# AGREEMENT BETWEEN AUSTRALIA AND JAPAN FOR AN ECONOMIC PARTNERSHIP

Australia and Japan (hereinafter referred to as "the Parties"),

CONSCIOUS of their longstanding friendship and ties that have developed through many years of fruitful and mutually beneficial cooperation between the Parties;

DETERMINED to strengthen their economic partnership through liberalisation and facilitation of trade and investment;

DETERMINED to establish a framework for enhanced cooperation to promote a predictable, transparent and consistent business environment that will lead to the improvement of economic efficiency and the development of trade and investment;

DESIRING to foster creativity, innovation and links between dynamic sectors of their economies;

SEEKING to create larger and new markets and to enhance the attractiveness and vibrancy of the markets of the Parties;

RECALLING the contribution made to the development of the bilateral trade relationship between the Parties by the Agreement on Commerce between the Commonwealth of Australia and Japan, signed at Hakone on 6 July 1957, as amended by the Protocol signed at Tokyo on 5 August 1963, and the Basic Treaty of Friendship and Co-operation between Australia and Japan, signed at Tokyo on 16 June 1976;

DETERMINED to build on their rights and obligations under the WTO Agreement and other agreements to which they are both parties; and

CONVINCED that this Agreement would open a new era for the relationship between the Parties;

HAVE AGREED as follows:

# Chapter 1. General Provisions

## Article 1.1. Establishment of a Free Trade Area

The Parties hereby establish a free trade area consistent with Article XXIV of the GATT 1994 and Article V of the GATS.

## Article 1.2. General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) the term "Agreement on Anti-Dumping" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(b) the term "Agreement on Customs Valuation" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(c) the term "Agreement on Subsidies and Countervailing Measures" means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;

(d) the term "Area" means:

(i) for Australia, the Commonwealth of Australia:

(A) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands,

and the Coral Sea Islands Territory; and

(B) including Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf, over which Australia exercises sovereign rights or jurisdiction in accordance with international law; and

(ii) for Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law and the laws and regulations of Japan;

Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

(e) the term "customs administration" means the administration that, in accordance with the laws and regulations of each Party or non-Parties, is responsible for the administration and enforcement of customs laws and regulations;

(f) the term "customs duty" means any customs or import duty and a charge of any kind, including any form of surtax or surcharge, imposed in comnection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Party or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;

(ii) anti-dumping or countervailing duty applied pursuant to a Party's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Anti- Dumping, and the Agreement on Subsidies and Countervailing Measures; or

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

(g) the term "days" means calendar days, including weekends and holidays;

(h) the term "enterprise" means any corporation, company, association, partnership, trust, joint venture, sole-proprictorship or other entity constituted or organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled;

(i) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(j) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(k) the term "government procurement" means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

(l) the term "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System defined in paragraph (a) of Article 1 of the International Convention on the Harmonized Commodity Description and Coding System, including the General Rules for the Interpretation of the Harmonized System, Section Notes and Chapter Notes, as adopted and implemented by the Parties in their respective laws;

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

(n) the term "natural person of a Party" means a natural person who is:

(i) for Australia, an Australian citizen or permanent resident, as defined in accordance with its laws and regulations; and

(ii) for Japan, a national of Japan, as defined in accordance with its laws and regulations;

(o) the term "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3 (Rules of Origin);

(p) the term "person" means either a natural person or an enterprise;

(q) the term "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;

(r) the term "SPS measure" means any sanitary or phytosanitary measure referred to in paragraph 1 of Annex A to the SPS

Agreement;

(s) the term "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement; and

(t) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.

## Article 1.3. Transparency

1. Each Party shall ensure that its laws, regulations, administrative procedures, and administrative rulings of general application as well as international agreements to which the Party is a party, with respect to any matter covered by this Agreement, are promptly published or otherwise made publicly available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. Each Party shall make easily available to the public the names and addresses of the competent authorities responsible for the laws, regulations, administrative procedures and administrative rulings referred to in paragraph 1.

3. Each Party shall, on request of the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1.

4. When introducing or changing its laws, regulations or administrative procedures that significantly affect the implementation of this Agreement, each Party shall endeavour to take appropriate measures to enable interested persons and the other Party to become acquainted with such introduction or change.

## Article 1.4. Public Comment Procedures

To the extent practicable and subject to its laws and regulations, each Party shallprovide a reasonable opportunity for comments on any measure of general application it proposes to adopt with respect to any matter covered by this Agreement.

## Article 1.5. Administrative Proceedings

1. Where administrative decisions which pertain to or affect the implementation and operation of this Agreement are taken by the competent authorities of the Government of a Party, the competent authorities shall, subject to the laws and regulations of the Party:

(a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party; and

(b) provide, within a reasonable period of time, information concerning the status of the application, on request of the applicant.

2. Recognising the importance of administering its laws, regulations, administrative procedures, and administrative rulings of general application in a consistent, impartial and reasonable manner, each Party shall ensure, subject to its laws and regulations, that its competent authorities, prior to any final administrative decision which imposes obligations on or restricts rights of a person, provide that person with:

(a) when the process is initiated, reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and

(b) a reasonable opportunity to present facts and arguments in support of the positions of such person, provided that time, the nature of the measure and the public interest permit.

## Article 1.6. Review and Appeal

1. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of administrative actions relating to matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement of such actions.

2. Each Party shall ensure that the parties in any such tribunals or procedures are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record.

3. Each Party shall ensure, subject to appeal or further review as provided for in its laws and regulations, that such decision is implemented by the relevant competent authorities with respect to the administrative action at issue.

## Article 1.7. Confidential Information

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

2. Unless otherwise provided for in this Agreement, nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

## Article 1.8. Taxation

1. Unless otherwise provided for in this Article, nothing in this Agreement shall apply to taxation measures.

Note: the term "taxation measures" shall not include: (a) a customs duty as defined in subparagraph (f) of Article 1.2;

(b) an anti-dumping or countervailing duty referred to in subparagraph (f)(ii) of Article 1.2; and

(c) fees or charges referred to in subparagraph (f)(iii) of Article 1.2. 2. The following provisions shall apply to taxation measures:

(a) Articles 1.3, 1.6 and 1.7, to the extent that the provisions of this Agreement are applicable to such taxation measures;

(b) Article 2.3 (Trade in Goods — National Treatment) to the same extent as Article III of the GATT 1994 and Article 2.6 (Trade in Goods — Export Duties);

(c) Article 9.4 (Trade in Services — National Treatment);

(d) Article 9.5 (Trade in Services — Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax;

(e) Article 14.3 (Investment — National Treatment) and 14.4 (Investment — Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax;

(f) Article 14.11 (Investment — Expropriation and Compensation), to the extent that such taxation measures constitute expropriation under Chapter 14 (Investment); and

(g) Article 14.6 (Investment — Access to the Courts of Justice), where Article 14.11 investment — Expropriation and Compensation) applies to taxation measures in accordance with subparagraph (f).

3. Notwithstanding paragraph 2, nothing in the Articles referred to in that paragraph shall apply to:

(a) a non-conforming provision of any taxation measure that is maintained by a Party on the date of entry into force of this Agreement;

(b) the continuation or prompt renewal of a non-conforming provision of any taxation measure referred to in subparagraph (a);

(c) an amendment or modification to a non-conforming provision of any taxation measure referred to in subparagraph (a), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with any of those Articles;

(d) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or

(e) a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

4. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax agreement. In the event of any inconsistency relating to a taxation measure between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency. In the case of a tax agreement between the Parties any consultations about whether any inconsistency exists shall include the competent authorities of each Party under that tax agreement.

5. Nothing in this Agreement shall oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax agreement.

## Article 1.9. General Exceptions

1. For the purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures), 5 (Sanitary and Phytosanitary Cooperation), 6 (Technical Regulations, Standards and Conformity Assessment Procedures), 7 (Food Supply), 8 (Energy and Mineral Resources) and 13 (Electronic Commerce), Article XX of the GATT 1994 is incorporated into and forms part of this Agreement, mutatis mutandis.

2. For the purposes of Chapters 9 (Trade in Services), 10 (Telecommunications Services), 11 (Financial Services), 12 (Movement of Natural Persons) and 13 (Electronic Commerce), Article XIV of the GATS is incorporated into and forms part of this Agreement, mutatis mutandis.

## Article 1.10. Security Exceptions

Nothing in this Agreement shall be construed:

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

(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

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

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

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

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

## Article 1.11. Relation to other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement and any other agreements to which both Parties are party.

2. Inthe event of any inconsistency between this Agreement and the WTO Agreement or any other agreements to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

3. Unless otherwise provided for in this Agreement, if any international agreement, or provision therein, incorporated into or referred to in this Agreement is amended, the Parties shall consult on whether it is necessary to amend this Agreement.

4. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that entitles goods, services, or persons to treatment more favourable than that accorded by this Agreement.

5. In the event of any inconsistency between this Agreement and the Agreement on Commerce between Japan and the Commonwealth of Australia or the Basic Treaty of Friendship and Co-operation between Japan and Australia, this Agreement shall prevail to the extent of inconsistency.

## Article 1.12. Implementing Agreement

The Governments of the Parties shall conclude a separate agreement setting forththe details and procedures for the implementation of this Agreement (hereinafter referred to as "the Implementing Agreement').

### Article 1.13. Joint Committee

1. The Parties hereby establish a Joint Committee under this Agreement. 2. The functions of the Joint Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Agreement;

(b) considering and recommending to the Parties any amendments to this Agreement;

(c) supervising and coordinating the work of all Sub-Committees established under this Agreement;

(d) adopting any necessary decisions, including those referred to the Joint Committee under the relevant provisions of this Agreement; and

(e) carrying out other functions as the Parties may agree.

3. The Joint Committee:

(a) shall be composed of representatives of the Governments of the Parties; and

(b) may establish and delegate its responsibilities to Sub-Committees. 4. The Joint Committee shall meet once a year alternately in Japan and Australia, unless the Parties otherwise agree.

### Article 1.14. Communications

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

# Chapter 2. Trade In Goods

## Section 1. General Rules

### Article 2.1. Definitions

For the purposes of this Chapter:

(a) the term "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(b) the term "Agreement on Import Licensing Procedures" means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;

(c) the term "Agreement on Safeguards" means the Agreement on Safeguards in Annex 1A to the WTO Agreement,

(d) the term "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 1 of Article 2.13;

(e) the term "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;

(f) the term "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(g) the term "export subsidy" means any subsidy as defined in subparagraph 1(a) of Article 3 of the Agreement on Subsidies and Countervailing Measures or export subsidies listed in subparagraphs 1(a) through 1(f) of Article 9 of the Agreement on Agriculture;

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

(i) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in paragraph 1 of Article 2.17;

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

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

(l) the term "transition period" means, in relation to a particular originating good, the period from the entry into force of this Agreement until eight years after the date of entry into force of this Agreement or five years after the date on which elimination or reduction of the customs duty on that good is completed in accordance with Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), whichever is longer.

## Article 2.2. Classification of Goods

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

## Article 2.3. National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994. To this end, Article III of the GATT 1994 is incorporated into and made a part of this Agreement, mutatis mutandis.

## Article 2.4. Elimination or Reduction of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).

2. On request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedules in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties), in accordance with the terms and conditions set out in such Schedules.

3. If, as a result of the elimination or reduction of its customs duty applied on a particular good on a most-favoured-nation basis, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.

4. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, cach Party shall apply the lower rate with respect to that originating good.

## Article 2.5. Customs Valuation

Each Party shall determine the customs value of goods traded between the Parties in accordance with Part I of the Agreement on Customs Valuation.

## Article 2.6. Export Duties

Neither Party shall adopt or maintain any duties on a good exported from the Party into the other Party, unless such duties are not in excess of those imposed on the like good destined for domestic consumption.

## Article 2.7. Export Subsidies

Neither Party shall introduce or maintain any export subsidy on any good destined for the other Party.

## Article 2.8. Non- Tariff Measures

1. Neither Party shall adopt or maintain any non-tariff measures, including quantitative restrictions, on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party, except in accordance with its rights and obligations under the WTO Agreement or as otherwise provided for in this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1, including quantitative restrictions, and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

### Article 2.9. Administrative Fees and Charges

1. Each Party shall ensure that all fees and charges imposed on or in connection with the importation or exportation of goods are consistent with Article VIII of the GATT 1994.

2. Each Party shall make available on the Internet details of fees and charges it imposes in connection with the importation and exportation of goods as soon as practically possible.

### Article 2.10. Administration of Trade Regulations

1. Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings of general application respecting any matter covered by this Chapter. To this end, Article X of the GATT 1994 is incorporated into and made a part of this Agreement, mutatis mutandis.

2. To the extent possible, each Party shall make its laws, regulations, decisions and rulings of the kind referred to in paragraph 1 publicly available on the Internet.

### Article 2.11. Import Licensing

1. Each Party shall ensure that all automatic and non-automatic import licensing measures are administered in a transparent and predictable manner, and applied in accordance with the Agreement on Import Licensing Procedures.

2. Promptly after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing import licensing procedures. The notification shall include the information specified in Article 5 of the Agreement on Import Licensing Procedures.

3. Any new import licensing procedure or change to an import licensing procedure shall be made available on the Internet and published in the sources notified to the Committee on Import Licensing established by Article 4 of the Agreement on Import Licensing Procedures, whenever practicable, 21 days prior to the effective date of such new procedure or change but in all events not later than the effective date.

4. On request of the other Party, a Party shall, promptly and to the extent possible, respond to the request of that Party for information on an import licensing measure of general application.

### Article 2.12. Anti-dumping Measures and Countervailing Measures

With respect to anti-dumping measures and countervailing measures, the Parties reaffirm their commitment to the provisions of the Agreement on Anti-Dumping and the Agreement on Subsidies and Countervailing Measures.

## Section 2. Safeguard Measures

### Article 2.13. Application of Bilateral Safeguard Measures

1. Subject to the provisions of this Section, during the transition period, each Party may apply a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 2.4, is being imported into the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury or threat thereof, to the domestic industry of the former Party.

2. A Party may, as a bilateral safeguard measure:

(a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or

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

(i) the most-favoured-nation applied rate of customs duty in effect at the time when the bilateral safeguard measure is applied; and

ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

## Article 2.14. Investigation

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards.

2. The investigation referred to in paragraph 1 shall in all cases be completed within one year following its date of initiation.

3. In the investigation referred to in paragraph 1, to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Section, the competent authorities of a Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

4. The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in paragraph 1 demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than increased imports of the originating good of the other Party as a result of the elimination or reduction ofa customs duty in accordance with Article 2.4 are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

## Article 2.15. Conditions and Limitations

1. With regard to a bilateral safeguard measure, a Party shall immediately deliver a written notice to the other Party upon:

(a) initiating an investigation referred to in Article 2.14 relating to serious injury, or threat thereof, and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 2.4;

(c) taking a decision to apply or extend a bilateral safeguard measure; and

(d) taking a decision to modify the bilateral safeguard measure for progressive liberalisation.

2. The Party delivering the written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

(a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation including its subheading of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and

(b) in the written notice referred to in subparagraphs 1(b), (c), and (d), evidence of serious injury or threat thereof caused by the increased imports of the originating good as a result of the elimination or reduction of a customs duty in accordance with Article 2.4, a precise description of the originating good subject to the proposed bilateral safeguard measure including its subheading of the Harmonized System, a precise description of the bilateral safeguard measure including the grounds for not selecting the measure described in subparagraph 2(a) of Article 2.13, and, where applicable, the proposed date of the application, extension or modification of the bilateral safeguard measure, its expected duration and the timetable for the progressive liberalisation of the measure provided for in paragraph 4.

3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in Article 2.14 and notified under paragraph 1, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in Article 2.16. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided.

4. No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three years. However, in very exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total period of the bilateral safeguard measure, including such extensions, shall not exceed four years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party

maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.

5. No bilateral safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.

6. Neither Party shall apply or maintain a bilateral safeguard measure beyond the expiration of the transition period, except with the consent of the other Party.

7. Upon the termination of a bilateral safeguard measure, the rate of customs duty for an originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

8. The Parties shall review the provisions of this Section, if necessary, in the tenth year following the date of entry into force of this Agreement.

9. Awritten notice referred to in paragraphs 1 and 2 and any other communication between the Parties pursuant to this Section shall be done in the English or Japanese language.

## Article 2.16. Compensation

1. A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties which are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.

2. Ifthe Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to paragraph 3 of Article 2.15, the Party against whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

3. The Party exercising the right of suspension provided for in paragraph 2 shall notify the other Party, in writing, at least 30 days before suspending the application of concessions.

## Article 2.17. Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2(a) or (b) of Article 2.13, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 2.4 have caused or are threatening to cause serious injury to a domestic industry.

2. A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Articles 2.14 and 2.15 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 4 of Article 2.15.

4. Paragraph 7 of Article 2.15 shall be applied mutatis mutandis to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 1 of Article 2.14 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

## Article 2.18. Special Safeguard Measures on Specific Agricultural Goods

1. A Party may apply a special safeguard measure on specific originating agricultural goods classified under the tariff lines indicated with "PS*" or "PS**" in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), hereinafter referred to as "special safeguard measure", only under the conditions set out in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).

2. In proposing to apply a special safeguard measure, a Party may, in lieu of paragraph 2 of Article 2.13, increase the rate of customs duty on the originating good to a level not to exceed the lesser of:

(a) the most-favoured-nation applied rate of customs duty in effect at the time the special safeguard measure is applied;

(b) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; and

(c) the Base Rate set out in that Party's Schedule in Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)).

3. The applied special safeguard measure shall only be maintained until the end of the year in which it has been imposed.

Note: For the purposes of this paragraph, the term "year" means the twelve- month period which starts on 1 April of that year.

4. Neither Party shall apply or maintain a special safeguard measure under this Article and at the same time apply or maintain a bilateral safeguard measure, a provisional bilateral safeguard measure, or a measure applied pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, on the same goods.

5. Provisions on special safeguard measures shall be subject to review in the tenth year following entry into force of this Agreement, or a year on which the Parties otherwise agree, whichever comes first. The review shall proceed with a view to improving market access for the specific originating agricultural goods referred to in paragraph 1, through, for example, such measures as increasing the trigger level as set out in paragraph 3 of Section 1 (Notes for Schedule of Japan) of Part 3 of Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), reducing the applied customs duties on those goods, or if market conditions allow, terminating the special safeguard measure.

### Article 2.19. Relation to Safeguard Measures Under the Wto Agreement

1. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with:

(a) Article XIX of the GATT 1994 and the Agreement on Safeguards; or

(b) Article 5 of the Agreement on Agriculture.

2. A Party shall not apply a bilateral safeguard measure or a provisional bilateral safeguard measure under this Section on a good that is subject to a measure that the Party has applied pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, nor shall a Party continue to maintain a bilateral safeguard measure or a provisional bilateral safeguard measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture.

3. The period of application of a bilateral safeguard measure referred to in this Section shall not be interrupted by a Party's non-application of the bilateral safeguard. measure in accordance with paragraph 2. That Party may resume the application of the bilateral safeguard measure to imports of the originating good upon the termination of the safeguard measures applied in accordance with subparagraph 1(a) or (b), up to the remaining period of the bilateral safeguard measure.

## Section 3. Other Provisions

### Article 2.20. Reviews of Market Access and Protection of Competitiveness

1. For the purposes of Article 2.4, treatment of originating goods classified under the tariff lines indicated with "S" in Column 4 of the Schedule in Section 2 of a Party's Schedule to Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), shall be subject to review by the Parties in the fifth year following the date of entry into force of this Agreement or a year on which the Parties otherwise agree, whichever comes first. The review shall proceed with a view to improving market access conditions through, for example, such measures as faster reduction and/or elimination of custom duties, streamlining tendering processes and increasing quota quantities, as well as addressing issues related to levies.

2. The Parties shall also conduct a review if there is a significant change to the competitiveness in the Japanese market of such originating good designated in paragraph 1 as a result of preferential market access being granted by Japan to a non-Party based on an international agreement with that non-Party, with a view to providing equivalent treatment to the originating good of Australia. The Parties shall commence such a review within three months following the date of entry into force of the international agreement with the non-Party and will conduct the review with the aim of concluding it within six

months following the same date.

### Article 2.21. Sub-committee on Trade In Goods

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues relating to the Chapter, including:

(i) promoting trade in goods between the Parties, including through consultations on further liberalisation of customs duties and accelerating tariff elimination under this Agreement;

ii) addressing tariff and non-tariff measures to trade in goods between the Parties; and

(iii) addressing issues relating to each Party's administration of its tariff rate quotas, including to promote transparency in its administration;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions which may be delegated by the Joint Committee.

3. The Sub-Committee shall review non-tariff measures, raised by either Party for the purposes of considering approaches that may facilitate trade between the Parties. The Sub-Committee shall, if necessary, report the findings through such a review to the Joint Committee.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

### Article 2.22. Amendment of Annex

11. Without prejudice to the legal procedures of each Party with respect to the conclusion and amendment of international agreements, amendments relating to Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)) which are made to give effect to amendments of the Harmonized System and which include no change to the rates of customs duty to be applied to the originating goods of the other Party in accordance with Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)) may be made by diplomatic notes exchanged between the Governments of the Parties.

2. Any amendment pursuant to paragraph 1 shall enter into force on the date to be agreed by the Parties.

### Article 2.23. Operational Procedures

On the date of entry into force of this Agreement, the Joint Committee shall adopt Operational Procedures that provide detailed regulations pursuant to which the customs administrations, the competent governmental authorities and other authorised bodies of the Parties implement their functions in relation to the application of tariff rate quotas and other relevant issues.

## Chapter 3. Rules of Origin

### Article 3.1. Definitions

For the purposes of this Chapter:

(a) the term "authorised body" means a competent governmental authority or other entity that is responsible for the issuing of a Certificate of Origin referred to in paragraph 1 of Article 3.15;

Note: In the case of Japan:

(i) the authorised body is the Ministry of Economy, Trade and Industry, or its successor; and

ii) the Ministry of Economy, Trade and Industry, as the authorised body of Japan, may designate other certification bodies for the issuing of a Certificate of Origin referred to in paragraph 1 of Article 3.15 (hereinafter referred to as "other certification bodies").

(b) the term "factory ships of the Party" or "vessels of the Party" respectively means factory ships or vessels which:

(i) are registered in the Party; ii) sail under the flag of the Party; and (iii) meet one of the following conditions:

(A) they are at least 50 per cent owned by the nationals of the Parties;

(B) they are owned by a juridical person which has its head office and its principal place of business in the Party; or

(C) they are authorised by the Government of the Party to operate under a bare boat charter contract only in the Area of the Party;

(c) the term "fungible goods" or "fungible materials" respectively means goods or materials that are interchangeable as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

(d) the term "Generally Accepted Accounting Principles" means the recognised consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;

(e) the term "importer" means a person who imports a good into the importing Party;

(f) the term "indirect materials" means goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(i) fuel and energy;

ii) tools, dies and moulds;

(iii) spare parts and goods used in the maintenance of equipment and buildings;

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

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

(vi) equipment, devices and supplies used for testing or inspection;

(vii) catalysts and solvents; and

(viii) any other goods that are not incorporated into another good

but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(g) the term "material" means a good that is used in the production of another good;

(h) the term "originating material" means a material that qualifies as originating in accordance with the provisions of this Chapter;

(i) the term "packing materials and containers for transportation and shipment" means goods that are used to protect a good during transportation, other than packing materials and containers for retail sale referred to in Article 3.13;

(j) the term "preferential tariff treatment" means the application of customs duties to originating goods in accordance with paragraph 1 of Article 2.4 (Trade in Goods - Elimination or Reduction of Customs Duties); and

(k) the term "production" means a method of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

## Article 3.2. Originating Goods

For the purposes of this Agreement, a good shall qualify as an originating good of a Party if it:

(a) is wholly obtained in the Party, as provided for in Article 3.3;

(b) is produced entirely in the Party exclusively from originating materials of the Party;

(c) satisfies the requirements of Article 3.4 as a result of processes performed entirely in one or both Parties by one or more producers, and the last process of production of the good, other than the operations provided for in Article 3.7, was performed in the exporting Party; or

(d) otherwise qualifies as an originating good under this Chapter, and meets all other applicable requirements of this Chapter.

## Article 3.3. Wholly Obtained Goods

For the purposes of subparagraph (a) of Article 3.2, the following goods shall be considered as being wholly obtained in a Party:

(a) live animals born and raised in the Area of the Party, excluding the sea outside the territorial sea of the Party;

(b) animals obtained from hunting, trapping, fishing, gathering or capturing in the Area of the Party, excluding the sea outside the territorial sea of the Party;

(c) goods obtained from live animals in the Area of the Party;

(d) plants, fungi and algae, harvested, picked or gathered in the Area of the Party;

(e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from the Area of the Party, excluding the seabed or subsoil beneath the seabed outside the territorial sea of the Party;

3. A good that does not undergo the required change in tariff classification or a specific manufacturing or processing operation shall be considered as an originating good of a Party if:

(a) in the case of a good other than those specified in subparagraph (b), the total value of non-originating materials used in the production of the good that have not undergone the required change in tariff classification or a specific manufacturing or processing operation does not exceed 10 per cent of the F.O.B.; or

(b) in the case of a good classified under Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in the production of the good that have not undergone the required change in tariff classification does not exceed 10 per cent of the total weight of the good, provided that it meets all other applicable criteria set out in this Chapter for qualifying as an originating good.

4. Paragraph 3 shall not apply to a good provided for in Chapters 1 through 24 of the Harmonized System, except where the non-originating material used in the production of the good is provided for in a different subheading than the good for which origin is being determined under this Article.

5. The value of non-originating materials referred to in paragraph 3 shall, however, be included in calculating the value of non-originating materials used in the production of the good.

## Article 3.5. Calculation of Qualifying Value Content

1. For the purposes of paragraph 1 of Article 3.4, the product specific rules set out in Annex 2 (Product Specific Rules) using the value-added method require that the qualifying value content of a good, calculated in accordance with paragraph 2, is not less than the percentage specified by the rule for the good.

2. For the purposes of calculating the qualifying value content of a good, the following formula shall be applied:

Q.V.C = F.O.B. . V.N.M. x 100

F.O.B.

where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 3, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted, or repaid when the good is exported; and

V.N.M. is the value of non-originating materials used in the production of a good. 3. F.0.B. referred to in paragraph 2 shall be the value:

(a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good or determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is free-on- board value of the good, but it is unknown and cannot be ascertained; or

(b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

4. For the purposes of paragraph 2, the value of a non-originating material used in the production of a good in a Party:

(a) shall be determined in accordance with the Agreement on Customs Valuation, and shall include freight, insurance where appropriate, packing and all the other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or

(b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warchouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

5. For the purposes of paragraph 2, the value of non-originating materials of a good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

6. For the purposes of paragraph 2, the value of non-originating material produced in either Party may be limited to the value of materials contained therein that are not otherwise qualified as originating materials of cither Party.

7. Paragraphs 5 and 6 may apply in calculating the value of any materials contained in a good as long as the documentary evidence of the value referred to therein is available.

8. For the purposes of subparagraph 3(b) or 4(a), in determining the value of a good or non-originating material, the Agreement on Customs Valuation shall apply mutatis mutandis to domestic acquisition of the good or the non-originating material including domestic transactions.

## Article 3.6. Accumulation

For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered to be an originating material of the former Party.

## Article 3.7. Non-qualifying Operations

1. A good shall not be considered to be an originating good of the exporting Party merely by reason of:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;

(b) changes of packaging and breaking up and assembly of packages;

(c) disassembly;

(d) placing in bottles, cases, boxes and other simple packaging operations;

(e) collection of parts and components classified as a good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;

(f) mere making-up of sets of articles;

(g) mere reclassification of goods without any physical change; or

(h) any combination of operations referred to in subparagraphs (a) through (g).

2. Paragraph 1 shall prevail over the product specific rules set out in Annex 2 (Product Specific Rules).

## Article 3.8. Consignment

A good shall not be considered to be an originating good if the good:

(a) undergoes subsequent production or any other operation outside the Area of the exporting Party, other than repacking and relabelling for the purpose of satisfying the requirements of the importing Party, splitting up of the consignment, unloading, reloading, storing or any other operation necessary to preserve it in good condition or to transport the good to the importing Party during its transhipment and temporary storage; or

(b) does not remain under customs control of one or more non-Parties while it is in those non-Parties.

## Article 3.9. Unassembled or Disassembled Goods

1. Where a good satisfies the requirements of the relevant provisions of Articles 3.2 through 3.7 and is imported into a Party from the other Party in an unassembled or disassembled form but is classified as an assembled good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered to be an originating good of the other Party.

2. A good assembled in a Party from unassembled or disassembled materials, which were imported into the Party and classified as an assembled good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, shall be considered as an originating good of the Party, provided that the good would have satisfied the applicable requirements of the relevant provisions of Articles 3.2 through 3.7 had each of the non-originating materials among the unassembled or disassembled materials been imported into the Party separately and not in an unassembled or disassembled form.

## Article 3.10. Fungible Goods and Materials

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible materials consisting of originating materials of the Party and non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method recognised in the Generally Accepted Accounting Principles in the Party.

2. Where fungible goods consisting of originating goods of a Party and non- originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading or any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method recognised in the Generally Accepted Accounting Principles in the Party.

## Article 3.11. Indirect Materials

Indirect materials used in the production of a good shall be treated as originating materials of the Party where the good is produced.

## Article 3.12. Accessories, Spare Parts and Tools

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2 (Product Specific Rules), accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded, provided that:

(a) the accessories, spare parts or tools are not invoiced separately from the good, whether or not they are separately described in the invoice; and

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

2. If a good is subject to a qualifying value content requirement, the value of the accessories, spare parts or tools shall be taken into account as the value of originating materials or non-originating materials, as the case may be, in calculating the

qualifying value content of the good.

3. Where accessories, spare parts or tools are not customary for the good or are invoiced separately from the good, they shall be treated as separate goods for the purpose of origin determination.

## Article 3.13. Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall be disregarded in determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with the good, shall be disregarded in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements set out in Annex 2(Product Specific Rules).

3. Ifa good is subject to a qualifying value content requirement, the packing materials and containers in which the good is packaged for retail sale shall be taken into

account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

## Article 3.14. Documentary Evidence of Origin

For the purposes of this Chapter, the following documents shall be considered to be Documentary Evidence of Origin:

(a) a Certificate of Origin referred to in Article 3.15; or

(b) an origin certification document referred to in Article 3.16.

## Article 3.15. Certificate of Origin

1. A Certificate of Origin shall be issued by an authorised body or other certification bodies of the exporting Party, following a written application submitted by an exporter, by a producer or, under the exporter's or producer's responsibility, by their authorised representative located in the exporting Party.

2. The Certificate of Origin shall: (a) specify that the goods described therein are originating goods;

(b) be made in respect of one or more goods and may include a variety of goods;

(c) be in a printed format or such other medium agreed by the Parties;

(d) contain the data elements set out in Annex 3 (Data Elements for Documentary Evidence of Origin);

(e) remain valid for one year from the date on which it was issued; and OD be applicable to a single importation, unless the Parties otherwise agree.

3. Where an exporter in a Party is not the producer of the good, the exporter may apply for a Certificate of Origin on the basis of:

(a) its knowledge that the good qualifies as an originating good based on the information provided by the producer;

(b) a written or electronic declaration or statement that the good qualifies as an originating good, provided by the producer; or

(c) a written or electronic declaration or statement that the good qualifies as an originating good, voluntarily provided by the producer of the good directly to the authorised body or other certification bodies of the exporting Party on request of the exporter.

4. Each Party shall provide that its authorised bodies or other certification bodies carry out proper examination of each application for a Certificate of Origin to ensure that:

(a) goods described therein are originating goods; and

(b) the data to be contained in the Certificate of Origin corresponds to that in supporting documents submitted.

5. A Certificate of Origin which is submitted to the customs administration of the importing Party after its expiration date

may be accepted, in accordance with the laws and regulations or administrative procedures of the importing Party, when failure to observe the time-limit is due to force majeure or other valid causes beyond the control of the exporter, producer or importer.

6. On entry into force of this Agreement, each Party shall provide the other Party with a sample format of a Certificate of Origin, the names, addresses, specimen signatures of representatives, and impressions of the stamps or official seals and other details of its authorised bodies or other certification bodies that the Parties may agree. Any subsequent change shall be promptly notified.

## Article 3.16. Origin Certification Document

1. An origin certification document referred to in subparagraph (b) of Article 3.14 may be completed, in accordance with this Article, by an importer, by an exporter, or by a producer of the good on the basis of:

(a) the importer's, exporter's or producer's information demonstrating that the good is an originating good;

(b) in the case of an origin certification document completed by an importer, reasonable reliance on the exporter's or, if the exporter is not a producer of the good, producer's written or electronic declaration or statement that the good is an originating good; or

(c) in the case of an origin certification document completed by an exporter, reasonable reliance on, if the exporter is not the producer of the good, the producer's written or electronic declaration or statement that the good is an originating good.

2. An origin certification document shall:

(a) specify that the goods described therein are originating goods;

(b) be made in respect of one or more goods and may include a variety of goods;

(c) be in a print format or an electronic format;

(d) contain the data elements set out in Annex 3 (Data Elements for Documentary Evidence of Origin);

(e) remain valid for one year from the date on which it was completed; and

(f) be applicable to a single importation, unless the Parties otherwise agree.

3. An origin certification document which is submitted to the customs administration of the importing Party after its expiration date may be accepted, in accordance with the laws and regulations or administrative procedures of the importing Party, when failure to observe the time-limit is due to force majeure or other valid causes beyond the control of the exporter, producer or importer.

4. On entry into force of this Agreement, each Party shall provide the other Party with a sample format of an origin certification document. Any subsequent change shall be promptly notified.

## Article 3.17. Claim for Preferential Tariff Treatment

1. Acclaim for preferential tariff treatment shall be supported by Documentary Evidence of Origin.

2. Unless otherwise provided for in this Chapter, the importing Party shall grant preferential tariff treatment to a good imported from the exporting Party, provided that:

(a) the importer requests preferential tariff treatment at the time of importation;

(b) the good qualifies as an originating good of the exporting Party; and

(c) the importer provides, on request of the customs administration of the importing Party, Documentary Evidence of Origin and, where appropriate, other evidence that the good qualifies as an originating good, in accordance with the laws and regulations of the importing Party.

Note 1: Without prejudice to the authority of the customs administration of the importing Party to require the importer to provide the original of the Certificate of Origin, for the purposes of claiming preferential tariff treatment, the importer may present a copy of the Certificate of Origin on request of the customs administration of the importing Party, provided that the original of the Certificate of Origin is in possession of the importer.

Note 2: Without prejudice to the authority of the customs administration of the importing Party to require the importer to provide the original of the origin certification document, for the purposes of claiming preferential tariff treatment, the importer may present a copy of the origin certification document on request of the customs administration of the importing Party.

3. An importer should promptly make a corrected customs import declaration in a manner required by the customs administration of the importing Party and pay any duties owing where the importer has reason to believe that the Documentary Evidence of Origin on which a claim was based contains information that is not correct.

4. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require importers that claim preferential tariff treatment for the good to submit evidence that the good meets the requirements for an originating good specified in Article 3.8 in accordance with the applicable laws and regulations of the importing Party.

5. Each Party shall provide that the importer may, in accordance with the laws and regulations of the importing Party, apply for:

(a) in the case of Australia, where the importer does not claim preferential tariff treatment at the time of importation of the good, a refund of any excess customs duties paid as a result of the good not having been granted preferential tariff treatment, provided that the requirements in subparagraphs 2(b) and (c) are met; or

(b) in the case of Japan, where the importer does not have Documentary Evidence of Origin in its possession at the time of importation of an originating good, the temporary deferment of the presentation of Documentary Evidence of Origin by paying the deposit for preferential tariff treatment, which will be released upon the presentation of Documentary Evidence of Origin to the customs administration of the importing Party.

## Article 3.18. Waiver of Documentary Evidence of Origin

Each Party shall provide that Documentary Evidence of Origin shall not be required for:

(a) an importation of a good whose customs value does not exceed, in the case of Australia, 1,000 Australian Dollars or, in the case of Japan, 100,000 Yen, or such amount as cach Party may establish; or

(b) an importation of a good for which the importing Party has waived the requirement for Documentary Evidence of Origin,

provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the Documentary Evidence of Origin requirements of Articles 3.15, 3.16 and 3.17.

## Article 3.19. Measures Regarding an Erroneous or False Documentary Evidence of Origin

Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate measures to prevent an erroneous or false Documentary Evidence of Origin from being used or circulated.

## Article 3.20. Record-keeping Requirements

1. Each Party shall provide that:

(a) an exporter or a producer that has been issued a Certificate of Origin or completed an origin certification document or provided a written or electronic declaration or statement referred to in subparagraph 3(b) or (c) of Article 3.15 or in subparagraph 1(b) or (c) of Article 3.16, shall maintain, for five years, in accordance with relevant laws and regulations of the exporting Party, all records necessary to demonstrate that the good for which the Documentary Evidence of Origin was issued or completed was an originating good;

(b) an importer claiming preferential tariff treatment:

(i) that is supported by a Certificate of Origin or an origin certification document completed by an exporter or a producer, shall maintain, for a period required under relevant laws and regulations of the importing Party, such documentation, including an original or copy of the Certificate of Origin or an original or copy of the origin certification document, as the importing Party may require relating to the importation of the good; or

ii) that is supported by an origin certification document completed by the importer, shall maintain, for a period required under relevant laws and regulations of the importing Party, such documentation, including an original or copy of the origin certification document and all other records necessary to demonstrate that the good for which the origin certification document was completed was an originating good, as the importing Party may require relating to the importation of the good; and

(c) an authorised body or other certification bodies of the exporting Party shall maintain, for five years, in accordance with relevant laws, regulations or accreditation requirements of the exporting Party, all relevant documents pertaining to a Certificate of Origin.

2. The records to be kept in accordance with this Article may include electronic records.

## Article 3.21. Origin Verification

1. In order to ensure the proper application of this Chapter, the Parties shall, subject to available resources, assist each other to carry out verification of the information related to Documentary Evidence of Origin, in accordance with this Agreement and their respective laws and regulations.

2. For the purposes of determining whether a good imported into one Party from the other Party qualifies as an originating good, the customs administration of the importing Party may conduct a verification action by means of:

(a) written requests for information from the importer;

(b) written requests to the authorised body or customs administration of the exporting Party to verify the validity of Documentary Evidence of Origin subject to available resources of the exporting Party;

(c) written requests for information from the exporter or producer referred to in subparagraph 1(a) of Article 3.20 in the exporting Party; or

(d) verification visits to the premises of the exporter or producer referred to in subparagraph 1(a) of Article 3.20 in the exporting Party in accordance with Article 3.22.

3. For the purposes of subparagraphs 2(b) and (c), the customs administration of the importing Party shall allow the exporter, producer, authorised body or customs administration of the exporting Party a period of 45 days from the date of receipt of the written request to respond or any other time period agreed upon by the Parties.

4. The customs administration of the importing Party shall endeavour to complete any action under paragraph 2 to verify eligibility for preferential tariff treatment within six months. Upon the completion of the action under paragraph 2, the customs administration of the importing Party shall provide written notification of its decision as well as the legal basis and findings of fact on which the decision was made to:

(a) where a written request for information under subparagraph 2(a), (b) or (c) was made, the importer, exporter, producer, authorised body or customs administration of the exporting Party who was requested to provide information; and

(b) where a verification visit under subparagraph 2(d) was undertaken, the exporting Party and the exporter and the producer whose premises were visited.

## Article 3.22. Verification Visit

1. A verification visit referred to in subparagraph 2(d) of Article 3.21 shall be conducted under the conditions set out by the exporting Party.

2. Prior to the verification visit referred to in paragraph 1:

(a) the importing Party shall provide a request to the exporting Party in writing on the verification visit to the premises of the exporter or producer at least 40 days in advance of the proposed date of the visit; and

(b) the exporting Party shall respond to the importing Party in writing on whether the requested verification visit is accepted or refused, within 30 days from the receipt by the exporting Party of the request referred to in subparagraph (a). The exporting Party shall request the written consent of the exporter or producer whose premises are to be visited.

3. The written request referred to in subparagraph 2(a) shall include:

(a) the identity of the customs administration issuing the request;

(b) the name of the exporter or producer to whom the request is addressed;

(c) the date on which the written request is made;

(d) the proposed date and place of the visit;

(e) the objective and scope of the requested visit, including specific reference to the good subject to verification referred to in the Documentary Evidence of Origin; and

(f) the names and titles of the officials of the customs administration of the importing Party who will participate in the visit.

## Article 3.23. Denial of Preferential Tariff Treatment

1. The importing Party may deny a claim for preferential tariff treatment where:

(a) the good does not meet the requirements of this Chapter;

(b) the exporter, producer or importer of the good fails or has failed to comply with any of the relevant requirements for obtaining preferential tariff treatment;

(c) the exporting Party fails to respond to the importing Party in writing on the requested verification visit in accordance with subparagraph 2(b) of Article 3.22 or provides a written response indicating that the requested verification visit has been refused;

(d) in the case that a claim for preferential tariff treatment is supported by a Certificate of Origin or by an origin certification document completed by an exporter or producer, the importer and, either one of the exporter, producer or authorised body of the exporting Party fails to provide sufficient information requested by the customs administration of the importing Party in accordance with Article 3.21 which demonstrates that the good is an originating good; or

(e) in the case that a claim for preferential tariff treatment is supported by an origin certification document completed by the importer, the information provided to the customs administration of the importing Party in accordance with subparagraph 2(a) of Article 3.21 is not sufficient to prove that the good qualifies as an originating good.

2. The importing Party may suspend or deny the application of preferential tariff treatment to a good that is the subject of an origin verification action under Article 3.21 for the duration of that action. However, the suspension of preferential tariff treatment shall not be a reason to stop the release of the good, provided any applicable deposit, fees, charges or duties are paid.

3. The importing Party may suspend or deny the application of preferential tariff treatment on any subsequent import of a good where the relevant authority had already determined that an identical good from the same producer was not eligible for such treatment, until it is demonstrated that the good complies with the provisions under this Chapter.

## Article 3.24. Non-party Invoices

The customs administration of the importing Party shall not reject Documentary Evidence of Origin only for the reason that the invoice was issued in a non-Party.

## Article 3.25. Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter, and shall protect that information from disclosure.

2. Information obtained by the customs administration of the importing Party pursuant to this Chapter:

(a) may only be used by such authority for the purposes of this Chapter; and

(b) shall not be used by the importing Party for presentation in criminal proceedings carried out by a court or a judge, unless such information was provided for use in criminal proceedings on request of the importing Party, through diplomatic channels or other channels established in accordance with the laws and regulations of the exporting Party.

3. This Article shall not preclude the use or disclosure of information to the extent such use or disclosure is required by the laws and regulations of the importing Party receiving the information. The importing Party shall, wherever possible, give advance notice of any such disclosure to the exporting Party.

## Article 3.26. Penalties

Each Party shall adopt or maintain appropriate penalties or other measures against violations of its laws and regulations relating to the provisions of this Chapter.

## Article 3.27. Transitional Provisions for Goods In Transport or Storage

1. Within four months after the date of entry into force of this Agreement, or such longer period as allowed by the importing Party, the customs administration of the importing Party shall grant preferential tariff treatment for an originating good of the exporting Party which, on the date of entry into force of this Agreement:

(a) is in the process of being transported from the exporting Party to the importing Party; or

(b) has not been released from customs control, including from temporary storage in a warehouse regulated by the customs administration of the importing Party.

2. For the purpose of paragraph 1, the provisions of Article 3.17 shall apply, and for the purpose of this Article, a Certificate of Origin may be issued retrospectively.

## Article 3.28. Sub-committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee").

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

(a) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on:

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annex 2 (Product Specific Rules) including amendments to reflect periodic amendments to the Harmonized System, and to Annex 3 (Data Elements for Documentary Evidence of Origin), proposed by either Party; and

(iii) Chapter 2 of the Implementing Agreement referred to in Article 1.12 (General Provisions - Implementing Agreement);

(b) considering any other matter as the Parties may agree related to this Chapter;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee. 3. The Sub-Committee shall commence a review of this Chapter, within one year following entry into force of this Agreement. This review will focus on improvements to the origin certification system. The review will also give consideration to the inclusion of additional product specific rules relating to specific manufacturing or processing operations and to extending applicable rules to goods exempted from their application at entry into force of this Agreement. The Sub-Committee will ensure that the rules as set out in subsequent agreements to which both Parties are party are, as appropriate and at the agreement of Parties, incorporated into this Agreement.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

## Article 3.29. Amendments to Annexes 2 and 3

1. Without prejudice to the legal procedures of each Party with respect to the conclusion and amendment of international agreements, amendments relating to:

(a) Annex 2 (Product Specific Rules); or (b) Annex 3 (Data Elements for Documentary Evidence of Origin), may be made by diplomatic notes exchanged between the Governments of the Parties.

2. Any amendment pursuant to paragraph 1 shall enter into force on the date to be agreed by the Parties.

# Chapter 4. Customs Procedures

## Article 4.1. Scope

This Chapter shall apply to customs procedures applied to goods traded between the Parties and shall be implemented by the Parties in accordance with the laws and regulations of each Party.

## Article 4.2. Definitions

For the purposes of this Chapter, the term "customs laws" means such laws and regulations administered and enforced by the customs administration of each Party concerning the importation, exportation and transit of goods, as they relate to customs duties, charges and other taxes, or to prohibitions, restrictions and other similar controls with respect to the movement of controlled goods across the boundary of the customs territory of each Party.

## Article 4.3. Transparency

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is readily available to any interested person cither in print or through the Internet.

2. When information that has been made available must be revised due to changes in a Party's customs laws, that Party shall make the revised information readily available, sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

3. On request of any interested person of the Parties, a Party shall provide, as quickly and as accurately as possible, information relating to the specific customs matters raised by the interested person and pertaining to its customs laws, and any other pertinent information of which it considers the interested person should be made aware.

4. Each Party shall designate one or more enquiry points to answer reasonable enquiries from any interested person of the Parties concerning customs matters and shall make publicly available, including through the Internet, the names, addresses and telephone numbers of such enquiry points.

## Article 4.4. Customs Clearance

1. The Parties shall apply their respective customs procedures in a predictable, consistent, transparent, impartial and reasonable manner.

2. For prompt customs clearance of goods traded between the Parties, each Party shall:

(a) make use of information and communications technology;

(b) simplify its customs procedures;

(c) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and

(d) promote cooperation, where appropriate, between its customs administration and:

(i) other national authorities of the Party;

(ii) the trading communities of the Party; and

(iii) the customs administrations of non-Parties.

3. Each Party shall periodically review its customs procedures with a view to exploring ways of further facilitating legitimate trade flows between the Parties while ensuring effective enforcement of its customs laws.

## Article 4.5. Advance Rulings

1. The importing Party shall provide for advance rulings that are issued, prior to the importation of a good of the exporting Party, to importers of the good or their authorised agents, or exporters or producers of the good in the exporting Party or their authorised agents, concerning the tariff classification, customs valuation and origin of the good, as well as the qualification of the good as an originating good of the exporting Party under the provisions of Chapter 3 (Rules of Origin).

2. Where a written application is made with all the necessary information and the importing Party has no reasonable

grounds to deny issuance, the importing Party shall endeavour to issue such a written advance ruling as referred to in paragraph 1. The importing Party shall adopt or maintain procedures for issuing advance rulings which satisfy the requirements specified in the Implementing Agreement.

3. The advance ruling issued in accordance with paragraph 2 shall remain valid for the period determined by the importing Party, in accordance with its laws, regulations and procedures.

4. The importing Party may modify or revoke the advance ruling issued in accordance with paragraph 2 in such cases as are specified in the Implementing Agreement.

5. The importing Party shall, where appropriate, make publicly available the advance ruling issued in accordance with paragraph 2.

### Article 4.6. Temporary Admission and Goods In Transit

1. Each Party shall continue to facilitate procedures for the temporary admission of goods traded between the Parties in accordance with its laws, regulations and international obligations, including those under the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, done at Brussels on 6 December 1961, as amended.

2. Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of the GATT 1994.

3. For the purposes of this Article, the term "temporary admission" means customs procedures under which certain goods may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such goods shall be imported for a specific purpose and intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

### Article 4.7. Cooperation and Exchange of Information

1. The Parties shall, within the competence and available resources of their respective customs administrations, cooperate and exchange information in the field ofcustoms procedures.

2. Such cooperation and exchange of information shall be implemented as provided for in the Implementing Agreement.

### Article 4.8. Review Process

Each Party shall, in relation to any decision concerning customs matters taken by the Party, provide affected parties with easily accessible processes of administrative and judicial review. Such review shall be independent from the official or office making the decision.

### Article 4.9. Sub-committee on Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Customs Procedures (hereinafter referred to in this Article as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) identifying areas relating to this Chapter to be improved to facilitate trade between the Parties;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

## Chapter 5. Sanitary and Phytosanitary Cooperation

### Article 5.1. Scope

This Chapter shall apply to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

## Article 5.2. Reaffirmation of Rights and Obligations

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

## Article 5.3. Cooperation

1. The Parties shall give positive consideration to further cooperation through:

(a) exchanging views and information at a bilateral level and in relevant international bodies engaged in food safety and human, animal or plant life or health issues; and

(b) facilitating the timely exchange of information on their respective SPS measures.

2. Where a Party makes a notification in accordance with subparagraph 5(b) or 6(a) of Annex B to the SPS Agreement, it shall provide a copy of the notification electronically to the other Party at the same time as the notification is provided to the World Trade Organization.

## Article 5.4. Sub-committee on Sanitary and Phytosanitary Cooperation

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Cooperation (hereinafter referred to in this Chapter as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) undertaking consultations, including science-based consultations, to identify and address specific issues that may arise from the application of SPS measures with the objective of achieving mutually acceptable solutions;

(c) as appropriate, reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee. 3. | The Sub-Committee shall coordinate its activities with those of the relevant consultative fora of the Parties, with the objective of avoiding unnecessary duplication and maximising efficiency of efforts of the Parties on SPS measures.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties with responsibility for SPS measures.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

## Article 5.5. Chapter Coordinator

1. For the purposes of the effective implementation and operation of this Chapter, each Party shall designate the following governmental authority as its Chapter Coordinator:

(a) for Australia, the Department of Agriculture, or its successor; and

(b) for Japan, the Ministry of Foreign Affairs, or its successor. 2. The functions of the Chapter Coordinators shall be:

(a) coordinating the work of the Sub-Committee and facilitating the implementation of this Chapter and decisions of the Sub-Committee; and

(b) answering all reasonable enquiries from the other Party regarding SPS measures and, as appropriate, providing the other Party with other relevant information.

3. The Chapter Coordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions.

## Article 5.6. Non-application of Chapter 19 (dispute Settlement)

The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter.

# Chapter 6. Technical Regulations, Standards and Conformity Assessment Procedures

## Article 6.1. Scope

1. This Chapter shall apply to technical regulations, standards and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties.

2. This Chapter shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies or to SPS measures.

3. Each Party shall take such reasonable measures as may be available to it to ensure compliance in the implementation of the provisions of this Chapter by local government and non-governmental bodies within its Area.

## Article 6.2. Definitions

For the purposes of this Chapter:

(a) the term "TBT Agreement" means the Agreement on Technical Barriersto Trade in Annex 1A to the WTO Agreement; and

(b) the definitions set out in the TBT Agreement shall apply.

## Article 6.3. Reaffirmation of Rights and Obligations

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

## Article 6.4. International Standards, Guides or Recommendations

1. Subject to paragraph 4 of Article 2 and paragraph 4 of Article 5 of the TBT Agreement, each Party shall use relevant international standards, guides or recommendations, or their relevant parts, as a basis for its technical regulations and conformity assessment procedures.

2. Where a Party does not use an international standard, guide or recommendation referred to in paragraph 1, or their relevant parts, as a basis for its technical regulations or conformity assessment procedures, it shall, on request of the other Party, explain the reasons therefor.

3. The Parties shall encourage their respective standardising bodies to consult and exchange views on matters under discussion in relevant international or regional bodies that develop standards, guides, recommendations or policies relevant to this Chapter.

## Article 6.5. Technical Regulations

1. In accordance with paragraph 7 of Article 2 of the TBT Agreement, each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain the reasons therefor.

## Article 6.6. Conformity Assessment Procedures

1. In accordance with Article 6 of the TBT Agreement, each Party shall ensure, to the extent possible, that results of conformity assessment procedures conducted in the Area of the other Party are accepted.

2. Each Party recognises that a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the Area of the other Party. Each Party shall, on request of the other Party, provide information on the range of such mechanisms used with a view to facilitating acceptance of conformity assessment results.

3. Where a Party does not accept the results of a conformity assessment procedure conducted in the Area of the other Party as referred to in paragraph 1, it shall, on request of the other Party, explain the reasons therefor.

4. Where a Party accredits, approves, licenses, or otherwise recognises a body assessing conformity with a specific technical regulation or standard in its Area and refuses to accredit, approve, license, or otherwise recognise a body assessing conformity with that technical regulation or standard in the Area of the other Party, it shall, on request of the other Party, explain the reasons therefor.

5. Further to paragraph 3 of Article 6 of the TBT Agreement, where a Party declines a request from the other Party to engage in negotiations to conclude an agreement or arrangement on facilitating recognition in the Area of the Party of the results of conformity assessment procedures conducted by the conformity assessment bodies in the Area of the other Party, it shall, on request of the other Party, explain the reasons therefor.

## Article 6.7. Transparency

1. Each Party shall allow persons of the other Party to participate in the development of technical regulations, standards and conformity assessment procedures, subject to its laws and regulations or administrative arrangements, on terms no less favourable than those accorded to its own persons.

2. Asapplicable, each Party shall recommend that non-governmental bodies in its Area observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

3. Where a Party makes a notification in accordance with paragraph 9.2 or 10.1 of Article 2, or paragraph 6.2 or 7.1 of Article 5, of the TBT Agreement, it shall provide immediately a copy of the notification to the other Party electronically through the enquiry point the Party has established in accordance with Article 10 of the TBT Agreement. On request of the other Party, a Party shall provide the other Party with information regarding the objective of, and rationale for, a technical regulation, standard or conformity assessment procedure that the Party has adopted or is proposing to adopt.

## Article 6.8. Sub-committee on Technical Regulations, Standards and Conformity Assessment Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (hereinafter referred to in this Chapter as "the Sub- Committee").

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

(a) exchanging information on technical regulations, standards and conformity assessment procedures;

(b) reviewing and monitoring the implementation and operation of this Chapter;

(c) undertaking consultation on issues related to technical regulations, standards and conformity assessment procedures, including, if the Parties so decide, by establishing ad hoc working groups;

(d) discussing any issues related to this Chapter;

(e) as appropriate, reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee; and

(f) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee:

(a) shall be composed of and co-chaired by representatives of the Governments of the Parties; and

(b) may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

5. Where a Party declines a request from the other Party to consult on an issue relevant to this Chapter, it shall, on request of the other Party, explain the reasons therefor.

## Article 6.9. Chapter Coordinator

1. For the purposes of the effective implementation and operation of this Chapter, each Party shall designate the following

governmental authority as its Chapter Coordinator:

(a) for Australia, the Department of Industry, or its successor; and

(b) for Japan, the Ministry of Foreign Affairs, or its successor. 2. The functions of the Chapter Coordinators shall be:

(a) coordinating the work of the Sub-Committee and facilitating the

implementation of this Chapter and the decisions of the Sub-Committee; and

(b) answering all reasonable enquiries from the other Party regarding technical regulations, standards and conformity assessment procedures and, as appropriate, providing the other Party with other relevant information.

3. The Chapter Coordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions. Article 6.10 Information Exchange Any information or explanation that is provided on request of a Party in accordance with the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time.

### Article 6.11. Non-application of Chapter 19 (dispute Settlement)

The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter.

# Chapter 7. Food Supply

### Article 7.1. Basic Principle

The Parties recognise the importance of strengthening their stable relationship in trade in food.

### Article 7.2. Definitions

For the purposes of this Chapter, the term "essential food" means any good listed in Annex 4 (List of Essential Food).

### Article 7.3. Export Restrictions on Essential Food

1. Each Party shall endeavour not to introduce or maintain any prohibitions or restrictions on the exportation or sale for export of any essential food to the other Party as set out in paragraph 2(a) of Article XI of the GATT 1994.

2. Where a Party intends to adopt an export prohibition or restriction on an essential food to the other Party in accordance with paragraph 2(a) of Article XI of the GATT 1994, it shall:

(a) seek to limit such prohibition or restriction to the extent necessary, giving due consideration to its possible negative effects on the other Party's food security;

(b) before adopting such a prohibition or restriction, provide notice in writing, as far in advance as practicable, to the other Party of such prohibition or restriction and its reasons, together with its nature and expected duration; and

(c) on request, provide the other Party with reasonable opportunity for consultation with respect to any matter related to such prohibition or restriction with a view to minimising the negative effects on the other Party's food security.

3. The Parties shall review this Article with a view to considering the approach on avoiding the introduction or maintenance of any prohibition or restriction on the exportation or sale for export of essential food ten years after the date of entry into force of this Agreement, unless the Parties otherwise agree.

### Article 7.4. Promotion and Facilitation of Investment

In order to promote investment in the food sector, each Party shall designate a contact point to respond to all enquiries from interested parties in the other Party regarding investment in the food sector and, if appropriate, to provide the relevant information.

### Article 7.5. Consultations for Supply of Essential Food

1. Each Party shall designate a contact point for each essential food for prompt communication.

2. Each Party shall promptly notify the other Party when a significant decrease in the export volume of any essential food is forescen.

3. The Parties shall enter into consultations with respect to the matters specified in paragraph 2 with a view to supporting stable trade in essential food. Such consultations shall be held by representatives of the Governments of the Parties, and the Governments of the Parties may invite representatives of other public and private entities with necessary expertise relevant to the issues to be discussed.

# Chapter 8. Energy and Mineral Resources

## Article 8.1. Basic Principle

The Parties recognise the importance of strengthening their stable and mutually beneficial relationship in the energy and mineral resources sector.

## Article 8.2. Definitions

For the purposes of this Chapter:

(a) the term "energy and mineral resource good" means any good listed in Annex 5 (List of Energy and Mineral Resource Goods),

(b) the term "energy and mineral resource regulatory body" means any body responsible for the regulation of energy and mineral resources;

(c) the term "energy and mineral resource regulatory measure" means any measure by one or more energy and mineral resource regulatory body that directly affects the exploration, extraction, processing, production, transportation, distribution or sale of an energy and mineral resource good; and

(d) the term "export licensing procedures" means administrative procedures, whether or not referred to as "licensing", used by a Party for the operation of export licensing regimes requiring the submission of an application or other documentation, other than that required for customs clearance purposes, to the relevant administrative body, as a prior condition for exportation from that Party.

## Article 8.3. Stable Supply of Energy and Mineral Resources

1. Recognising the importance of a stable supply of energy and mineral resource goods and the role that trade, investment and cooperation (including on infrastructure development) play in achieving long term security, cach Party shall take reasonable measures as may be available to it for that purpose.

2. Without prejudice to Article 19.4 (Dispute Settlement — Consultations), if there arises a severe and sustained disruption to supply of an energy and mineral resource good or threat thereof, a Party may request consultations with the other Party. When such a request is made, the other Party shall reply promptly to the request and enter into consultations to discuss the matter within a reasonable period of time after the date of receipt of that request. The Parties shall explore and endeavour to take any appropriate actions available to them that would contribute to the resolution of the disruption or threat thereof described above.

## Article 8.4. Export Restrictions

1. Each Party shall endeavour not to introduce or maintain any prohibitions or restrictions on the exportation or sale for export of any energy and mineral resource goods as set out in paragraph 2(a) of Article XI, or taken consistently with Article XX(g), of the GATT 1994.

2. Where a Party intends to adopt an export prohibition or restriction on an energy and mineral resource good in accordance with paragraph 2(a) of Article XI or Article XX(g) of the GATT 1994, the Party shall:

(a) seek to limit such prohibition or restriction to the extent necessary, giving due consideration to its possible negative effects on the other Party's energy and mineral resources security;

(b) provide notice in writing, as far in advance as practicable, to the other Party of such prohibition or restriction and its reasons together with its nature and expected duration; and

(c) on request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to such prohibition or restriction.

Note: For greater certainty, nothing in this Article shall be construed to require the Parties to take any measures inconsistent with the relevant provisions of the GATT 1994.

## Article 8.5. Export Licensing Procedures and Administrations

If a Party adopts or maintains export licensing procedures with respect to an energy and mineral resource good:

(a) the implementation shall be undertaken in a transparent and predictable manner, in accordance with its laws and regulations;

(b) all information concerning procedures for the submission of applications, the administrative bodies to be approached and the lists of products subject to the licensing requirement shall be published, as soon as possible, in such a manner as to enable the other Party and traders of the other Party to become acquainted with them. Any modification to export licensing procedures or the list of products subject to export licensing shall also be published in the same manner;

(c) the Party shall provide, on request of the other Party, all relevant information concerning the administration of the restrictions in accordance with its laws and regulations;

(d) when administering quotas by means of export licensing, the Party shall inform the other Party of the overall amount of quotas to be applied and any change thereof;

(e) the Party shall hold consultations on request of the other Party, on the ules for such procedures with the other Party; and

(f) if a licence application is not approved, an applicant of the other Party shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the legislation or procedures of the Party to which the licence application is submitted.

## Article 8.6. Energy and Mineral Resource Regulatory Measures

1. In the introduction of any energy and mineral resource regulatory measure of general application after the date of entry into force of this Agreement, a Party shall take into consideration the impact on commercial activities and implement such measure in an orderly and equitable manner in accordance with its laws and regulations.

2. Onrequest of a Party, the other Party shall promptly provide information and respond to questions pertaining to any new energy and mineral resource regulatory measure of general application.

3. In cases where a Party adopts any new energy and mineral resource regulatory measure of general application that might materially affect the operation of this Chapter or otherwise substantially affect the other Party's interests under this Chapter, the Party shall notify the other Party of such measure prior to the implementation of such measure, or as soon as possible thereafter.

4. Where a Party adopts any new energy and mineral resource regulatory measure under paragraph 3, it shall, on request of the other Party, hold consultations with the other Party. Each Party shall accord due consideration to views presented by the other Party in the course of such consultations.

## Article 8.7. Cooperation

The Parties shall, in accordance with their respective laws and regulations andsubject to their available resources, promote cooperation for strengthening stable and mutually beneficial relationships in the energy and mineral resources sector.

## Article 8.8. Sub-committee on Energy and Mineral Resources

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Energy and Mineral Resources (hereinafter referred to in this Article as "the Sub-Committee").2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) exchanging information on any matters related to this Chapter;

(c) reviewing the provisions of this Chapter, taking into account developments in the energy and mineral resources sector;

(d) discussing any issues related to this Chapter, in cooperation, where appropriate, with other relevant Sub-Committees established in accordance with this Agreement;

(e) as appropriate, reporting the findings of the Sub-Committee, and making recommendations to the Joint Committee; and

(f) carry out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

4. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

5. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, including from the private sector, or regional or local governments, with expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee.

# Chapter 9. Trade In Services

## Article 9.1. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services, including measures with respect to:

(a) the supply of a service;

Note: Measures with respect to the supply of a service include those with respect to the provision of any financial security as a condition for the supply of a service.

(b) the purchase or use of, or payment for, a service;

(c) the access to services offered to the public generally and the use of them, in connection with the supply of a service; and

(d) the presence in its Area of a service supplier of the other Party.

2. This Chapter shall not apply to:

(a) with respect to air transport services, measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

ii) the selling and marketing of air transport services; and

(iii) computer reservation system services;

Note: The Parties note the multilateral negotiations with respect to the review of the Annex on Air Transport Services of the GATS. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

(b) government procurement;

(c) subsidies provided by a Party or a state enterprise thereof including grants, government-supported loans, guarantees and insurance, except as provided for in Article 9.11;

(d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis; and services supplied in the exercise of governmental authority.

## Article 9.2. Definitions

For the purposes of this Chapter:

(a) the term "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;

(b) the term "commercial presence" means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of an enterprise; or

ii) the creation or maintenance of a branch or a representative office,

within the Area of a Party for the purposes of supplying a service;

(c) the term "computer reservation system services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(d) the term "enterprise of the other Party" means an enterprise which is either:

(i) constituted or otherwise organised in accordance with the law of the other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(A) natural persons of the other Party; or

(B) enterprises of the other Party identified under subparagraph (i);

(e) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:

(i) central, regional or local governments or authorities of a Party; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of a Party;

(f) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(g) the term "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

(h) the term "service consumer" means any person that receives or uses a service;

(i) the term "services of the other Party" means services which are supplied:

(i) from or in the Area of the other Party, or in the case of maritime transport services, by a vessel registered in accordance with the law of the other Party, or by a person of the other Party which supplies the services through the operation of a vessel or its use in whole or in part; or

(ii) in the case of the supply of services through commercial presence or through the presence of natural persons, by service suppliers of the other Party;

(j) the term "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(k) the term "service supplier" means any person that seeks to supply or supplies a service;

Note: Where the service is not supplied or sought to be supplied directly by an enterprise but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.c. the enterprise) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers in accordance with this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the supplier located outside the Area of a Party where the service is supplied or sought to be supplied.

(l) the term "state enterprise" means an enterprise owned or controlled by a Party;

(m) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(n) the term "trade in services" means the supply of a service:

(i) from the Area of a Party into the Area of the other Party "cross-border supply mode");

(ii) in the Area of a Party to the service consumer of the other Party ("consumption abroad mode");

(iii) by a service supplier of a Party, through commercial presence in the Area of the other Party ("commercial presence mode"); and

(iv) by a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party ("presence of natural persons mode"); and

(o) the term "traffic rights" means the rights for scheduled and non- scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

## Article 9.3. Market Access

1. With respect to market access through the modes of supply defined in subparagraph (n) of Article 9.2, a Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire Area, measures that are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirements of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirements of an economic needs test;

Note: This subparagraph shall not apply to measures of a Party which limit inputs for the supply of services.

(d= limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirements of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

2. With respect to the supply of a service through the mode of supply referred to in subparagraph (n)(i) of Article 9.2, where the cross-border movement of capital is an essential part of the service itself, a Party shall allow such movement of capital. With respect to the supply of a service through the mode of supply referred to in subparagraph (n)(iii) of Article 9.2, a Party shall allow related transfers of capital into its Area.

## Article 9.4. National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.

Note: Nothing in this Article shall be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Article with respect to a measure of the other Party that falls within the scope of an international agreement between the Parties relating to the avoidance of double taxation.

## Article 9.5. Most-favoured-nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-Party.

## Article 9.6. Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its Area as a condition for the supply of a service.

Note: This Article shall not apply to the supply of a service described in subparagraph (n)(iii) of Article 9.2.

## Article 9.7. Non-conforming Measures

1. Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4 shall not apply to: (a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, as set out in Schedules in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10):

(i) the central government of a Party; or (ai) a State or Territory of Australia or a prefecture of Japan;

(b) any non-conforming measure that is maintained by a local government other than a prefecture or a State or Territory referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement;

(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or

(d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4.

2. Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10).

3. In cases where a Party makes an amendment or modification to any non- conforming measure set out in its Schedule in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) after the date of entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or as soon as possible thereafter:

(a) on request of the other Party, promptly provide information and respond to questions pertaining to any such proposed or actual amendment, modification or measure;

(b) to the extent possible, provide a reasonable opportunity for comments by the other Party on any such proposed or actual amendment, modification or measure; and

(c) to the maximum extent possible, notify the other Party of any such amendment, modification or measure that may substantially affect the other Party's interests under this Agreement.

4. Each Party shall endeavour, where appropriate, to reduce or eliminate the non- conforming measures set out in its Schedules in Annexes 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) and 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) respectively.

## Article 9.8. Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, on request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Paragraph 2 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. With a view to ensuring that any measure adopted or maintained by a Party relating to the authorisation, licensing or qualification of service suppliers or to the technical standards of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall endeavour to ensure that such measure:

(a) is based on objective and transparent criteria, such as the competence and ability to supply services;

(b) is not more burdensome than necessary to ensure the quality of services; and (c) does not constitute a disguised restriction on the supply of services.

5. If the results of the negotiations related to paragraph 4 of Article VI of the GATS enter into effect, the Parties shall jointly review those results with a view to their incorporation into this Agreement, as considered appropriate by the Parties.

6. Where a Party maintains measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, the Party shall:

(a) where practicable, make publicly available:

(i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and

(ii) information on technical standards;

(b) where any form of authorisation is required for the supply of a service, ensure that it will:

(i) within a reasonable period of time after the submission of an application deemed complete under its laws and regulations, consider the application, make a decision as to whether or not to grant the relevant authorisation and inform the applicant of the decision;

(ii) on request of the applicant, provide without undue delay, information concerning the status of the application;

(iii) where practicable, in the case of an incomplete application, on request of an applicant, identify all the additional information that is required to complete the application;

(iv) endeavour to provide the service supplier whose application has been found to be deficient with at least one means to achieve the authorisation; and

Note: Such means to achieve authorisation may include, but are not limited to, additional experience under the supervision of a professional qualified or licensed in that Party, additional academic training or exams in a specialised field, or language exams.

(v) where a competent authority of a Party notifies an unsuccessful applicant of the administrative decision in writing, ensure that the competent authority informs the applicant of the reasons for denial of the application in writing; and

(c) provide for adequate procedures to verify the competency of professionals of the other Party.

7. A Party shall, subject to its laws and regulations, permit service suppliers of the other Party to use the enterprise names under which they trade in the Area of the other Party and otherwise ensure that the use of enterprise names is not unduly restricted.

8. The Parties shall endeavour to implement the Disciplines on Domestic Regulation in the Accountancy Sector adopted under the auspices of the World Trade Organization on 14 December 1998.

9. This Article shall not apply to any measures which fall within the responsibility of non-government bodies. However, each Party shall encourage, where possible, such non-government bodies to comply with the relevant requirements of this Article.

## Article 9.9. Recognition

1. A Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers of the other Party.

2. Recognition referred to in paragraph 1, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognises the education or experience obtained, requirements met, or licences or certifications granted in any non-Party:

(a) nothing in Article 9.5 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the other Party;

(b) in cases where such recognition is accorded by an agreement or arrangement between the Party and the non-Party, the Party shall afford the other Party, on request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate one comparable with it; and

(c) in cases where such recognition is accorded unilaterally, the Party shall afford the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the other Party should also be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-Parties in the application of its standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

5. Wherever appropriate, recognition provided for in paragraph 1 should be based on multilaterally agreed criteria. In appropriate cases, the Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

## Article 9.10. Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a mamner inconsistent with the Party's obligations under Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4, except those covered by the non-conforming measures under Article 9.7.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's obligations under Articles 9.3, 9.5 and 9.6 and paragraph 1 of Article 9.4, except those covered by the non-conforming measures under Article 9.7, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its Area in a manner inconsistent with such obligations.

Note: For the purposes of this paragraph, the definition of the term "affiliated" provided for in subparagraph (n)(iii) of Article XX VIII of the GATS shall apply mutatis mutandis.

3. Ifa Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations in its Area.

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and (b) substantially prevents competition among those suppliers in its Area.

## Article 9.11. Subsidies

1. Each Party shall review the treatment of subsidies related to trade in services taking into account the development of the multilateral disciplines pursuant to paragraph 1 of Article XV of the GATS.

2. Inthe event that either Party considers that its interests have been adversely affected by a subsidy of the other Party, the Parties shall, on request of the former Party, enter into consultations with a view to resolving the matter.

3. During the consultations referred to in paragraph 2, the Party granting a subsidy shall, if it deems fit, consider a request of the other Party for information relating to the subsidy program such as:

(a) laws and regulations under which the subsidy is granted;

(b) form of the subsidy (e.g. grant, loan, tax concession);

(c) policy objective or purpose of the subsidy;

(d) dates and duration of the subsidy and any other time limits attached to it; and

(e) eligibility requirements of the subsidy.

4. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Article.

## Article 9.12. Payments and Transfers

1. Except under the circumstances envisaged in Article 9.13, a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 9.13, or on request of the International Monetary Fund.

## Article 9.13. Restrictions to Safeguard the Balance-of-payments

1. In the event of serious balance-of-payments and external financial difficulties orthreat thereof, a Party may adopt or maintain restrictive measures on trade in services, including on payments or transfers for transactions.

2. Restrictive measures referred to in paragraph 1:

(a) shall be applied such that the other Party is treated no less favourably than any non-Party;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

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

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. Indetermining the incidence of such restrictive measures, a Party may give priority to the supply of services which are more essential to its economic or development programs. However, such restrictive measures shall not be adopted or maintained for the purposes of protecting a particular service sector.

4. Any restrictive measures adopted or maintained in accordance with paragraph 1, or any changes therein, shall be promptly notified to the other Party.

5. The Party which has adopted any restrictive measures in accordance with paragraph 1 shall, on request, commence consultations with the other Party in order to review the restrictive measures adopted by it.

## Article 9.14. Denial of Benefits

1. A Party may deny the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) to a service supplier of the other Party that is an enterprise of the other Party, where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party, and that the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter and Chapters 10 (Telecommunications Services) and 11 (Financial Services) to a service supplier of the other Party that is an enterprise of the other Party, where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party or of the denying Party and has no substantial business activities in the Area of the other Party.

Note: For the purposes of this Article, an enterprise is:

(a) "owned" by persons if more than 50 per cent of the equity interests in it is beneficially owned by such persons; and

(b) "controlled" by persons if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

## Article 9.15. Sub-committee on Trade In Services

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) reviewing this Chapter in light of developments elsewhere;

(c) considering promotion of recognition of qualifications as outlined in Article 9.9 and Annex 8 (Recognition of Qualifications of Service Suppliers);

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) considering any other matters identified by the Parties.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

# Chapter 10. Telecommunications Services

## Article 10.1. Scope

1. This Chapter provides for commitments additional to Chapters 9 (Trade in Services) and 14 (Investment) in relation to telecommunications services.

2. This Chapter shall apply to measures adopted or maintained by a Party affecting telecommunications services.

3. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter shall not apply to measures that a Party adopts or maintains relating to broadcasting services, including distribution of radio and television programming. This Chapter shall not apply to measures by Japan affecting telegraph services.

Note 1: For the purposes of this paragraph, the term "broadcasting services" shall include radio and television services and radio and television transmission services under the Services Sectoral Classification List (GATT Document MTN.GNS/W/120, dated 10 July 1991).

Note 2: For the purposes of this paragraph, for Japan, the term "telegraph services" means telegraph services referred to in Supplementary Provisions of Telecommunications Business Law (Law No. 86 of 1984).

4. Nothing in this Chapter shall be construed to:

(a) require a Party (or require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services not offered to the public generally; or

(b) require a Party to compel any enterprise exclusively engaged in the broadcasting services referred to in paragraph 3 to make available its broadcast or cable facilities as a public telecommunications transport network.

## Article 10.2. Definitions

For the purposes of this Chapter:

(a) the term "carrier pre-subscription function" means a function of enabling end users to use the carrier they have selected by pre-registration without dialling a carrier identification code;

(b) the term "cost-oriented" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(c) the term "dialling parity" means the ability of an end user to use an equal number of digits including through carrier pre-subscription function to access a like public telecommunications transport service designated by the Party, regardless of the public telecommunications transport service supplier chosen by such end user;

(d) the term "end user" means a final consumer of or subscriber to public telecommunications transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks or services;

(e) the term "essential facilities" means facilities of a public telecommunications transport network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

ii) cannot feasibly be economically or technically substituted in order to provide a service;

(f) the term "interconnection" means linking with suppliers providing public telecommunications transport networks or services in order to allow the end users of one supplier to communicate with the end users of another supplier and to access services provided by another supplier;

(g) the term "leased circuits" means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user;

(h) the term "major supplier" means a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

(i) control over essential facilities; or

ii) use of its position in the market;

Note: For greater certainty, the term "basic telecommunications services" includes Internet access services.

(i) the term "non-discriminatory" means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;

(j) the term "public telecommunications transport network" means the telecommunications infrastructure which is used to provide public telecommunications transport services between and among defined network termination points;

(k) the term "public telecommunications transport service" means any telecommunications transport service offered to the public generally. Such services may include, inter alia, telegraph, telephone, telex and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

(l) the term "telecommunications" means the transmission and reception of signals by any electromagnetic means;

(m) the term "telecommunications regulatory body" means any body or bodies responsible for the regulation of telecommunications; and

(n) the term "users" means end users or suppliers of public telecommunications transport networks or services.

## Article 10.3. Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications transport networks and services in a timely fashion, on transparent, reasonable and non-discriminatory terms and conditions. This obligation shall be applied, inter alia, through paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network or service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such suppliers are permitted to:

(a) purchase or lease, and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's service;

(b) provide services to individual or multiple users over any leased or owned circuits;

(c) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier;

(d) perform switching, signalling, processing, and conversion functions; and

(e) use operating protocols of the service supplier's choice in the supply of any services, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across borders including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in either Party or any non-Party which is a party to the WTO Agreement.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the personal data of end users of public telecommunications transport networks or services, including the privacy of such users,

subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;

(b) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in Article 10.23;

(c) type approval of terminal or other equipment which interfaces with such networks and technical requirements relating to the attachment of such equipment to such networks;

(d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

(e) notification, registration and licensing.

## Article 10.4. Submarine Cables

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its Area, where a supplier is authorised to operate a submarine cable facility as a public telecommunications transport service.

## Article 10.5. Number Portability

Each Party shall ensure that suppliers of public telecommunications transport networks or services in its Area provide number portability for end users when switching suppliers of mobile services or between other like services designated by that Party, to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

## Article 10.6. Dialling Parity

Each Party shall ensure that:

(a) suppliers of public telecommunications transport networks or services in its Area provide dialling parity within the same category of service to suppliers of public telecommunications transport networks or services of the other Party without unreasonable dialling delays; and

(b) suppliers of public telecommunications transport networks or services of the other Party are afforded non-discriminatory allocation of telephone numbers.

## Article 10.7. Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its Area, from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 shall include, in particular:

(a) engaging in anticompetitive cross-subsidisation or other anticompetitive pricing practices;

(b) using information obtained from competitors with anticompetitive results; and

(c) not making available to other service suppliers, on a timely basis,

technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

## Article 10.8. Treatment by Major Suppliers

Each Party shall ensure that major suppliers in its Area accord suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable than such major supplier accords in like circumstances to its subsidiaries, its affiliates, or any non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates or quality of like telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

## Article 10.9. Resale

Each Party shall ensure that major suppliers of public telecommunications transport networks or services in its Area do not impose unreasonable or discriminatory conditions or limitations which have anticompetitive effects on the resale of such services by suppliers of public telecommunications transport networks or services of the other Party.

## Article 10.10. Interconnection

1. Each Party shall ensure that suppliers of public telecommunications transport networks in its Area provide, directly or indirectly, interconnection with the suppliers of public telecommunications transport networks or services of the other Party on commercial terms.

2. Each Party shall ensure that major suppliers in its Area provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the service supplier need not pay for network components or facilities that it does not require for the services to be provided; and

(c) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may interconnect their facilities and equipment with those of major suppliers in its Area pursuant to at least one of the following options:

(a) a reference interconnection offer, approved by the Party's telecommunications regulatory body, containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services;

(b) a standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services;

(c) the terms and conditions of an interconnection agreement; or

(d) a binding award or arbitration.

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. With respect to any major supplier in its Area, each Party shall ensure that:

(a) a reference interconnection offer or other standard interconnection offer; or

(b) the terms of the major supplier's interconnection agreement,

are published or otherwise made publicly available.

Note: For Australia, this paragraph shall only apply with respect to services deemed or declared a "declared service" by Australia's telecommunications regulatory body in accordance with the laws and regulations of Australia.

6. Each Party shall maintain appropriate measures for the purpose of preventing major suppliers in its Area from using or providing to any other persons information on suppliers of public telecommunications transport networks or services or end users thereof, including commercially sensitive information, which was acquired through interconnection with public telecommunications transport networks of other such suppliers, for purposes other than such interconnection.

Note: For Japan, the major suppliers referred to in paragraphs 2, 3 and 6 are limited to those falling under subparagraph (h)(i) of Article 10.2.

## Article 10.11. Unbundling of Network Elements

Each Party shall provide its telecommunications regulatory body with the authority to require that major suppliers in its Area provide suppliers of public telecommunications transport networks or services of the other Party, with respect to linking between their telecommunications facilities, access to network components or facilities for the provision of public telecommunications transport networks or services on an unbundled basis, in a timely fashion, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h)(i) of Article 10.2.

## Article 10.12. Provisioning and Pricing of Leased Circuit Services

Each Party shall ensure that major suppliers in its Area provide suppliers of public telecommunications transport networks or services of the other Party with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h)(i) of Article 10.2.

## Article 10.13. Co-location

1. Subject to paragraph 2, each Party shall ensure that major suppliers in its Area allow suppliers of public telecommunications transport networks or services of the other Party to physically locate on the major suppliers' premises the equipment which is essential for interconnection or access to unbundled network components or facilities, where physically feasible and where no practical or viable alternatives exist, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

2. Paragraph 1 applies to the major suppliers' premises determined by each Party in accordance with its laws and regulations and applies with respect to linking with the essential facilities of the major suppliers.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h)(i) of Article 10.2. Article 10.14 Access to Facilities 1. Each Party shall ensure, subject to its laws and regulations, reasonable, non-

discriminatory and transparent treatment with regard to access to conduits, cable tunnels, poles or other facilities which can be used to establish telecommunications cables and are owned by public utilities including owners of public telecommunications transport networks, to any supplier of public telecommunications transport networks or services of the other Party, when a supplier requests such access.

2. Subject to paragraph 3, each Party shall ensure that major suppliers in its Area allow suppliers of public telecommunication transport networks or services of the other Party to access towers, conduits, cable tunnels, poles and rights of way owned or controlled by such major suppliers, where physically feasible and where no practical or viable alternative exists, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including

with respect to timeliness) and transparent.

3. Paragraph 2 applies to the towers, conduits, cable tunnels, poles and rights of way determined by each Party in accordance with its laws and regulations and applies with respect to linking with the essential facilities of the major suppliers.

4. Each Party shall ensure, to the extent provided for in its laws and regulations, that suppliers of public telecommunications transport networks or services of the other Party:

(a) can request negotiations with owners of land or structures fixed thereto (including buildings), for the right to use such land or structures for the purposes of establishing, extending and maintaining a public telecommunications transport network; and

(b) can obtain the right to use such land or structures for such purposes, on terms that are reasonable and non-discriminatory (including with respect to timeliness), if a negotiated outcome referred to in subparagraph (a) is not reached in a timely manner.

Note: For Japan, the major suppliers referred to in paragraphs 2 and 3 are limited to those falling under subparagraph (h)(i) of Article 10.2.

## Article 10.15. Independent Telecommunications Regulatory Body

1. Each Party shall ensure that any telecommunications regulatory body that it establishes or maintains is separate from, and not accountable to, any supplier of telecommunications services.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all current and prospective market participants and shall endeavour to ensure that the decisions and the procedures are made and implemented without undue delay. To this end, each Party shall ensure that any financial interest that it holds in a supplier of telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

## Article 10.16. Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anticompetitive per se, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

## Article 10.17. Licensing Process

1. Where a licence is required, each Party shall make publicly available the following:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of individual licences.

2. Each Party shall notify the applicant of the outcome of its application without undue delay after a decision has been taken. In case a decision is taken to deny an application for or revoke a licence, cach Party shall make known to the applicant, on request, the reasons for the denial or revocation.

## Article 10.18. Allocation and Use of Scarce Resources

1. Each Party shall carry out any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. The Parties recognise that each Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article 9.3 (Trade in Services — Market Access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the

number of suppliers of public telecommunications transport services, provided that it does so in a manner consistent with other provisions of this Agreement. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest.

## Article 10.19. Transparency

1. Each Party shall endeavour to ensure that:

(a) telecommunications service suppliers are provided with adequate advance notice of, and opportunity to comment on, any regulatory decision of general application that its telecommunications regulatory body proposes; and

(b) suppliers of public telecommunications transport networks or services of the other Party are, on request, provided with a clear and detailed explanation of reasons for any decision to deny access of the kind specified in Articles 10.10, 10.13 and 10.14, where that decision is made, approved, endorsed or authorised by the Party.

2. Each Party shall ensure that its measures relating to public telecommunications transport networks or services are published or otherwise made publicly available, including measures relating to:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces with such networks and services; bodies responsible for the preparation and adoption of standards affecting access to and use of public telecommunications transport networks and services;

(c) conditions applying to attachment of terminal or other equipment; and

(d) notifications, registration, or licensing requirements, if any.

## Article 10.20. Unsolicited Electronic Messages

1. Each Party shall, in accordance with its laws and regulations, take appropriate and necessary measures to regulate unsolicited electronic messages, with a view to encouraging favourable conditions for the use of electronic messages, and thus contributing to the sound development of an advanced information and communication society. For these purposes, the Parties shall cooperate bilaterally and in international fora.

2. For the purposes of paragraph 1, bilateral cooperation includes, where appropriate, the exchange of information and other assistance concerning the regulation of unsolicited electronic messages, subject to the laws and regulations of each Party.

## Article 10.21. Resolution of Telecommunications Disputes

Further to Articles 1.5 (General Provisions — Administrative Proceedings) and 1.6 (General Provisions — Review and Appeal), cach Party shall ensure that:

(a) suppliers of public telecommunications transport networks or services of the other Party may have timely recourse to its telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to the obligations set out in Articles 10.3 through 10.14;

(b) a supplier of public telecommunications transport networks or services of the other Party that has requested interconnection with a major supplier in the Party's Area may have recourse to its telecommunications regulatory body, within a reasonable period after the supplier requests interconnection, concerning disputes regarding the terms, conditions and rates for interconnection with such major supplier; and

(c) any enterprise that is aggrieved by the determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority. Neither Party shall permit such judicial review to constitute grounds for non-compliance with such determination or decision of the said body unless the relevant judicial authority withholds, suspends, repeals or stays such determination or decision.

## Article 10.22. Sub-committee on Telecommunications

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Telecommunications (hereinafter referred to in this Article as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter and other issues relevant to the telecommunications sectors agreed on by the Parties;

(c) as appropriate, reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

5. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, including from the private sector, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub- Committee.

### Article 10.23. Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international organisations, including the International Telecommunication Union and the International Organization for Standardization.

## Chapter 11. Financial Services

### Article 11.1. Scope

1. This Chapter provides for commitments additional to Chapters 9 (Trade in Services) and 14 (Investment) in relation to financial services.

2. This Chapter shall apply to measures adopted or maintained by a Party affecting the supply of a financial service. Reference to the supply of a financial service in this Chapter shall mean the supply of a service defined in subparagraph (n) of Article 9.2 (Trade in Services — Definitions).

### Article 11.2. Definitions

1. For the purposes of this Chapter:

(a) the term "financial service" means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the activities stated in Annex 9 (Financial Services);

(b) the term "financial service supplier" means any person that seeks to supply or supplies a financial service but does not include a public entity;

(c) the term "new financial service" means any service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in a Party but which is supplied in the other Party;

(d) the term "public entity" means:

(i) the Government, central bank or monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising

those functions; and

(e) the term "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or any other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers.

2. For the purposes of subparagraph 2(e) of Article 9.1 (Trade in Services — Scope), the term "services supplied in the exercise of governmental authority" means, in respect of a financial service:

(a) activities conducted by the central bank or monetary authority of a Party or by any other public entity in pursuit of monetary or exchange rate policies;

(b) activities forming part of a statutory system of social security or public retirement plans; and

(c) other activities conducted by a public entity for the account or with the yap y guarantee or using the financial resources of the Government.

3. For the purposes of subparagraph 2(c) of Article 9.1 (Trade in Services — Scope), ifa Party allows any of the activities referred to in subparagraphs 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services supplied in the exercise of governmental authority" shall exclude such activities.

4. Subparagraph (j) of Article 9.2 (Trade in Services — Definitions) shall not apply to the services covered by this Chapter. Article 11.3 New Financial Services Each Party shall permit financial service suppliers of the other Party established in the former Party to offer in the former Party any new financial service that a Party would permit its own financial service suppliers to offer, in like circumstances.

## Article 11.4. Domestic Regulation

Nothing in this Agreement shall prevent a Party from adopting or maintaining measures relating to financial services or the financial system for prudential reasons including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the Party's financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

## Article 11.5. Recognition

1. A Party may recognise prudential measures of any international regulatory body or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international regulatory body or non-Party concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such an agreement or arrangement, or to negotiate one comparable with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

## Article 11.6. Transfers of Information and Processing of Information

Neither Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Chapter and Chapters 9 (Trade in Services) and 14 (Investment).

## Article 11.7. Regulatory Transparency

1. Each Party, recognising the importance of transparent regulations and policies governing the activities of financial service

suppliers in facilitating their ability to gain access to and operate in each other's market, shall promote regulatory transparency in financial services.

2. To the extent possible, each Party shall allow a reasonable period of time between the publication of final regulations and their effective date.

3. To the extent possible, each Party shall, on request of the other Party, within a reasonable period of time, respond to specific questions and substantive comments from, and provide information to, the other Party on any measures of general application it proposes to adopt with respect to any matter covered by this Chapter.

4. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made publicly available in such a manner as to enable interested persons of the other Party to become acquainted with them.

5. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from interested persons of the other Party regarding measures of general application covered by this Chapter.

6. Each Party's competent authorities shall, to the extent possible, make publicly available their requirements, including any documentation required, for completing applications relating to the supply of financial services.

7. Where a Party's competent authority requires additional information from an applicant of an application relating to the supply of financial services, it shall notify the applicant without undue delay of such additional information required.

8. A Party's competent authorities shall make an administrative decision within a reasonable period of time on an application, regarded as complete under its laws and regulations, of a financial service supplier of the other Party, relating to the supply of a financial service, and shall, to the extent possible, promptly notify the applicant of the decision in writing.

## Article 11.8. Self-regulatory Organisations

When membership or participation in, or access to, any self-regulatory organisation is required by a Party in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the former Party, or when the former Party provides directly or indirectly such organisation privileges or advantages in supplying financial services, the former Party shall ensure that such organisation accords national treatment to financial service suppliers of the other Party resident in the former Party.

## Article 11.9. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in the former Party access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

## Article 11.10. Sub-committee on Financial Services

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Financial Services (hereinafter referredto in this Chapter as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to financial services, including prudential policies and supervision of financial institutions, with a view to enhancing trade relations between the Parties in the field of financial services and to promoting efficient and transparent administration of their financial systems;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and (d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of: (a) for Australia, officials from the Department of Foreign Affairs and Trade and the Department of the Treasury, or their successors, and, as necessary, officials from the relevant financial regulatory authorities including the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission, or their successors; and

(b) for Japan, officials from the Ministry of Foreign Affairs and the Financial Services Agency, or their successors.

4. The Sub-Committee shall meet annually, or as otherwise agreed. The Sub- Committee shall inform the Joint Committee of the results of each meeting.

### Article 11.11. Consultations

Without prejudice to Article 19.4 (Dispute Settlement - Consultations), a Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Sub-Committee. Consultations under this Article and consultations under Article 19.4 (Dispute Settlement - Consultations), that affect financial services shall include officials specified in paragraph 3 of Article 11.10.

### Article 11.12. Dispute Settlement

1. Further to subparagraph 9(a) of Article 19.6 (Dispute Settlement - Establishment and Composition of Arbitral Tribunals), all arbitrators appointed in accordance with paragraphs 5 and 6 of Article 19.6 (Dispute Settlement - Establishment and Composition of Arbitral Tribunals), for a dispute arising under this Chapter shall, unless otherwise agreed by the Parties, have expertise or experience in laws or practice of financial services, which may include the laws and regulations concerning financial service suppliers.

2. Further to Article 19.15 (Dispute Settlement - Compensation and Suspension of Concessions), where an arbitral tribunal finds a measure of a Party to be inconsistent with this Agreement and the measure under dispute affects:

(a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.

## Chapter 12. Movement of Natural Persons

### Article 12.1. Scope

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party into the other Party who fall under one of the categories referred to in Annex 10 (Specific Commitments on the Movement of Natural Persons).

2. This Chapter shall not apply to measures affecting natural persons of a Party secking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, or residence or employment on a permanent basis.

3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the Area of the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under this Chapter.

4. Except for this Chapter and Chapters 1 (General Provisions), 19 (Dispute Settlement) and 20 (Final Provisions), nothing in this Agreement shall impose any obligation on cither Party regarding measures pursuant to immigration laws and regulations.

### Article 12.2. Definitions

For the purposes of this Chapter, the term "entry and temporary stay" means entry into and stay in a Party by a natural person of the other Party without the intent to establish permanent residence.

### Article 12.3. Specific Commitments

1. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Chapter and relevant laws and regulations of the former Party, and subject to the terms of the specific commitments set out in Annex 10

(Specific Commitments on the Movement of Natural Persons).

2. Neither Party shall impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party falling under one of the categories referred to in Annex 10 (Specific Commitments on the Movement of Natural Persons), unless otherwise specified in that Annex.

### Article 12.4. Transparency

Each Party shall:

(a) publish or otherwise make available to the other Party on the date of entry into force of this Agreement, with respect to natural persons covered by that Party's specific commitments under this Chapter, information on requirements and procedures necessary for an effective application for the grant of entry into, initial or renewal of temporary stay in and, where applicable, permission to work in, and a change of status of temporary stay in, that Party in such a manner as to enable persons of the other Party to become acquainted with them;

(b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to the entry and temporary stay of natural persons covered by paragraph 1 of Article 12.3; and

(c) endeavour to promptly make available to the other Party information on the introduction of any new requirements and procedures, or changes in any existing requirements and procedures referred to in subparagraph (a) that affect the effective application for the grant of entry into, initial or renewal of temporary stay in and, where applicable, permission to work in, and a change of status of temporary stay in, that Party.

### Article 12.5. Requirements and Procedures Relating to the Movement of Natural Persons

1. The competent authorities of each Party shall, without delay, process complete applications for the grant of entry and temporary stay or, where applicable, work permits or certificates of eligibility submitted for natural persons of the other Party, including applications for renewal thereof.

2. If the competent authorities of a Party require additional information from the applicant in order to process the application, they shall, without undue delay, endeavour to notify the applicant.

3. A Party shall, within a reasonable period after a complete application by a natural person of the other Party covered by this Chapter requesting entry and temporary stay is lodged, notify the natural person of the decision concerning the application, including, if approved, the period of temporary stay and other conditions.

4. Each Party shall ensure that fees charged by its competent authorities on applications for the grant of entry and temporary stay do not in themselves represent an unjustifiable impediment to the movement of natural persons of the other Party under this Chapter.

5. Each Party shall endeavour, to the extent practicable, to take measures to simplify the requirements and to facilitate and expedite the procedures relating to the movement of natural persons of the other Party, subject to its laws and regulations.

### Article 12.6. Dispute Settlement

1. The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter unless:

(a) the matter involves a pattern of practice; and

(b) the natural persons of a Party concerned have exhausted the domestic remedies, where available, regarding the particular matter.

2. The domestic remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority of the other Party within two years after the date of the institution of proceedings for such domestic remedy, and the failure to issue such determination is not attributable to delay caused by the natural persons.

## Chapter 13. Electronic Commerce

### Article 13.1. Basic Principles

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of avoiding unnecessary barriers to its use and development.

2. The aim of this Chapter is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties and the wider use of electronic commerce globally.

3. The Parties recognise the principle of technological neutrality in electronic commerce.

## Article 13.2. Definitions

For the purposes of this Chapter:

(a) the term "digital products" means such products as computer programmes, text, video, images and sound recordings, or any combinations thereof, that are digitally encoded, electronically transmitted, and produced for commercial sale or distribution, and does not include those that are fixed on a carrier medium;

Note 1: For greater certainty, digital products do not include digitised representations of financial instruments, including money.

Note 2: Nothing in this Chapter shall be considered as affecting the views of either Party on whether trade in digital products through electronic transmission is categorised as trade in services or trade in goods.

(b) the term "electronic signature" means a measure taken with respect to information that can be recorded in an electromagnetic record and which fulfils both of the following requirements:

(i) that the measure indicates that such information has been approved by a person who has taken such measure; and

(ii) that the measure confirms that such information has not been altered;

(c) the term "electronic transmissions" means transmissions made using any electromagnetic means;

(d) the term "personal data" means any information about an identified or identifiable individual; and

(e) the term "trade administration documents" means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

## Article 13.3. Customs Duties

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

## Article 13.4. Non-discriminatory Treatment of Digital Products

1. Neither Party may accord less favourable treatment to some digital products than it accords to other like digital products:

(a) on the basis that the digital products receiving less favourable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the Area of the other Party;

(b) on the basis that the author, performer, producer, developer, or distributor of such digital products is a person of the other Party; or

(c) so as to otherwise afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its Area.

Note: Recognising the Parties' objective of promoting bilateral trade, the term "some digital products" in paragraph 1 refers solely to those digital products created, produced, published, contracted for, or commissioned in the Area of the other Party, or digital products of which the author, performer, producer, or developer is a person of the other Party.

2. Neither Party may accord less favourable treatment to digital products:

(a) created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the Area of the other Party than it accords to like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in a non-Party; or

(b) whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital

products whose author, performer, producer, developer, or distributor is a person of a non-Party.

3. Paragraphs 1 and 2 do not apply to:

(a) non-conforming measures adopted or maintained by a Party in accordance with Article 9.7 (Trade in Services - Non-Conforming Measures) or 14.10 (Investment - Non-Conforming Measures and Exceptions);

(b) the extent that they are inconsistent with Chapter 16 (Intellectual Property);

(c) government procurement;

(d) subsidies provided by a Party or a state enterprise including grants, government-supported loans, guarantees, and insurance; and

(e) services supplied in the exercise of governmental authority, as defined in Article 9.2 (Trade in Services — Definitions).

4. For greater certainty, paragraphs 1 and 2 do not prevent a Party from adopting or maintaining measures, including measures in the audio-visual and broadcasting sectors, in accordance with Article 9.7 (Trade in Services — Non-Conforming Measures) or 14.10 (investment — Non-Conforming Measures and Exceptions).

Note: Nothing in this Article shall be construed as affecting rights and obligations of the Parties with respect to cach other under Article 4 of the TRIPS Agreement.

## Article 13.5. Domestic Regulation

1. Each Party shall ensure that measures it adopts or maintains do not unreasonably prohibit or restrict electronic commerce or its development.

2. Neither Party shall adopt or maintain measures regulating electronic transactions that:

(a) deny the legal effect, validity or enforceability of a transaction, including a contract, solely on the grounds that it is in the form of an electronic communication; or

(b) discriminate between different forms of technology,

unless such measures are provided for in its laws and regulations and are administered in a reasonable, objective and impartial manner.

3. Each Party shall, when formulating any new regulations relating to electronic commerce, take into account the importance of industry-led development of electronic commerce.

4. Each Party shall encourage the private sector to adopt self-regulation, including codes of conduct, model contracts, guidelines and enforcement mechanisms, with a view to facilitating electronic commerce.

## Article 13.6. Electronic Signature

1. Neither Party shall adopt or maintain measures regulating electronic signature that:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic signature methods for their transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to prove in court that their electronic transaction complies with any legal requirements.

2. Notwithstanding paragraph 1, where prescribed by a Party's laws and regulations, that Party may require that, for transactions where a high degree of reliability and security is required, the method of authentication meet certain security standards or be certified by an authority accredited in accordance with that Party's laws and regulations.

3. Each Party shall, as appropriate, encourage the use of electronic signatures based on internationally accepted standards.

4. The Parties shall, where possible, cooperate to work toward the mutual recognition of electronic signatures issued or recognised by either Party.

## Article 13.7. Consumer Protection

1. The Parties recognise the importance of adopting and maintaining measures which provide, for consumers using electronic commerce, protection that is at least equivalent to that provided for consumers using other forms of commerce, and measures conducive to the promotion of consumer confidence in electronic commerce.

2. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection activities related to electronic commerce in order to enhance consumer protection.

### Article 13.8. Personal Data Protection

1. Each Party shall adopt or maintain measures to protect the personal data of electronic commerce users.

2. In the development of protection standards for the personal data of electronic commerce users, each Party shall take into account relevant international standards and criteria of relevant international bodies.

### Article 13.9. Paperless Trade Administration

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

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

3. In developing initiatives which provide for the use of paperless trade administration, cach Party shall take into account international standards or methods made under the auspices of international organisations. 4. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of trade administration documents submitted electronically.

### Article 13.10. Cooperation

1. The Parties shall, where appropriate, cooperate and participate actively in regional and multilateral fora to promote the development of electronic commerce.

2. The Parties shall, as appropriate, share information and experiences, including on related laws, regulations and best practices with respect to electronic commerce, in relation to, inter alia, consumer confidence, cyber-security, combatting unsolicited commercial electronic messages, intellectual property, electronic government, personal data protection and electronic signatures.

3. The Parties shall cooperate to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce.

4. Each Party shall, as appropriate, encourage activities by non-government organisations in that Party which promote electronic commerce, including its secure use.

5. The Parties shall endeavour to cooperate, in appropriate cases of mutual concern, in the enforcement of laws against fraudulent and deceptive commercial practices in electronic commerce, subject to the laws and regulations of the respective Parties.

## Chapter 14. Investment

### Article 14.1. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Article 14.9, all investments in the Area of the Party adopting or maintaining the measure.

2. With the exception of Article 14.15, in the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of inconsistency.

### Article 14.2. Definitions

For the purposes of this Chapter:

(a) the term "covered investment" means, with respect to a Party, an investment in its Area of an investor of the other Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter;

(b) the term "enterprise of a Party" means an enterprise constituted or organised under the law of a Party;

(c) the term "freely usable currencies" means any currency designated as such by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, as amended;

(d) the term "investment activities" means the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

(e) the term "investment agreement" means a written agreement between a national authority of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment, that grants rights to the covered investment or investor:

(i) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution or sale;

(ii) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(iii) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

Note 1: "Written agreement" means an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties. For greater certainty:

(i) a unilateral act of an administrative or judicial authority, such as a permit, licence, or authorisation issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and

(ii) an administrative or judicial consent decree or order, shall not be considered a written agreement.

Note 2: For the purposes of this definition, "national authority" means an authority at the central level of government.

(f) the term "investment" means every kind of asset owned or controlled, directly or indirectly, by an investor, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(i) an enterprise and a branch of an enterprise;

(ii) shares, stocks or other forms of equity participation in an enterprise;

(iii)bonds, debentures, loans and other forms of debt;

(iv) futures, options and other derivatives;

(v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(vi) claims to money or to any contractual performance related to a business activity and having an economic value;

(vii) intellectual property as defined in Article 16.2 (Intellectual Property - Definitions);

(viii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits; and

(ix) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges; and

Note: Investments may also include amounts yielded by investments that are re-invested, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

(g) the term "investor of a Party" means a natural person or an enterprise of a Party, that seeks to make, is making, or has made, an investment in the Area of the other Party.

## Article 14.3. National Treatment

Each Party shall accord to investors of the other Party and to covered investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to investment activities in its Area.

## Article 14.4. Most-favoured-nation Treatment

Each Party shall accord to investors of the other Party and to covered investments treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities in its Area.

Note: For greater certainty, this Article does not apply to dispute settlement procedures or mechanisms under any international agreement.

## Article 14.5. Minimum Standard of Treatment

Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

Note 1: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded by a Party to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

Note 2: A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

## Article 14.6. Access to the Courts of Justice

1. Each Party shall with respect to investment activities in its Area accord to investors of the other Party treatment no less favourable than that it accords in like circumstances to its own investors or investors of a non-Party, with respect to access to its courts of justice and administrative tribunals and agencies.

2. Paragraph 1 does not apply to treatment provided to investors of a non-Party pursuant to an international agreement concerning access to courts of justice or administrative tribunals, or judicial cooperation agreements.

## Article 14.7. Special Formalities and Information Requirements

1. Nothing in Article 14.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of investors of the other Party and covered investments, such as compliance with registration requirements, or requirements that investors be residents of the Party or that covered investments be legally constituted under the laws and regulations of the Party provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 14.3 and 14.4, a Party may require an investor of the other Party, or a covered investment, to provide information concerning that covered investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## Article 14.8. Senior Management and Boards of Directors

1. Neither Party shall require that an enterprise of that Party that is a covered investment appoint to senior management positions nationals of any particular nationality.

2. A Party may require that a majority or less than a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the Area of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## Article 14.9. Prohibition of Performance Requirements

1. Neither Party shall apply in connection with investment activities of an investor of a Party in its Area any measure which is inconsistent with the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement.

2. Without prejudice to paragraph 1, neither Party shall impose or enforce any of the following requirements, in connection with investment activities of an investor of a Party or of a non-Party in its Area:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from persons in its Area;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with an investment of the investor;

(e) to restrict sales of goods or services in its Area that an investment of the investor produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its Area, except when the requirement:

(i) is imposed or enforced by a court of justice, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under its competition laws and regulations; or

ii) concems the disclosure of proprietary information or the use of intellectual property rights which is undertaken in a manner not inconsistent with the TRIPS Agreement; or

(g) to supply to a specific region or the world market exclusively from its Area, one or more of the goods that an investment of the investor produces or the services that an investment of the investor provides.

3. Without prejudice to paragraph 1, neither Party shall condition the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Party or of a non-Party in its Area, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from persons in its Area;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with an investment of the investor; or

(d) to restrict sales of goods or services in its Area that an investment of the investor produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Party or of a non-Party in its Area, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its Area.

5. Subparagraphs 2(a), 2(b), 2(c), 3(a) and 3(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

6. Subparagraphs 2(b), 2(c), 2(f), 2(g), 3(a) and 3(b) shall not apply to government procurement.

7. Subparagraphs 3(a) and 3(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. Paragraphs 2 and 3 shall not apply to any requirement other than the requirements set out in those paragraphs.

Note: For greater certainty, this Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, where a Party did not impose or require the commitment, undertaking or requirement.

## Article 14.10. Non-conforming Measures and Exceptions

1. Articles 14.3, 14.4, 14.8 and 14.9 shall not apply to:

(a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, as set out in Schedules in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10):

(i) the central government of a Party; or (ai) a State or Territory of Australia or a prefecture of Japan;

(b) any non-conforming measure that is maintained by a local government other than a State or Territory or a prefecture referred to in subparagraph (a)Gi) on the date of entry into force of this Agreement;

(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or

(d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 14.3, 14.4, 14.8 and 14.9.

2. Articles 14.3, 14.4, 14.8 and 14.9 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors and activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10).

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.

4. In cases where a Party makes an amendment or a modification to any non- conforming measure set out in its Schedule in Annex 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) after the date of the entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or as soon as possible thereafter:

(a) on request of the other Party, promptly provide information and respond to questions pertaining to any such proposed or actual amendment, modification or measure;

(b) to the extent possible, provide a reasonable opportunity for comments by the other Party on any such proposed or actual amendment, modification or measure; and

(c) to the maximum extent possible, notify the other Party of any such amendment, modification or measure that may substantially affect the other Party's interests under this Agreement.

5. Each Party shall endeavour, where appropriate, to reduce or eliminate the non- conforming measures set out in its Schedules in Annexes 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) and 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10) respectively.

6. Articles 14.3 and 14.4 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement.

7. Articles 14.3, 14.4 and 14.8 shall not apply to any measure that a Party adopts or maintains with respect to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

## Article 14.11. Expropriation and Compensation

1. Neither Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (hereinafter referred to in this Chapter as "expropriation") except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law; and

(d) upon payment of prompt, adequate and effective compensation in accordance with paragraphs 2 through 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate accrued from the date of expropriation to the date of payment and shall be effectively realisable and freely transferable in accordance with Article 14.13.

4. If payment is made in a freely usable currency, the compensation paid shall include interest, at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

5. Ifa Party elects to pay in a currency other than a freely usable currency, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than the sum of the following:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; and

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

6. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 16 (Intellectual Property).

Note: For greater certainty, the reference to the TRIPS Agreement in paragraph 6 includes any waiver in force between the Parties of any provision of that Agreement granted by WTO members in accordance with the WTO Agreement.

## Article 14.12. Treatment In Case of Strife

1. Each Party shall, with respect to restitution, indemnification, compensation or any other settlement, accord to investors of the other Party that have suffered loss or damage to their covered investments due to armed conflict or civil strife such as revolution, insurrection, civil disturbance or any other similar event in its Area, treatment that is no less favourable than that it would accord, in like circumstances, to its own investors or to investors of a non-Party.

2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned or freely usable currencies.

3. Notwithstanding the provisions of Article 1.10 (General Provisions — Security Exceptions), neither Party shall be relieved of its obligation under paragraph 1 by reason of its measures taken pursuant to that Article.

## Article 14.13. Transfers

1. Each Party shall allow all transfers relating to a covered investment to be made freely into and out of its Area without delay. Such transfers shall include those of:

(a) the initial capital and additional amounts to maintain or increase investments;

(b) profits, capital gains, dividends, royalties, interest, fees and other current incomes accruing from investments;

(c) proceeds from the total or partial sale or liquidation of investments;

(d) payments made under a contract including loan payments in connection with investments;

(e) earnings and remuneration of personnel from abroad who work in connection with investments in the Area of the Party;

(f) payments made in accordance with Articles 14.11 and 14.12; and

(g) payments arising out of a dispute.

2. Each Party shall allow such transfers to be made in freely usable currencies at the market exchange rate prevailing at the time of each transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers through the equitable, non-discriminatory and good-faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors; issuing, trading or dealing in securities or derivatives;

(b) criminal or penal offences;

(c) reporting or record keeping of transfers of currency or other monetary instruments when necessary to assist law enforcement or financial regulatory authorities; or

(d) ensuring compliance with orders or judgments in judicial or administrative proceedings.

## Article 14.14. Subrogation

Ifa Party or its designated agency makes a payment to an investor of the Party pursuant to an indemnity, guarantee or insurance contract pertaining to an investment of that investor within the Area of the other Party, that other Party shall recognise:

(a) the assignment, to the Party or its designated agency, of any right or claim of the investor in respect of such investment, that formed the basis of such payment; and

(b) the right of the Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

## Article 14.15. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between covered investments or investors of the other Party and other investments or investors, where like conditions prevail, or a disguised restriction on investment, nothing in Articles 14.3, 14.4, and 14.9 shall prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public morals or to maintain public order;

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(b) necessary to protect human, animal or plant life or health;

Note: This exception includes environmental measures necessary to protect human, animal or plant life or health.

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter, including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

(d) imposed for the protection of national treasures of artistic, historic or archacological value; or

(e) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

## Article 14.16. Temporary Safeguard Measures

1. A Party may adopt or maintain restrictive measures with regard to cross-border capital transactions as well as payments or transfers for transactions related to covered investments:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in exceptional cases where movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular monetary and exchange rate policies.

2. Restrictive measures referred to in paragraph 1 shall:

(a) be applied such that the other Party is treated no less favourably than any non-Party;

(b) be consistent with the Articles of Agreement of the International Monetary Fund;

(c) not exceed those necessary to deal with the circumstances set out in paragraph 1,

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

(e) be promptly notified to the other Party; and

(f) avoid unnecessary damages to the commercial, economic and financial interests of the other Party.

3. The Party which has adopted any measures under paragraph 1 shall, on request, commence consultations with the other Party in order to review the restrictions adopted by it.

## Article 14.17. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party or of the denying Party and the enterprise has no substantial business activities in the Area of the other Party.

Note: For the purposes of this Article, an enterprise is:

(a) "owned" by an investor if more than 50 per cent of the equity interest in itis beneficially owned by the investor; and

(b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

## Article 14.18. Sub-committee on Investment

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee").

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

(a) exchanging information on any matters related to this Chapter;

(b) reviewing and monitoring the implementation and operation of this Chapter and the non-conforming measures set out in each Party's Schedules in Annexes 6 (Non-Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10) and 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10);

(c) discussing any issues related to this Chapter;

(d) considering any issues raised by either Party concerning the imposition or enforcement of performance requirements, including those specified in Article 14.9;

(e) considering any issues raised by cither Party concerning investment agreements between a Party and an investor of the other Party;

(f) reporting the findings and outcome of discussions of the Sub-Committee to the Joint Committee; and

(g) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.

4. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

### Article 14.19. Review

1. Unless the Parties otherwise agree, the Parties shall conduct a review of this Chapter with a view to the possible improvement of the investment environment through, for example, the establishment of a mechanism for the settlement of an investment dispute between a Party and an investor of the other Party. Such review shall commence in the fifth year following the date of entry into force of this Agreement or a year on which the Parties otherwise agree, whichever comes first.

2. The Parties shall also conduct such a review if, following the entry into force of this Agreement, Australia enters into any multilateral or bilateral international agreement providing for a mechanism for the settlement of an investment dispute between Australia and an investor of another or the other party to that agreement, with a view to establishing an equivalent mechanism under this Agreement. The Parties shall commence such review within three months following the date on which that international agreement entered into force and will conduct the review with the aim of concluding it within six months following the same date.

3. At any time after the first year following the entry into force of this Agreement, either Party may request the other Party to agree to commence the review provided for in paragraph 1.

## Chapter 15. Competition and Consumer Protection

### Article 15.1. Objectives

The aim of this Chapter is to contribute to the fulfilment of the objectives of this Agreement by promoting economic efficiency and consumer welfare through the promotion of competition and cooperation on consumer protection.

### Article 15.2. Definitions

For the purposes of this Chapter:

(a) the term "anticompetitive activities" means any conduct or transaction that adversely affects competition and may be subject to penalties or other relief under the competition laws of either Party;

(b) the term "competition authority" means:

(i) for Australia, the Australian Competition and Consumer Commission, or its successor; and.

(ii) for Japan, the Fair Trade Commission, or its successor; and

(c) the term "competition law" means:

(i) for Australia, Parts IV and XIA of the Competition and Consumer Act 2010, and any regulations made under those Parts; and provisions of other Parts in so far as they relate to Part IV, but not including Part X; as well as any amendments thereto;

(ii) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) and its implementing regulations as well as any amendments thereto; and

(iii) for both Australia and Japan, such other laws and regulations as the Parties may from time to time mutually determine to be a "competition law".

### Article 15.3. Promotion of Competition by Addressing Anticompetitive Activities

1. Each Party shall, subject to its laws and regulations, take measures which it considers appropriate to promote competition, especially by addressing anticompetitive activities.

2. Any measures referred to in paragraph 1 shall be consistent with the principles of transparency, non-discrimination and procedural fairness.

### Article 15.4. State-owned Enterprises

In addition to Article 15.3, bearing in mind the relationship between the promotion of competition and other policy objectives, the Parties recognise that seeking to ensure that governments do not provide competitive advantages to state-owned enterprises simply because they are state owned can contribute to the promotion of competition.

### Article 15.5. Cooperation on Addressing Anticompetitive Activities

1. The Parties recognise the importance of cooperation to further the promotion of competition.

2. The Parties shall, subject to their respective laws and regulations as well as available resources, cooperate on the promotion of competition by addressing anticompetitive activities.

3. Cooperation may include, but is not limited to, exchange of information, notification and coordination of enforcement activities, and consultation.

4. Detailed cooperation arrangements to implement this Article may be made between the competition authorities of the Parties.

### Article 15.6. Cooperation on Consumer Protection

The Parties recognise the importance of cooperation on matters related to consumer protection in order to enhance consumer welfare in their respective Areas. Accordingly, the Parties shall cooperate, where appropriate, on matters relating to consumer protection, such as through exchange of publicly available information and experience.

### Article 15.7. Consultations

The Parties, recognising the importance of respecting the independence of each competition authority to enforce their competition laws, shall consult with each other, on request of either Party, on any matter which may arise in connection with this Chapter.

### Article 15.8. Confidentiality of Information

1. Each Party's competition authority may share information with the other Party's competition authority subject to each Party's laws and regulations.

2. Recognising the importance of confidentiality when exchanging information that is not publicly available, the competition authority of the Party receiving such information may only use or disclose that information in accordance with conditions imposed by the providing Party's competition authority.

3. Information provided by the competition authority of a Party to the competition authority of the other Party shall not be used by the other Party for presentation in criminal proceedings carried out by a court or a judge, unless, on request of the other Party, such information was provided for use in criminal proceedings through diplomatic channels or other channels established in accordance with the laws and regulations of the Parties.

4. This Article shall not preclude the use or disclosure of information provided in accordance with this Chapter to the extent such use or disclosure is required by the laws and regulations of the Party receiving the information. The competition authority of a Party shall, wherever possible, give advance notice of any such use or disclosure to the competition authority of the other Party providing the information.

### Article 15.9. Non-application of Chapter 19 (dispute Settlement)

The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter.

## Chapter 16. Intellectual Property

### Article 16.1. General Provisions

1. Each Party shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of its intellectual property system and provide for measures for adequate

and effective enforcement of intellectual property rights against infringement, including counterfeiting and piracy, in accordance with the provisions of this Chapter.

2. Each Party reaffirms its rights and obligations under the international agreements relating to intellectual property to which both Parties are party.

3. Each Party shall endeavour to participate in international efforts, at various fora, in harmonising intellectual property systems.

## Article 16.2. Definitions

For the purposes of this Chapter:

(a) the term "intellectual property" means:

(i) copyright and related rights, trade marks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, and protection of undisclosed information as defined or referred to in the TRIPS Agreement; and

ii) new varieties of plants as defined or referred to in the UPOV Convention;

(b) the term "nationals" shall have the same meaning as in Article 1 of the TRIPS Agreement;

(c) the term "Paris Convention" means the Paris Convention for the Protection of Industrial Property done at Paris on 20 March 1883, as amended; and

(d) the term "UPOV Convention" means the International Convention for the Protection of New Varieties of Plants done at Paris on 2 December 1961, as amended.

## Article 16.3. National Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions provided in the TRIPS Agreement.

2. The Parties may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Party, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Chapter and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Note: For the purposes of this Article, the term "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically covered in this Chapter. Further, for the purposes of this Article, the term "protection" includes the prohibition of circumvention of effective technological measures specified in paragraph 1 of Article 16.12.

## Article 16.4. Streamlining of Procedural Matters

For the purposes of providing efficient administration of its intellectual property system, each Party shall take appropriate measures to streamline its administrative procedures concerning intellectual property.

## Article 16.5. Acquisition and Maintenance of Intellectual Property Rights

1. In relation to the substantive examination of applications for patents, applications for registrations of new plant varieties and trade marks, and applications for registrations, or registrations, of industrial designs, neither Party shall refuse an application or a registration without notifying the applicant in writing of the reasons for such refusal and giving the applicant at least one opportunity, prior to the decision of refusal, to make amendments to the application or the registration and submit their written opinions. Each Party shall ensure that, where the examined application or registration is refused, the applicant has an opportunity to appeal against the decision of refusal.

2. Each Party shall, in accordance with its laws and regulations, maintain judicial or administrative tribunals or procedures for the purpose of the examination, review, correction, opposition, invalidation, revocation or cancellation, as appropriate,

of a grant of a patent, or the registration of a new plant variety, trade mark or industrial design.

## Article 16.6. Transparency

For the purposes of further promoting transparency in the administration of its intellectual property system, cach Party shall, in accordance with its laws and regulations, take appropriate measures to:

(a) publish, on the Internet or otherwise, information on:

(i) applications for patents;

(ii) grants of patents;

(iii) registrations of industrial designs;

(iv) applications for registration of trade marks;

(v) registrations of trade marks;

(vi) applications for registration of new varieties of plants; and

(vii) registrations of new varieties of plants,

and make available to the public information contained in dossiers for the above applications, grants and registrations;

(b) make available to the public information on applications for the suspension by its competent authorities of the release of goods suspected of infringing intellectual property rights as a border measure;

(c) make available to the public information on its efforts to ensure effective enforcement of intellectual property rights; and

(d) make available to the public, on the Internet or otherwise, other information with regard to its intellectual property system, including laws, regulations and guidelines.

## Article 16.7. Promotion of Public Awareness of Protection of Intellectual Property

The Parties shall take necessary measures to promote public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

## Article 16.8. Patents

The Parties shall cooperate to enhance mutual utilisation of search and examination results so as to allow applicants to obtain patents in an efficient and expeditious manner.

## Article 16.9. Trade Marks

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trade mark. Such signs, in particular words including personal names, letters, numerals, figurative elements, three-dimensional shapes and combinations of colours as well as any combination of such signs, shall be eligible for registration as a trade mark. Where signs are not inherently capable of distinguishing the relevant goods or services, each Party may make eligibility for registration depend on distinctiveness acquired through use.

## Article 16.10. Geographical Indications

1. Each Party shall recognise that geographical indications are eligible for protection through a trade mark system or other legal means.

2. The relationship between the protection of trade mark rights and that of geographical indications shall be in accordance with the TRIPS Agreement.

3. Each Party shall ensure that protection measures for geographical indications are transparent, readily available and understandable to the public.

4. The Parties may exchange views on issues related to this Article including protection of geographical indications. The Sub-Committee on Intellectual Property referred to in Article 16.21 shall provide a forum for this purpose.

5. The Parties shall review this Article, with a view to considering further provisions, five years after the date of entry into force of this Agreement, unless the Parties otherwise agree. The Sub-Committee on Intellectual Property referred to in Article 16.21 shall provide a forum for this purpose.

## Article 16.11. New Varieties of Plants

Each Party shall, in accordance with its rights and obligations under the UPOV Convention, provide for protection of plant varieties by granting and protecting rights in a plant variety where the variety is new, distinct, uniform and stable.

## Article 16.12. Copyright and Related Rights

1. With respect to copyright and related rights, each Party shall provide:

(a) adequate legal protection; and

(b) effective criminal penalties or civil remedies or any combination thereof, against the circumvention of effective technological measures that are used by authors, performers, or producers of phonograms in connection with the exercise of their rights under the laws and regulations of the Party and that restrict acts, in respect of their works, performances or phonograms, which are neither authorised by the authors, performers or producers of phonograms concerned nor permitted in certain special cases by the laws and regulations of the Party.

2. Each Party shall ensure that its collective management organisations are encouraged to:

(a) operate to collect and distribute revenues to their members in a manner that is fair, efficient, transparent and accountable; and

(b) adopt open and transparent record keeping of the collection and distribution of revenues.

3. In civil judicial proceedings involving copyright, each Party shall provide for a presumption that, in the absence of evidence to the contrary, the person whose name is indicated on a work in the usual manner as the name of the author of the work is the author of the work. This paragraph shall be applicable even if such name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his or her identity.

4. Each Party shall confine limitations or exceptions to exclusive rights of copyright and related rights to certain special cases which do not conflict with a normal exploitation of a work, performance or phonogram and do not unreasonably prejudice the legitimate interests of the right holder.

Note: With respect to works, performances and phonograms, paragraph 4 does not reduce the capacity of each Party to provide for limitations or exceptions in accordance with multilateral agreements related to intellectual property to which that Party is, or becomes, a party.

## Article 16.13. Protection of Undisclosed Information

Each Party shall protect undisclosed information in accordance with Article 39 of the TRIPS Agreement.

## Article 16.14. Utility Models

The Parties reaffirm their rights and obligations for the protection of utility models in accordance with the Paris Convention.

## Article 16.15. Unfair Competition

Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention.

## Article 16.16. Internet Service Providers

Each Party shall take appropriate measures to limit the liability of, or remedies available against, Internet service providers for copyright infringement by the users of their online services or facilities, where the Internet service providers take action to prevent access to the materials infringing copyright in accordance with the laws and regulations of the Party.

## Article 16.17. Enforcement — General

Each Party shall maintain mechanisms for the effective enforcement of intellectual property rights including border measures, civil remedies and criminal procedures and penalties in accordance with Articles 16.18 through 16.20. These mechanisms may also include:

(a) public or private advisory groups; and

(b) internal coordination among, and joint actions by, national government agencies concerned with enforcement of intellectual property rights.

## Article 16.18. Enforcement — Border Measures

1. Each Party shall provide for procedures concerning the suspension at the border by its customs administration, ex officio, of the release of goods suspected of infringing rights to trade marks, or copyright or related rights, which are destined for importation into and exportation from the Party.

2. Each Party shall provide for procedures concerning the suspension at the border by its customs administration, on request of a right holder, of the release of goods suspected of infringing rights to trade marks, or copyright or related rights, which are destined for importation into the Party.

3. Each Party may provide for procedures concerning the suspension at the border by its customs administration of the release of goods suspected of infringing rights to trade marks, or copyrights or related rights which:

(a) are destined for exportation from the Party, on request of a right holder; and

(b) are destined for transhipment through the Party, ex officio or on request of a right holder.

4. Each Party may provide for procedures concerning the suspension at the border by its customs administration of the release of goods suspected of infringing rights to patents, industrial designs or new varieties of plants, which are destined for importation into, exportation from or transhipment through the Party.

5. In the case of suspension with respect to importation or exportation, in accordance with the procedures referred to in this Article, the competent authorities of the importing Party upon importation, or of the exporting Party upon exportation, shall, where authorised in accordance with its laws and regulations or by its judicial authorities, notify the right holder of the names and addresses of the importer and the consignor, or the exporter and the consignee, of the goods in question, as the case may be.

6. Once a positive determination regarding infringement has been made, each Party shall ensure that the goods, the release of which has been suspended in accordance with the procedures referred to in this Article, will not be released into the channels of commerce without the consent of the right holder, and that the goods will be destroyed or disposed of in accordance with its laws and regulations, except with the consent of the right holder, or otherwise, in exceptional circumstances.

7. Each Party shall provide for simplified procedures, to be used when the importer does not object, for the competent authorities to seize, destroy or dispose of the goods the release of which has been suspended in accordance with the procedures referred to in paragraph 2.

Note: For the purposes of this Article, the term "transhipment" means transhipment, as defined in the International Convention on the Simplification and Harmonization of Customs Procedures, done at Kyoto on 18 May 1973, as amended.

## Article 16.19. Enforcement — Civil Remedies

1. Each Party shall provide that in civil judicial proceedings by a right holder of intellectual property rights against a person who knowingly, or with reasonable grounds to know, infringed the right holder's intellectual property rights, its judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement of the right holder's intellectual property rights.

2. Each Party shall ensure, subject to its laws and regulations, that its judicial authorities have the authority to determine the amount of damages based on the totality of the evidence presented to them. In determining the amount of damages for infringement of intellectual property rights, a Party's judicial authorities shall have the authority to consider, inter alia, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or

services measured by the market price, or the suggested retail price.

## Article 16.20. Enforcement — Criminal Procedures and Penalties

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of trade mark counterfeiting, copyright or related rights piracy or infringement of rights relating to new varieties of plants, committed wilfully and on a commercial scale.

2. Each Party shall treat wilful importation or exportation of goods covered by paragraph 1 as unlawful activities subject to criminal penalties. A Party may comply with its obligation relating to importation and exportation of goods covered by paragraph 1 by providing for distribution, sale or offer for sale of such goods ona commercial scale as unlawful activities subject to criminal penalties.

3. Penalties applicable to the cases referred to in paragraphs 1 and 2 shall include imprisonment and/or monetary fines sufficient to provide a deterrent, that are consistent with the level of penalties applied for crimes of a corresponding gravity.

4. Each Party shall ensure, at least in cases of trade mark counterfeiting or infringement of rights relating to new varieties of plants, committed wilfully and on a commercial scale, that its competent authorities may institute prosecution ex officio, without the need for a formal complaint by the right holder whose right has been infringed.

5. Each Party shall ensure that in cases of trade mark counterfeiting or copyright or related rights piracy committed wilfully and on a commercial scale, its judicial authorities may order the confiscation of crime proceeds and properties derived from such crime proceeds, in accordance with its laws and regulations.

Note: For the purposes of this paragraph, for Australia, its judicial authorities shall only be required to order the confiscation of crime proceeds and properties derived from such crime proceeds, in respect of offences defined as "indictable offences" under its law.

6. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation and domestic use, in the course of trade and on a commercial scale, of labels or packaging:

(a) to which a mark has been applied without authorisation which is identical to, or cannot be distinguished from, a trade mark registered in its Area; and

(b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trade mark is registered.

Note 1: A Party may comply with its obligation under this paragraph relating to importation of labels or packaging through its measures concerning distribution.

Note 2: A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trade mark offence.

## Article 16.21. Sub-committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to intellectual property, including geographical indications, covered by this Chapter,

(c) overseeing ongoing cooperation between the Parties in relation to the protection of intellectual property, enforcement of intellectual property rights and administration of their intellectual property systems;

(d) reporting the findings and the outcomes of discussions of the Sub- Committee to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee:

(a) shall be composed of and co-chaired by representatives of the Governments of the Parties; and

(b) may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee to provide advice on specific issues.

4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

# Chapter 17. Government Procurement

## Article 17.1. Scope

1. This Chapter shall apply to any measure regarding covered procurement.

2. For the purposes of this Chapter, the term "covered procurement" means a government procurement of goods, services or both:

(a) by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, build- operate-transfer contracts and public works concession contracts;

(b) that is conducted by a procuring entity;

(c) where the value of the contracts to be awarded is estimated in accordance with Article 17.5 to be not less than the thresholds specified in Annex 13 (Government Procurement) at the time of publication of a notice in accordance with Article 17.10;

(d) subject to the conditions specified in Annex 13 (Government Procurement); and

(e) that is not excluded from coverage by this Agreement.

3. This Chapter shall not apply to:

(a) procurement of goods and services by a procuring entity from another entity of the same Party, or between a procuring entity of a Party and a regional or local government of that Party;

(b) non-contractual agreements or any form of assistance that a Party provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, and sponsorship arrangements;

(c) procurement for the direct purpose of providing international assistance, including development aid;

(d) procurement of research and development services;

(e) procurement of goods and services outside the Area of the procuring Party, for consumption outside the Area of the procuring Party;

(f) public employment contracts;

(g) procurement conducted under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;

(h) procurement funded by grants and sponsorship payments received from a person other than a procuring entity of a Party;

(i) the acquisition or rental of land, existing buildings, or other immovable property or rights thereon;

(j) procurement conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; and

(k) procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities.

4. Neither Party shall prepare, design or otherwise structure any government procurement contract in order to avoid the obligations under this Chapter.

## Article 17.2. Definitions

For the purposes of this Chapter:

(a) the terms "build-operate-transfer contract" and "public works concession contract" mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants the supplier, fora specified period of time, temporary ownership or a right to control and operate, and demand payment for, the use of such works for the duration of the contract;

(b) the term "conditions for participation" means minimum conditions that potential suppliers must meet in order to participate in a procurement process or for submissions to be considered. This may include a requirement to undertake an accreditation or validation procedure;

(c) the term "in writing" means any worded or numbered expression that can be read, reproduced, and later communicated. This may include electronically transmitted and stored information;

(d) the term "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(e) the term "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that a Party intends to use more than once;

(f) the term "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

(g) the term "procuring entity" means an entity covered in Annex 13 (Government Procurement),

(h) the term "publish" means to disseminate information in an electronic or paper medium that is available widely and is readily accessible to the general public;

(i) the term "selective tendering" means a procurement method whereby those suppliers invited to do so by the procuring entity may submit a tender;

(j) the term "services" includes construction services unless otherwise specified; and

(k) the term "supplier" means a person that provides or could provide goods or services to a procuring entity.

## Article 17.3. National Treatment and Non-discrimination

1. With respect to any measure regarding covered procurement, each Party shall accord, immediately and unconditionally, to the goods, services and suppliers of the other Party, treatment no less favourable than that it accords to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party shall not:

(a) treat a locally-established supplier less favourably than another locally- established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally-established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

3. This Article shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than measures governing covered procurement.

4. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

5. For greater certainty, all orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2.

## Article 17.4. Rules of Origin

For the purposes of covered procurement, neither Party shall apply rules of origin to goods or services that are different from the rules of origin the Party applies in the normal course of trade to those goods or services.

## Article 17.5. Valuation of Contracts

1. In estimating the value of a procurement for the purposes of ascertaining whether itis a covered procurement under this Chapter:

(a) valuation shall take into account all forms of remuneration, including any premiums, fees, commissions, interest and other revenue streams that may be provided for under the contract;

(b) the selection of the valuation method by a procuring entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter; and

(c) in cases where an intended procurement specifies the need for or provides for the possibility of option clauses, the basis for valuation shall be the maximum total value of the procurement, inclusive of optional purchases.

2. In the case of procurement by lease, rental, or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

## Article 17.6. Prohibition of Offsets

With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset. The term "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar actions or requirements.

## Article 17.7. Technical Specifications

1. Technical specifications shall not be prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

2. Requirements relating to conformity assessment procedures shall not be prescribed with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

3. For the purposes of this Article, the term "technical specification" means a tendering requirement that sets out:

(a) the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(b) terminology, symbols, packaging, marking and labelling requirements, as they apply to goods or services.

4. Technical specifications prescribed by procuring entities shall, where appropriate:

(a) be specified in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) be based on international standards, where such exist; otherwise, on national technical regulations, recognised national standards, or building codes.

5. There shall be no requirement or reference to a particular trademark or trade name, patent, copyright, design or type, specific origin or producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.

6. Aprocuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

7. Notwithstanding paragraph 6, a procuring entity may:

(a) conduct market research in developing specifications for a particular procurement; or

(b) allow a supplier that has been engaged to provide design or consulting services to participate in procurements related to such services, provided it would not give the supplier an unfair advantage over other suppliers.

8. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

## Article 17.8. Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its procuring entities are applied in a non-discriminatory and transparent manner that is consistent with this Chapter.

2. A procuring entity shall use open, selective or limited tendering procedures.

## Article 17.9. Conditions for Participation

1. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of the other Party than to domestic suppliers.

2. A Party and its procuring entities may establish a multi-use list, provided that the procuring entity or other government agency annually publishes or otherwise makes available, continuously in electronic form, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of the conditions; and.

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the entity and obtain all relevant documents relating to the list.

3. The process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of the other Party off a suppliers' list or from being considered for a particular intended procurement.

4. Nothing in this Article shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations or significant deficiencies in performance of any substantive requirement or obligation under a prior contract.

5. For greater certainty, a procuring entity may allow suppliers who have not yet qualified to tender in an intended procurement to participate in that procurement, provided that there is sufficient time to complete the qualification procedure.

## Article 17.10. Notice of Procurement

1. In an open tendering procedure and, where appropriate, a selective tenderingprocedure, a procuring entity shall publish a notice inviting interested suppliers to submit tenders (hereinafter referred to as "notice of procurement") or application for participation in a procurement, in such a way as to be readily accessible to any interested supplier of the other Party for the entire period established for tendering.

2. The information in each notice of procurement shall include a description of the intended procurement, any conditions that suppliers must fulfil to participate in the procurement, the name of the procuring entity, the address where all documents relating to the procurement may be obtained, and the time-limits for submission of tenders.

3. Procuring entities are encouraged to publish, prior to or as early as possible in the fiscal year, a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject matter of each procurement and the planned date of the publication of the notice of procurement or commencement of the related tender procedure.

## Article 17.11. Selective Tendering

1. To ensure optimum effective competition under selective tendering procedures, procuring entities shall, for cach

intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Party, taking due account of the efficient operation of the procurement system and market conditions. They shall select the suppliers to participate in the procedure in a fair and non- discriminatory manner.

2. For greater certainty, a procuring entity applying selective tendering may use a list of qualified suppliers or a multi-use list established in accordance with Article 17.9.

## Article 17.12. Time-limits for Tendering

1. Each Party shall ensure that:

(a) any prescribed time-limit is adequate to allow suppliers to prepare and submit tenders before the closing of the tendering procedures; and

(b) in determining any such time-limit, its procuring entities, consistent with their own reasonable needs, take into account such factors as the date of publication of the tender notice, the complexity of the intended procurement and the extent of subcontracting anticipated.

2. For each covered procurement, the final date and time for submission of tenders determined by the procuring entity shall be the same for all suppliers participating in the tendering procedure. For greater certainty, this requirement shall also apply where:

(a) as a result of a need to amend information provided to suppliers during the procurement process, the procuring entity extends the time-limits for qualification or tendering procedures; or

(b) negotiations are terminated and suppliers may submit new tenders.

## Article 17.13. Tender Documentation

1. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders, including all criteria that the procuring entity will consider in awarding the contract.

2. Aprocuring entity shall respond promptly to any reasonable request for relevant information, including a request for explanations relating to tender documentation, submitted by a supplier participating in the tendering procedure.

3. Information relating to a specific procurement shall not be provided in a manner which would have the effect of giving a potential supplier or group of potential suppliers an advantage over competitors.

4. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of procurement or tender documentation provided to participating suppliers, or amends or re-issues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

## Article 17.14. Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. A procuring entity shall receive, open and treat all tenders in accordance with procedures that guarantee the fairness and impartiality of the procurement process.

2. Aprocuring entity shall treat all tenders in confidence to the extent permitted by the laws and regulations of the Party. In particular, it shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. Aprocuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

4. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

5. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notice of

procurement or tender documentation.

6. Acontract may only be awarded to a supplier that the procuring entity has determined to have complied with the conditions for participation. If a procuring entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that the tenderer can comply with the conditions for participation and is capable of fulfilling the terms of the contract.

7. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the criteria and requirements specified in the notices and tender documentation, has submitted:

(a) the most advantageous, best value or overall greatest value tender; or

(b) where price is the sole criterion, the lowest price.

8. Aprocuring entity shall not use option clauses, cancel a procurement or modify awarded contracts in order to avoid the obligations under this Chapter.

## Article 17.15. Limited Tendering

1. Aprocuring entity may use limited tendering, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination against the suppliers of the other Party or protection to domestic producers or suppliers. When a procuring entity applies limited tendering, it may choose, according to the nature of the procurement, not to apply Articles 17.7 through 17.14.

2. Subject to paragraph 1, a procuring entity may use limited tendering only under the following conditions:

(a) on condition that the requirements of the initial tender are not substantially modified in the contract as awarded:

(i) no tenders were submitted or no suppliers requested participation;

(ii) all tenders submitted have been collusive;

(iii) no tenders were submitted that conform to the essential requirements in the tender documentation; or

(iv) no suppliers satisfied the conditions for participation;

(b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable or unforeseen by the procuring entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier of goods or services, or its authorised representative, that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations; or

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(e) when a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

Note: Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards.

(f) for goods purchased on a commodity market;

(g) for purchases made under exceptionally advantageous conditions which only arise in the very short term such as from unsolicited innovative proposals, unusual disposals, or disposal of assets of businesses in liquidation, bankruptcy or

receivership and not routine purchases from regular suppliers;

(h) in the case of contracts awarded to the winner of a design contest provided that the contest has been organised in a manner which is consistent with the principles of this Chapter and the contest is judged by an independent jury with a view to design contracts being awarded to the winner; or

(i) for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following open tendering or selective tendering in accordance with this Chapter and for which the procuring entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for those construction services.

3. Procuring entities shall prepare a report in writing on each contract awarded under this Article. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, and a statement of the conditions in this Article which prevailed.

## Article 17.16. Post-award Information

1. Each Party, including its procuring entities shall publish a notice no later than 72 days after the award of cach contract for a covered procurement. Such notice shall contain:

(a) a description of the goods or services procured, which may include quantity;

(b) the name and address of the entity awarding the contract;

(c) the contract date or the date of award;

(d) the name and address of the contracted supplier or winning tenderer;

(e) the value of the contract or the value of the winning award or the highest and the lowest offer taken into account in the award of the contract; and

(f) the procurement method used.

2. Aprocuring entity shall promptly inform suppliers that have submitted tenders of the contract award decision. Subject to Article 17.18, a procuring entity shall, on request, provide an unsuccessful supplier with the reasons why the procuring entity did not select its tender.

3. Aprocuring entity shall maintain documentation and reports relating to the conduct of procurements covered by this Chapter, including reports required by paragraph 3 of Article 17.15, for a period of at least three years after the date it awards a contract.

## Article 17.17. Information on the Procurement System

1. Each Party shall promptly publish its procurement laws, regulations, procedures and policy guidelines relating to covered procurements, and any changes or additions thereto.

2. Each Party shall promptly reply to any request from the other Party for an explanation of any matter relating to its procurement laws, regulations, procedures and policy guidelines.

## Article 17.18. Non-disclosure of Information

Nothing in this Chapter shall be construed to require a Party or its procuring entities to disclose, furnish or allow access to confidential information furnished by a person where such disclosure might prejudice fair competition between suppliers, without the authorisation of the person that furnished the confidential information.

## Article 17.19. Challenge Procedure

1. In the event of a complaint by a supplier that there has been a breach of measures implementing the obligations of this Chapter in the context of a covered procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

2. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, ina non-discriminatory, timely, transparent and effective manner, complaints that suppliers submit, in accordance with the Party's laws, regulations and procedures, relating to a covered procurement.

3. Each Party shall make information on complaint mechanisms generally available.

## Article 17.20. Exceptions

1. Further to Article 1.10 (General Provisions — Security Exceptions), nothing in this Chapter shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests relating to government procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from imposing, enforcing or maintaining measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic or not-for-profit institutions or of prison labour.

3. The Parties understand that subparagraph 2(b) includes environmental measures necessary to protect human, animal, or plant life or health.

## Article 17.21. Ensuring Integrity In Procurement Processes

1. Each Party shall ensure that criminal or administrative penalties exist to prevent corruption in its government procurement.

2. Procuring entities shall conduct covered procurement in a transparent and impartial manner which:

(a) eliminates any conflicts of interest for persons administering a tendering procedure wherever possible; or

(b) for situations where it is not possible to fully eliminate such conflicts, prevent such interests from influencing procedures or decisions made in the course of a procurement.

## Article 17.22. Rectifications or Modifications

1. A Party shall notify the other Party in writing of any proposed rectification or modification of its Part to Annex 13 (Government Procurement) (any of which is hereinafter referred to in this Article as "modification"). Notification may include, where necessary to maintain a level of coverage comparable to that existing prior to the modification, an offer of compensatory adjustment.

2. Proposed modifications shall become effective provided the other Party does not object in writing to the modifying Party within 45 days after the date of notification.

3. A Party need not provide compensatory adjustments to the other Party where a proposed modification is of a purely formal or minor nature to its Part to Annex 13 (Government Procurement), such as:

(a) changes in the name of a procuring entity;

(b) merger of one or more procuring entities;

(c) the separation of a procuring entity into two or more entities that are all added to the list of procuring entities in the same Section of Annex 13 (Government Procurement); and

(d) changes in website references.

4. Where the Parties do not agree on the proposed modification, the objecting Party may request further information with a view to clarifying the proposed modification or may request that an offer of compensation be made where the objecting

Party considers that compensation is necessary to maintain a level of coverage comparable to that existing prior to the modification. The Parties shall make every attempt to resolve the objection through consultations.

5. Where the Parties resolve the objection through consultations, the Parties shall notify the contact points provided under Article 1.14 (General Provisions — Communications) of the agreed modifications.

6. Neither Party shall undertake modifications to avoid the obligations of this Chapter.

### Article 17.23. Privatisation of Procuring Entities

When government control over a procuring entity specified in Annex 13 (Government Procurement) has been effectively eliminated, notwithstanding that the government may possess holding thereof or appoint members of the board of directors thereto, this Chapter shall no longer apply to that entity and compensation need not be proposed. A Party shall notify the other Party of the name of such entity before elimination of government control or as soon as possible thereafter. Notification shall include evidence of such elimination.

### Article 17.24. Further Negotiation

In the event that after the entry into force of this Agreement a Party offers a non- Party additional advantages of binding access to its government procurement market beyond what the other Party has been provided with under this Chapter, the former Party shall, on request of the other Party, enter into negotiations with the other Party with a view to extending those advantages to the other Party on a reciprocal basis.

### Article 17.25. Cooperation

1. Each Party shall reply to any request from the other Party for an explanation of any matter relating to the application of this Chapter, including matters related to its procurement laws, regulations and policy guidelines.

2. Each Party shall use the contact point referred in Article 1.14 (General Provisions — Communications) for any request made pursuant to this Article.

3. The Joint Committee shall have responsibility for reviewing the implementation and operation of this Chapter.

## Chapter 18. Promotion of a Closer Economic Relationship

### Article 18.1. Cooperation

1. The Parties shall endeavour to cooperate and take appropriate measures to promote a closer economic relationship, including between their business sectors, in accordance with their respective laws and regulations.

2. The Parties, confirming their willingness to promote a closer economic relationship, shall hold consultations in accordance with this Chapter.

### Article 18.2. Sub-committee on Promotion of a Closer Economic Relationship

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Promotion of a Closer Economic Relationship (hereinafter referred to in this Chapter as "the Sub-Committee").

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

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter, including, as appropriate:

(i) ways to promote a closer economic relationship between the Parties;

(ii) ways to further remove obstacles to trade and investment between the Parties and to facilitate business activities between the Parties; and

(iii) possibilities for cooperation in the government and business sectors to promote bilateral trade and investment;

(c) as appropriate, reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee;

(d) making recommendations, as necessary, to the Joint Committee on appropriate measures to be taken by the Parties; and

(e) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

4. The Sub-Committee:

(a) shall be composed of and co-chaired by representatives of the Governments of the Parties; and

(b) shall take all its actions by mutual consent of the Parties.

5. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, including from the business sector, with the necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub- Committee.

6. The Sub-Committee shall cooperate with other relevant Sub-Committees with a view to avoiding unnecessary overlap with their work. The Joint Committee shall, if necessary, give instructions to this end.

### Article 18.3. Functions of the Contact Point

1. The functions of the contact point of each Party designated in accordance with Article 1.14 (General Provisions — Communications), in regard to the implementation of this Chapter, shall be:

(a) receiving concerns or enquiries expressed by the other Party's enterprises relating to business activities between the Parties;

(b) responding to the concerns or enquiries referred to in subparagraph (a), where appropriate, in collaboration with other relevant authorities of the Party; and

(c) reporting, as appropriate, relevant issues to the Sub-Committee.

2. A Party may designate an authority to help facilitate communications under paragraph 1 between its business sector and the contact point of the other Party.

3. Paragraphs 1 and 2 shall not prevent or restrict any contact by a Party's business sector directly with relevant authorities of the other Party.

### Article 18.4. Non-application of Chapter 19 (dispute Settlement)

The dispute settlement procedures provided for in Chapter 19 (Dispute Settlement) shall not apply to this Chapter.

## Chapter 19. Dispute Settlement

### Article 19.1. Scope

Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties concerning the implementation, interpretation or application of this Agreement.

### Article 19.2. Definitions

For the purposes of this Chapter, the term "DSU" means the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement.

### Article 19.3. Choice of Dispute Settlement Procedure

1. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are party, including the WTO Agreement.

2. Notwithstanding paragraph 1, once a dispute settlement procedure has been initiated by a Party under this Chapter or under any other international agreement to which both Parties are party with respect to a particular dispute, that Party shall

not initiate another dispute settlement procedure with respect to that particular dispute, unless:

(a) substantially separate and distinct rights or obligations under different international agreements are in dispute;

(b) the dispute settlement procedure which has been initiated fails to make findings on the issues in dispute for jurisdictional or procedural reasons; or

(c) the complaining Party terminates the dispute settlement procedure which has been initiated, prior to the issuance of any award or report by the dispute settlement body, whether draft, interim or final, and initiates a new dispute settlement procedure in another forum with respect to that particular dispute, provided that the dispute settlement procedure to be terminated is the first dispute settlement procedure which has been initiated by the complaining Party for that particular dispute and that the complaining Party provides an interval of at least 30 days between the date of the termination of the first dispute settlement procedure and the date on which it initiates a new dispute settlement procedure.

3. For the purposes of paragraph 2:

(a) a dispute settlement procedure under this Chapter shall be deemed to be initiated by a Party when it requests the establishment of an arbitral tribunal in accordance with paragraph 1 of Article 19.6, and deemed to be terminated by the complaining Party when it notifies the Party complained against and the chair of the arbitral tribunal of its intention to terminate the proceedings of the arbitral tribunal in accordance with paragraph 3 of Article 19.11; and

(b) a dispute settlement procedure under the WTO Agreement shall be deemed to be initiated by a Party when it requests the establishment of a panel in accordance with Article 6 of the DSU, and deemed to be terminated by the complaining Party when it requests the panel to suspend its work in accordance with paragraph 12 of Article 12 of the DSU.

Note: For the purposes of subparagraph 3(b), it is understood that where the complaining Party requests a Panel under the DSU to suspend its work, that Party shall not request the Panel to resume its work.

## Article 19.4. Consultations

1. Either Party may request consultations with the other Party if it considers:

(a) any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of:

(i) the application by the other Party of a measure which is inconsistent with this Agreement; or

(ii) the failure of the other Party to carry out its obligations under this Agreement; or

(b) any benefit accruing to it directly or indirectly under Chapter 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures), 9 (Trade in Services) or 16 (Intellectual Property) is being nullified or impaired as a result of the application by the other Party of a measure that is not inconsistent with the provisions of those Chapters, provided that the complaining Party presents a detailed justification in support of any complaint relating to that measure.

2. Any request by a Party for consultations shall be submitted to the other Party in writing and give the reasons for the request, including identification of the measures at issue and an indication of the factual and legal basis for the complaint.

3. With a view to reaching a prompt and satisfactory resolution of the matter, when a Party requests consultations in accordance with paragraph 1, the other Party shall reply promptly to the request and enter into consultations in good faith within 30 days, or within 15 days in cases of urgency which concern perishable goods, after the date of receipt of the request.

## Article 19.5. Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time if the Parties agree and, on request of cither Party, be terminated at any time.

2. Ifthe Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

## Article 19.6. Establishment and Composition of Arbitral Tribunals

1. The complaining Party that requested consultations in accordance with Article 19.4 may request, in writing, to the Party complained against, the establishment of an arbitral tribunal if:

(a) the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency which concern perishable goods, after the date of receipt of the request for such consultations; or

(b) the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency which concern perishable goods, after the date of receipt of the request for such consultations.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall:

(a) identify the specific measures at issue;

(b) provide a brief summary of the legal basis for the complaint sufficient to present the problem clearly, including the provisions alleged to have been breached and any other relevant provisions of this Agreement; and

(c) provide a brief summary of the factual basis for the complaint.

3. When a request is made by the complaining Party in accordance with paragraphs 1 and 2, an arbitral tribunal shall be established in accordance with this Article.

4. The arbitral tribunal shall consist of three arbitrators, including a chair.

5. Unless the Parties otherwise agree, each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the chair. The chair shall not be a national of cither Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

6. The Parties shall agree on and appoint the chair within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed in accordance with paragraph 5. If appropriate, the Parties may jointly consult the arbitrators appointed in accordance with paragraph 5.

7. Ifany of the three appointments have not been made within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, any arbitrators not yet appointed shall be appointed, on request of cither Party, by lot from the list of the candidates proposed in accordance with paragraph 5. The appointment by lot shall be undertaken within seven days after the date of receipt of the request for appointment by lot, unless the Parties otherwise agree. Where more than one arbitrator including a chair is to be selected by lot, the chair shall be selected first.

8. The date of the establishment of an arbitral tribunal shall be the date on which the third arbitrator is appointed.

9. All arbitrators shall: (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

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

(c) be independent of, and not be affiliated with or take instructions from, either Party.

10. Ifthe Parties agree that an arbitrator has failed to comply with the Code of Conduct referred to in Article 19.16, they may remove the arbitrator, waive the violation or request the arbitrator to take steps within a specified period of time to ameliorate the violation. If the Parties agree to waive the violation or determine that, after amelioration, the violation has ceased, the arbitrator may continue to serve.

11. Ifan arbitrator appointed in accordance with this Article dies, resigns or becomes unable to act, including as a result of his or her removal in accordance with paragraph 10, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator.

12. Where an arbitral tribunal is reconvened in accordance with Article 19.14 or 19.15, the reconvened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, a replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and shall have all the powers and duties of the original arbitrator.

## Article 19.7. Terms of Reference of Arbitral Tribunals

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

"To examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 19.6, to make findings of law and fact together with

the reasons therefor and to issue an award for the resolution of the dispute."

## Article 19.8. Functions of Arbitral Tribunals

The arbitral tribunal established in accordance with Article 19.6:

(a) should consult the Parties, as appropriate, and provide adequate opportunities for the development of a mutually satisfactory solution;

(b) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case, the applicability of the provisions of this Agreement cited by the Parties, and:

(i) the consistency with this Agreement of the measure at issue applied by the Party complained against;

(ii) whether the Party complained against has failed to carry out its obligations under this Agreement; or

(iii) whether the measure at issue applied by the Party complained against is causing the nullification or impairment of any benefit described in subparagraph 1(b) of Article 19.4; and

(c) may make such other findings as necessary for the resolution of the dispute.

## Article 19.9. Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session. If the Parties agree, meetings with the Parties may be open to the public.

2. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

3. Notwithstanding paragraph 2, cither Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions provided by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated as confidential, that Party shall, on request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

4. Each Party shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings and to set out in writing the facts of its case, its arguments and counter-arguments. Any information or written submissions provided by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

5. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus, but may also make such decisions, including its award, by majority vote.

6. The period for the arbitral tribunal proceedings, from the date of its establishment until the date on which it issues its award to the Parties, shall not exceed six months, unless the Parties otherwise agree.

7. After consulting the Parties, the arbitral tribunal shall, as soon as practicable and whenever possible within 10 days after the date of its establishment, fix the timetable for its proceedings, taking into account any applicable time-frames specified in this Chapter and the Indicative Timetable referred to in Article 19.16. On request of the Parties, modifications to such timetable may be made by the arbitral tribunal.

8. Any time period applicable to the proceedings of the arbitral tribunal shall be suspended for a period that begins on the date on which any arbitrator becomes unable to act and ends on the date on which the successor is appointed.

## Article 19.10. Information In Proceedings

1. The arbitral tribunal may seek from the Parties such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information.

2. Onits own initiative unless the Parties disapprove, or on request of a Party, the arbitral tribunal may obtain information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. However, before doing so the arbitral tribunal shall seek the views of the Parties.

3. Subject to paragraph 2, where the dispute raises factual issues concerning a scientific or other technical matter, the arbitral tribunal may, on its own initiative unless the Parties disapprove, or on request of a Party, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings,

but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award. Where two suitable scientific or technical experts are not available, the arbitral tribunal may, after consulting the Parties, select only one expert.

4. Where the arbitral tribunal obtains information or technical advice from any individual or body other than the Parties, it shall provide the Parties with a copy of any information or technical advice it receives and an opportunity to provide comments on the information or technical advice. Where the arbitral tribunal takes the information or technical advice into account in the preparation of its award, it shall also take into account any comments by the Parties.

## Article 19.11. Suspension and Termination of Proceedings

1. The arbitral tribunal may suspend its work on request of the complaining Party,and with the consent of the Party complained against, at any time for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraph 7 of Article 19.9 shall be extended by the amount of time that the work was suspended. The proceedings of the arbitral tribunal shall be resumed at any time on request of either Party. If the work of the arbitral tribunal has been suspended for more than 12 consecutive months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time before the issuance of the award to the Parties by jointly notifying the chair of the arbitral tribunal.

3. Notwithstanding paragraph 2, for the purpose of initiating a new dispute settlement procedure in another forum in accordance with subparagraph 2(c) of Article 19.3, the complaining Party may terminate the proceedings of the arbitral tribunal by notifying the Party complained against and the chair of the arbitral tribunal of such intention.

## Article 19.12. Award

1. The arbitral tribunal shall make its award based on the relevant provisions of this Agreement, applicable rules of interpretation under international law, the submissions and arguments of the Parties, and any information it has obtained in accordance with Article 19.10.

2. The award of the arbitral tribunal shall include:

(a) a descriptive part covering the factual background to the dispute;

(b) its findings on the facts of the case, the applicability of the provisions of this Agreement cited by the Parties, and:

(i) the consistency with this Agreement of the measure at issue applied by the Party complained against;

ii) whether the Party complained against has failed to carry out its obligations under this Agreement; or

(iii) whether the measure at issue applied by the Party complained against is causing the nullification or impairment of any benefit described in subparagraph 1(b) of Article 19.4; and

(c) the reasons for such findings.

3. The arbitral tribunal may also include in its award:

(a) any other findings necessary for the resolution of the dispute, in accordance with subparagraph (c) of Article 19.8; and

(b) suggested implementation options for the Parties to consider, if requested by either Party.

4. The findings and suggestions of the arbitral tribunal in its award shall not add to or diminish the rights and obligations of the Parties under this Agreement or any other international agreement.

5. The award of the arbitral tribunal shall be drafted without the presence of the Parties. Any opinions expressed in the award by individual arbitrators shall be anonymous.

6. The arbitral tribunal shall submit to the Parties its draft award meeting the requirements specified in paragraph 2, at least 30 days prior to the date set by the arbitral tribunal in accordance with paragraph 7 of Article 19.9 for issuance of its award, for the purpose of enabling the Parties to review it. Either Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award. The arbitral tribunal shall include in its award its analysis of any comments made by the Parties on the draft award.

7. Unless the Parties otherwise agree, cither Party may make the award of the arbitral tribunal publicly available seven days after the date of its issuance to the Parties, subject to paragraphs 2 and 3 of Article 19.9.

8. The award of the arbitral tribunal shall be final and binding on the Parties.

## Article 19.13. Implementation of Award

1. The Party complained against shall:

(a) where the award of the arbitral tribunal contains a finding of inconsistency of the measure at issue applied by the Party complained against with this Agreement, bring such measure into conformity with this Agreement;

(b) where the award of the arbitral tribunal contains a finding that the Party complained against has failed to carry out its obligations under this Agreement, carry out such obligations; or

(c) where the award of the arbitral tribunal contains a finding that the measure at issue applied by the Party complained against is causing the nullification or impairment of any benefit described in subparagraph 1(b) of Article 19.4, address such nullification or impairment or reach a mutually satisfactory solution.

2. Ifitis impracticable to comply promptly with paragraph 1, the Party complained against shall have a reasonable period of time in which to do so. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the reasonable period of time that it considers necessary for compliance.

3. If itis required, any reasonable period of time necessary to comply with paragraph 1 shall, whenever possible, be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the award, either Party may request the chair of the arbitral tribunal appointed in accordance with Article 19.6 to determine the reasonable period of time.

4. Where a request is made in accordance with paragraph 3, the chair of the arbitral tribunal shall present the Parties with a determination of the reasonable period of time and the reasons for such determination within 45 days after the date of receipt of the request. Prior to making this determination, the chair of the arbitral tribunal may, on its own initiative, or shall, on request of either Party, seek written submissions from the Parties, and if requested by either Party, shall hold a meeting with the Parties where each Party will be given an opportunity to present its submission. As a guideline, the reasonable period of time determined by the chair of the arbitral tribunal should not exceed 12 months from the date of issuance of the award. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

## Article 19.14. Disagreement Concerning Implementation

1. Where there is disagreement as to whether the Party complained against has complied with paragraph 1 of Article 19.13, such dispute shall be decided through recourse to an arbitral tribunal reconvened for this purpose.

2. The complaining Party may request in writing to the Party complained against the reconvening of the arbitral tribunal referred to in paragraph 1 after the earlier of:

(a) the expiry of the reasonable period of time determined in accordance with Article 19.13; or

(b) a notification by the Party complained against that it has complied with paragraph 1 of Article 19.13.

3. Any request for the reconvening of the arbitral tribunal pursuant to this Article shall provide a brief summary of the factual basis for the complaint, including the reason why the complaining Party considers that the Party complained against has not complied with paragraph 1 of Article 19.13.

4. When a request is made by the complaining Party in accordance with paragraphs 1 through 3, the arbitral tribunal shall be reconvened within 15 days after the date of receipt of the request. The period for the reconvened arbitral tribunal proceedings, from the date of its reconvening until the date on which it issues its award to the Parties, shall not exceed four months, unless the Parties otherwise agree.

5. The reconvened arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the factual aspects of any action taken by the Party complained against to comply with paragraph 1 of Article 19.13; and

(b) whether the Party complained against has complied with paragraph 1 of Article 19.13.

6. The award of the reconvened arbitral tribunal shall include:

(a) a descriptive part covering the factual background to the dispute arising under this Article;

(b) its findings on the facts of the dispute arising under this Article, particularly on whether the Party complained against has complied with paragraph 1 of Article 19.13; and

(c) the reasons for such findings.

7. The reconvened arbitral tribunal may also include in its award:

(a) any other findings necessary for the resolution of the dispute arising under this Article; and

(b) suggested implementation options for the Parties to consider, if requested by either Party.

8. The reconvened arbitral tribunal shall submit to the Parties its draft award meeting the requirements specified in paragraph 6, at least 30 days prior to the date set by the reconvened arbitral tribunal in accordance with paragraph 7 of Article 19.9 for issuance of its award, for the purpose of enabling the Parties to review it. Either Party may submit comments in writing to the reconvened arbitral tribunal on the draft award within 15 days after the date of submission of the draft award. The reconvened arbitral tribunal shall include in its award its analysis of any comments made by the Parties on the draft award.

9. With respect to the terms of reference, functions and proceedings of the arbitral tribunal reconvened in accordance with this Article, Article 19.7, Article 19.8 other than subparagraph (b), Article 19.9 other than paragraph 6, Article 19.10, Article 19.11 other than paragraph 3, and Article 19.12 other than paragraphs 2, 3 and 6, shall apply mutatis mutandis.

## Article 19.15. Compensation and Suspension of Concessions

1. The Party complained against shall, on request of the complaining Party, enter into consultations with the complaining Party with a view to developing mutually acceptable compensation, where:

(a) the Party complained against has notified the complaining Party that it considers it impracticable to comply with paragraph 1 of Article 19.13 within the reasonable period of time determined in accordance with Article 19.13;

(b) the Party complained against has notified the complaining Party of its failure to comply with paragraph 1 of Article 19.13 within the reasonable period of time determined in accordance with Article 19.13; or

(c) the failure of the Party complained against to comply with paragraph 1 of Article 19.13 has been established by the reconvened arbitral tribunal in accordance with Article 19.14.

2. If mutually acceptable compensation has not been agreed within 20 days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may notify the Party complained against in writing that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement, and shall have the right to begin the suspension 30 days after the date of the notification. The level of such suspension shall be:

(a) equivalent to the level of nullification or impairment of any benefit that is attributable to the failure of the Party complained against to comply with paragraph 1 of Article 19.13; and

(b) restricted to the same sector or sectors to which the nullification or impairment of benefit relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

3. Notwithstanding paragraph 2, the complaining Party shall not exercise the right to suspend concessions or other obligations under paragraph 2 where:

(a) a review of the proposed level of suspension of concessions or other obligations is being undertaken in accordance with paragraph 4 or 5;

(b) the Party complained against has notified the complaining Party that it complied with paragraph 1 of Article 19.13 after any of the circumstances referred to in paragraph 1, and the complaining Party has expressed its agreement that the Party complained against has complied with paragraph 1 of Article 19.13; or

(c) a mutually agreed solution has been reached.

4. The complaining Party shall specify, in the notification made in accordance with paragraph 2, the level of suspension of concessions or other obligations that it proposes. If the Party complained against objects to the level of suspension

proposed, it may request consultations with the complaining Party within 30 days after the date of receipt of the notification. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may request in writing to the complaining Party the reconvening of the arbitral tribunal to examine the matter.

5. When a request for the reconvening of the arbitral tribunal is made by the Party complained against in accordance with paragraph 4, the arbitral tribunal shall be reconvened within 15 days after the date of receipt of the request and shall issue, within 45 days after the date on which it is reconvened, its award containing a determination on the appropriate level of suspension to be applied by the complaining Party.

6. The suspension of concessions or other obligations under paragraph 2 shall be temporary and shall only be applied until it is agreed between the Parties in the manner specified in subparagraph 3(b) or established by the reconvened arbitral tribunal in accordance with paragraph 9, that the Party complained against has complied with paragraph 1 of Article 19.13, or a mutually agreed solution is reached.

7. In a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with this Article:

(a) if the Party complained against considers that the level of concessions or other obligations suspended by the complaining Party is manifestly excessive, it may request in writing to the complaining Party the reconvening of the arbitral tribunal to examine the matter; and

(b) if the Party complained against considers that it has complied with paragraph 1 of Article 19.13, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this subparagraph, the Party complained against may request in writing to the complaining Party the reconvening of the arbitral tribunal to examine the matter.

8. When a request for the reconvening of the arbitral tribunal is made by the Party complained against in accordance with subparagraph 7(a), the arbitral tribunal shall be reconvened within 15 days after the date of receipt of the request and shall issue, within 45 days after the date on which it is reconvened, its award containing a determination on the appropriate level of suspension to be applied by the complaining Party.

9. When a request for the reconvening of the arbitral tribunal is made by the Party complained against in accordance with subparagraph 7(b), the arbitral tribunal shall be reconvened and shall issue its award, applying, mutatis mutandis, paragraphs 3 through 8 of Article 19.14. In the event of a finding that the Party complained against has not complied with paragraph 1 of Article 19.13, the reconvened arbitral tribunal may also, on request of either Party, examine whether the level of the existing suspension of concessions or other obligations is still appropriate and, if not, provide a determination on the appropriate level of suspension.

10. With respect to the terms of reference, functions and proceedings of the arbitral tribunal reconvened in accordance with this Article, Article 19.7, Article 19.8 other than subparagraph (b), Article 19.9 other than paragraph 6, Article 19.10, Article 19.11 other than paragraph 3, and Article 19.12 other than paragraphs 2, 3 and 6, shall apply mutatis mutandis.

## Article 19.16. Rules of Procedure

1. The Joint Committee shall adopt the Rules of Procedure, including the Indicative Timetable and Code of Conduct, upon the entry into force of this Agreement. The Rules of Procedure provide the details of the rules and procedures of arbitral tribunals established under this Chapter.

2. Unless the Parties otherwise agree, the arbitral tribunal shall follow the Rules of Procedure adopted by the Joint Committee and may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the Rules of Procedure adopted by the Joint Committee.

3. Where an arbitral tribunal is reconvened in accordance with Article 19.14 or 19.15, it may, after consulting the Parties, determine the rules of procedure for the proceedings, drawing as it deems appropriate on the Rules of Procedure adopted by the Joint Committee in accordance with paragraph 1.

## Article 19.17. Modifications of Time Periods, Rules and Procedures

Any time period or other rules and procedures for arbitral tribunals provided for in this Chapter, including the Rules of

Procedure referred to in Article 19.16, may be modified for a particular dispute by the arbitral tribunal established for that particular dispute, provided that the Parties consent to such modifications.

### Article 19.18. Expenses

Unless the Parties otherwise agree, the expenses of an arbitral tribunal, including the remuneration of the arbitrators, shall be borne by the Parties in equal shares.

## Chapter 20. Final Provisions

### Article 20.1. Table of Contents and Headings

The table of contents and headings of the Chapters, Sections and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

### Article 20.2. Annexes and Notes

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

### Article 20.3. Amendment

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

2. Such amendment shall be approved by the Parties in accordance with their respective legal procedures and shall enter into force on the date to be agreed by the Parties.

### Article 20.4. Entry Into Force

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 20.6.

### Article 20.5. General Review

Unless the Parties otherwise agree, the Parties shall undertake a general review of the implementation and operation of this Agreement in the sixth year following the date of entry into force of this Agreement, or at any time agreed by the Parties.

### Article 20.6. Termination

Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.

### Article 20.7. Authentic Texts

1. The texts of this Agreement in the Japanese and English languages shall be equally authentic.

2. Notwithstanding paragraph 1, Part 2 of Annex 1 (Schedules in Relation to Article 2.4 (Elimination or Reduction of Customs Duties)), Part 1 of Annex 6 (Non- Conforming Measures Relating to Paragraph 1 of Articles 9.7 and 14.10), Part 1 of Annex 7 (Non-Conforming Measures Relating to Paragraph 2 of Articles 9.7 and 14.10), Part 1 of Annex 10 (Specific Commitments on the Movement of Natural Persons) and Part 1 of Annex 13 (Government Procurement) are written only in the English language.

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

DONE at Canberra on this eighth day of July in the year 2014, in duplicate in the English and Japanese languages.

For Australia:

For Japan:

### Annex 6. Referred to in chapter 9 (trade in services) and chapter 14 (investment)

NON-CONFORMING MEASURES RELATING TO PARAGRAPH 1 OF ARTICLES 9.7 and 14.10

# Part 1. Schedule of Australia

## Section 1. Notes for Sections 2 and 3

1. Section 2 of the Schedule of Australia sets out, pursuant to Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), Australia's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 9.3 (Trade in Services - Market Access);

(b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment) ;

(c) Article 9.5 (Trade in Services - Most-Favoured- Nation Treatment) or 14.4 (Investment - Most- Favoured-Nation Treatment);

(d) Article 9.6 (Trade in Services - Local Presence);

(e) Article 14.8 (Investment - Senior Management and Boards of Directors); or

(f) Article 14.9 (Investment - Prohibition of Performance Requirements).

2. Section 3 of the Schedule of Australia sets out, pursuant to Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), Australia's additional existing measures with respect to or relating to trade in financial services that are not subject to some or all of the obligations imposed by:

(a) Article 9.3 (Trade in Services - Market Access);

(b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);

(c) Article 9.5 (Trade in Services - Most-FavouredNation Treatment) or 14.4 (Investment - MostFavoured-Nation Treatment);

(d) Article 9.6 (Trade in Services - Local Presence);

(e) Article 14.8 (Investment - Senior Management and Boards of Directors); or

(f) Article 14.9 (Investment – Prohibition of Performance Requirements).

Note 1: Commitments on measures with respect to or relating to trade in financial services are undertaken subject to the limitations and conditions set forth in Chapter 9 (Trade in Services), Chapter 11 (Financial Services), Chapter 14 (Investment), this Section and the Schedule below.

Note 2: To clarify Australia's commitment with respect to Article 9.3 (Trade in Services - Market Access), enterprises supplying financial services and constituted under the laws of Australia are subject to non-discriminatory limitations on juridical form. (1)

(1) For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This note is not itself intended to affect, or otherwise limit, a choice by a financial service supplier of the other Party between branches or subsidiaries.

Note 3: Without prejudice to other means of prudential regulation of cross-border trade in financial services, Australia reserves the right to require the non-discriminatory licensing or registration of cross-border financial service suppliers of Japan and of financial instruments in accordance with Article 11.4 (Financial Services – Domestic Regulation).

Note 4: Australia reserves the right to adopt or maintain non-discriminatory limitations concerning admission to the market of new financial services where such measures are required to achieve prudential objectives. Australia may determine the

institutional and juridical form through which a new financial service may be supplied and may require authorisation for the supply of the service. Where authorisation to supply a new financial service is required, the authorisation may only be refused for prudential reasons.

3. Each Schedule entry sets out the following elements:

(a) "Sector" refers to the sector for which the Schedule entry is made;

(b) "Obligations Concerned" specifies the obligation(s) referred to in paragraph 1 that, pursuant to subparagraph 1(a) of Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), do not apply to the listed measure (s);

(c) "Level of Government" indicates the level of government maintaining the listed measure(s);

(d) "Source of Measure" means the laws, regulations or other measures that are the source of the non- conforming measure for which the Schedule entry is made. A measure cited in the "Source of Measure" element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) "Description" sets out the non-conforming measure for which the Schedule entry is made.

Note 1: In accordance with Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), the articles of this Agreement specified in the "Obligations Concerned" element of an entry do not apply to the non- conforming measure identified in the "Description" element of that entry.

Note 2: A reference to National Treatment in the "Obligations Concerned" element of an entry specifies Australia's obligations under Article 9.4 (Trade in Services - National Treatment) and Article 14.3 (Investment - National Treatment) .

4. Local Presence and National Treatment are separate disciplines and a measure that is only inconsistent with Local Presence (such as residency requirements) has not been reserved against National Treatment.

5. Where Australia maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the supply of a service in its territory, a Schedule entry for that measure taken with respect to Article 9.4 (Trade in Services - National Treatment), 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 9.6 (Trade in Services - Local Presence) shall operate as a Schedule entry with respect to Article 14.3 (Investment - National Treatment), 14.4 (Investment - Most-Favoured-Nation Treatment) or 14.9 (Investment - Prohibition of Performance Requirements) to the extent of that measure.

6. Australia reserves the right to maintain and to add to this Schedule any non-conforming measure at the regional level of government that existed at 1 January 2005, but was not listed in this Schedule at the date of entry into force of this Agreement, against the following obligations:

(a) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment) ;

(b) Article 9.5 (Trade in Services - Most-Favoured- Nation Treatment) or 14.4 (Investment - Most- Favoured-Nation Treatment);

(c) Article 9.6 (Trade in Services - Local Presence);

(d) Article 14.8 (Investment - Senior Management and Boards of Directors); or

(e) Article 14.9 (Investment – Prohibition of Performance Requirements).

# Section 2.

## 1.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3) National Treatment Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central and Regional

Source of Measure: Australia's foreign investment policy, which includes the Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulations 1989 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth) and Ministerial Statements. Land Act 1994 (Qld); Foreign Ownership of Land Register Act 1988 (Qld)

Description: Commonwealth

A. The following investments may be subject to objections by the Australian Government and may also require notification to the Government (2):

(a) investments by foreign persons (3) of 5 per cent or more in the media sector, regardless of the value of the investment;

(b) investments by foreign persons in existing (4) Australian businesses, or prescribed corporations, (5) the value of whose assets exceeds 248 million# Australian Dollars in the following sectors:

(i) the telecommunications sector;

(ii) the transport sector, including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia;

(iii) the supply of training or human resources, or the manufacture or supply of military goods, equipment, or technology, to the Australian or other defence forces;

(iv) the manufacture or supply of goods, equipment or technologies able to be used for a military purpose;

(v) the development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems; and

(vi) the extraction of (or rights to extract) uranium or plutonium, or the operation of nuclear facilities;

(c) investments by foreign persons in existing Australian businesses, or prescribed corporations, in all other sectors, excluding financial sector companies (6), the value of whose total assets exceeds 1078 million # Australian Dollars;

(d) acquisitions by foreign persons of developed non-residential commercial real estate valued at more than1078 million # Australian Dollars;

(e) direct investments by foreign government investors, irrespective of size;

Notified investments may be refused, subject to interim orders, and/or approved subject to compliance with certain conditions. Investments referred to in (a) through (e) for which no notification is required or received may be subject to orders under Sections 18 through 21 and 21A of the FATA.

B. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control (7) of an existing financial sector company, may be refused, or be subject to certain conditions (8)

C. In addition to the measures identified in this entry, other entries in Annex 6 or Annex 7 set out additional non-conforming measures imposing specific limits on, or requirements relating to, foreign investment in the following areas:

(a) Telstra;

(b) Commonwealth Serum Laboratories;

(c) Qantas Airways Ltd.;

(d) Australian international airlines, other than Qantas;

(e) urban land;

(f) agricultural land;

(g) agribusiness;

(h) federal leased airports; and

(i) shipping.

(2) Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA). "Investments" means activities covered by Part II of FATA or, where applicable,

ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

(3) A "foreign person" means, as defined in section 5 of the FATA: (a) a natural person not ordinarily resident in Australia; (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; (c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest; (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or (e) the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

(4) For the purposes of this entry, "existing" means in existence at the time the investment is proposed or made.

(5) For the purposes of this entry, "prescribed corporation" means: (a) a trading corporation; (b) a financial corporation; (c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies; (d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded 248 million Australian Dollars (for item (b) of the entry) or 1078 million Australian Dollars (for item (c) of the entry), being assets consisting of all or any of the following: (i) land situated in Australia (including legal and equitable interests in such land); (ii) mineral rights; (iii) shares in a corporation incorporated in Australia; (e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded 248 million Australian Dollars (for item (b) of the entry) or 1078 million Australian Dollars (for item (c) of the entry); (f) a corporation that was, on its last accounting date, a holding corporation of a foreign corporation referred to in paragraph (d) or (e) of this footnote; (g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d) of this footnote, where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation; or (h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.

(6) A "financial sector company" means, as defined in section 3 of the Financial Sector (Shareholdings) Act 1998: (a) an authorised deposit-taking institution; or (b) an authorised insurance company; or (c) a holding company of a company covered by paragraph (a) or (b) of this footnote.

(7) "Unacceptable shareholding situation" and "practical control" as defined in the Financial Sector (Shareholdings) Act 1998.

(8) Ministerial statements on foreign investment policy including the Treasurer's Press Release No. 28 of 9 April 1997.

# This is the figure as at 1 January 2014. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year. If the Agreement has not entered into force by 1 January 2015, this fiqure will be indexed on the date of entry into force.

Queensland

Certain leases (obtained at ballot), and other leases at the discretion of the Minister, may be subject to a condition that the lessee personally lives on the lease for the first seven years of its term.

While all changes to ownership of land must be registered, there is an additional duty on foreign land holders to disclose, through a prescribed notification, present interests in and acquisitions of land, disposal of interests in land and notification on ceasing to be or becoming a foreign person.

Failure to provide the information causes a breach of the Act that may result in prosecution, the imposition of financial penalties and/or forfeiture of the interest in the land to the Crown.

**2.**

Sector: All Sectors

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Source of Measure: Corporations Act 2001 (Cth)

Corporations Regulations 2001 (Cth)

Description: At least one director of a private company must be ordinarily resident in Australia.

At least two directors of a public company must be ordinarily resident in Australia.

At least one secretary of a private company (if such a private company appoints one or more secretaries) must be ordinarily resident in Australia.

At least one secretary of a public company must be ordinarily resident in Australia.

## 3.

Sector: All Sectors

Obligations Concerned: National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Regional

Source of Measure: Associations Act (NT) Associations Incorporations Act 1991 (ACT) Associations Incorporations Act 1981 (Qld) Association Incorporations Act 1985 (SA) Associations Incorporation Act 1964 (Tas) Associations Incorporation Reform Act 2012 (Vic)

Description:

Northern Territory

An application for the incorporation of an association (9) must be made by a person who is a resident of the Northern Territory.

The public officer of an incorporated association must be a person who is a resident of the Northern Territory.

(9) "Association" includes a trading association.

Australian Capital Territory

An application for incorporation of an association must be made by a person who is a resident of the Australian Capital Territory.

The public officer of an incorporated association must be a person who is a resident of the Australian Capital Territory.

Queensland

The office of secretary shall become vacant if the person holding that office ceases to be a resident in Queensland, or in another State but not more than 65 km from the Queensland border.

The management committee of an incorporated association must ensure the secretary is an individual residing in Queensland, or in another State but not more than 65 km from the Queensland border.

The members of the management committee of an incorporated association must ensure that the association has an address nominated for the service of documents on the association. The nominated address must be a place in the State where a document can be served personally on a person. A post office box is not a place that can be shown as a nominated address.

South Australia

The public officer of an incorporated association must be a person who is a resident of South Australia.

Tasmania

A person is not eligible to be appointed as a public officer of an incorporated association unless the person is resident in Tasmania.

Victoria

A person applying for the incorporation of an association must be an Australian resident.

The first secretary and secretary of an incorporated association must be Australian residents and the first secretary of an association applying for incorporation must be an Australian resident.

The first secretary of an amalgamated association must be an Australian resident.

## 4.

Sector: All Sectors

Obligations Concerned: Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Regional

Source of Measure: Cooperatives Act 2002 (ACT) Co-operatives (Adoption of National Law) Act 2012 (NSW) Co-operatives Act (NT) Cooperatives Act 1997 (Qld) Co-operatives Act 1997 (SA) Cooperatives Act 1999 (Tas) Co-operatives National Law Application Act 2013 (Vic) Co-operatives Act 2009 (WA)

Description: All Australian States and Territories

Except for South Australia, a cooperative must have a registered office in each state or territory in which it operates. In South Australia, registers must be kept at an office in South Australia.

The secretary of a cooperative must be a person ordinarily resident in Australia.

Excluding those states and territories which have implemented the Cooperatives National Law, a foreign cooperative must appoint a person who will act as agent of the cooperative in each state or territory in which it operates.

Excluding those states and territories which have implemented the Co-operatives National Law, a foreign cooperative must appoint a person resident in each state or territory in which it operates as a person on whom all notices and legal process may be served on behalf of the cooperative.

At least two of the directors of a cooperative must be Australian residents.

## 5.

Sector: All Sectors

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Partnership Act 1963 (ACT) Partnership Act 1892 (NSW) Partnership Act 1997 (NT) Partnership Act 1891 (Qld) Partnership Act 1891 (SA) Partnership Act 1891 (Tas) Partnership Act 1958 (Vic)

Description: Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Victoria

A limited partnership or an incorporated limited partnership established in a State or Territory must have an office, principal office or registered office in that State or Territory.

## 6.

Sector: Security Services

Obligations Concerned: National Treatment

Level of Government: Regional

Source of Measure: Security Industry Act 1997 (NSW)

Description: New South Wales

A person must be an Australian citizen or an Australian permanent resident to obtain a licence to carry on a security activity in New South Wales.

## 7.

Sector: All Sectors

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Consumer Affairs and Fair Trading Act (NT) Consumer Affairs and Fair Trading (Trading Stamps) Regulations (NT)

Description: Northern Territory

A promoter of a third party trading scheme (10) must maintain an office in Australia.

(10) The term "third party trading scheme" means a scheme or arrangement under which the acquisition of goods or services by a consumer from a supplier is a condition, which gives rise, or apparently gives rise, to an entitlement to a benefit from a third party in the form of goods or services or some discount, concession or advantage in connection with the acquisition of goods or services.

## 8.

Sector: Professional Services

Obligations Concerned: National Treatment

Level of Government: Regional

Source of Measure: Legal Practitioners Act 1981 (SA)

Description: South Australia

A company that is a subsidiary of a foreign law firm is not permitted to obtain a practising certificate and is not permitted to share profits with any other company or firm.

Foreign natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers in South Australia.

(A person is not taken to be practising the profession of the law if he or she is only providing legal advice or services relating to the law of a place outside Australia.)

## 9.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Source of Measure: Patents Act 1990 (Cth) Patent Regulations 1991 (Cth)

Description: In order to register to practise in Australia, patent attorneys must be ordinarily resident in Australia (11).

(11) For the purposes of this entry, a person is taken to be "ordinarily resident" in Australia if the person has his or her home in Australia or Australia is the country of his or her permanent abode even though he or she is temporarily absent from Australia. However, taken not to be

"ordinarily resident" in Australia if he or she resides in Australia for a special or temporary purpose only.

## 10.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Regional

Source of Measure: Trustee Companies Act 1947 (ACT) Trustee Companies Act 1964 (NSW) Companies (Trustees and Personal Representatives) Act 1981 (NT) Trustee Companies Act 1968 (Qld) Trustee Companies Act 1988 (SA) Trustee Companies Act 1953 (Tas) Trustee Companies Act 1984 (Vic) Trustee Companies Act 1987 (WA)

Description: Northern Territory

A body corporate may not obtain a grant of probate or act as an executor of a will, or trustee of an estate of a deceased person unless it is a "licensed trustee company" as defined in section 601RAA of the Corporations Act 2001 (Cth), or a body corporate authorised by a law of the Northern Territory to obtain a grant of probate and so act.

Western Australia

A company can only act as a trustee company in Western Australia if it is a "licensed trustee company" as defined in section 601RAA of the Corporations Act 2001 (Cth).

All other Australian States and Territories

A body corporate may not obtain a grant of probate or act as an executor of a will and any codicil unless it is a "licensed trustee company" within the meaning of Chapter 5D of the Corporations Act 2001 (Cth).

## 11.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central and Regional

Source of Measure: Corporations Act 2001 (Cth) Co-operative Housing and Starr-Bowkett Societies Act 1998 (NSW) Legal Practitioners Act 1981 (SA) Legal Practitioners Regulations (SA) Estate Agents Act 1980 (Vic)

Description: Commonwealth

A person who is not ordinarily resident in Australia may be refused registration as a company auditor or liquidator. At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia.

New South Wales

A person must be ordinarily resident in New South Wales in order to be an auditor of specified kinds of societies and associations.

South Australia

Persons who provide auditing services for legal practitioners' trust accounts must be public accountants engaged as a principal in practice in South Australia

Victoria

A firm of auditors cannot audit an estate agent's accounts unless at least one member of the firm of auditors is an Australian resident.

## 12.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Architects Act (NT)

Description: Northern Territory

To qualify for registration as an architectural partnership or company, the partnership/company must have a place of business or be carrying on business within the Northern Territory.

## 13.

Sector: Professional Services

Obligations Concerned: National Treatment Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central

Source of Measure: Migration Act 1958 (Cth)

Description: To practise as a migration agent in Australia, a person must be an Australian citizen or permanent resident or a citizen of New Zealand with a special category visa.

## 14.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Source of Measure: Customs Act 1901 (Cth)

Description: To act as a customs broker in Australia, service suppliers must provide the service in and from Australia.

## 15.

Sector: Research and Development Services

Obligations Concerned: National Treatment

Level of Government: Regional

Source of Measure: Biodiscovery Act 2004 (Qld)

Description: Queensland

Benefit sharing agreements require sublicences for use of samples or derivates to conduct biodiscovery research and commercialisation to be offered first to Queensland-based entities, then to Australian-based entities, and then to overseas-based entities. Any entity with a benefit sharing agreement must obtain consent before granting a sublicence to an overseas-based entity

## 16.

Sector: Real Estate and Distribution Services

Obligations Concerned: National Treatment Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Community Land Management Act 1989 (NSW)

Strata Schemes Management Act 1996 (NSW)

Property, Stock and Business Agents Act 2002 (NSW)

Agents Licensing Act (NT)

Agents Act 2003 (ACT)

Property Agents and Motor Dealers Act 2000 (Qld)

Estate Agents Act 1980 (Vic) Conveyancers Act 2006 (Vic)

Real Estate and Business Agents Act 1978 (WA)

Real Estate and Business Agents (General) Regulations 1979 (WA) Settlement Agents Act 1981 (WA) Settlement Agents Regulations 1982 (WA)

Description: New South Wales

A person cannot be appointed as an agent (for a proprietor of a development lot, neighbourhood lot or strata lot) if they are not an Australian resident. A person cannot be appointed as an agent (for an owner of a lot, for dealings with the owner's corporation) if they are not an Australian resident. To be licensed as a property, stock, business, strata managing or community managing agent in NSW, licensees must have a registered office in New South Wales.

Northern Territory

A licensed agent (12) must maintain an office in Australia at or from which the conduct of business under the licence is to occur.

(12) A "licensed agent" includes a real estate agent, business agent or conveyancing agent.

Australian Capital Territory

An estate agent must have their principal place of business in the Australian Capital Territory.

Queensland

In order to operate as a real estate agent, auctioneer, motor dealer or commercial agent, a person must have a business address in Queensland. This must be a physical address and not a post box.

Victoria

A person cannot be licensed as an estate agent unless they have a registered office in Victoria and they must maintain a principal office in Victoria. An agent's representative must have a registered address in Victoria to which documents can be sent.

A person cannot be licensed as a conveyancer or carry on a conveyancing business in Victoria unless they maintain a principal place of business in Victoria.

Western Australia

A person seeking to carry on business as a real estate or business agent in Western Australia must establish and maintain a registered office in the State.

A person seeking to carry on business as a settlement agent (conveyancer) in Western Australia must ordinarily reside in the State.

A licensed settlement agent must establish and maintain a registered office in the State.

## 17.

Sector: Fishing and Pearling

Obligations Concerned: Market Access (Article 9.3) National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central and Regional

Source of Measure: Fisheries Management Act 1991 (Cth) Foreign Fishing Licences Levy Act 1991 (Cth) Fisheries Management Act 1994 (NSW) Fisheries Act 1995 (Vic) Fish Resources Management Act 1994 (WA) Pearling Act 1990 (WA) Ministerial Policy Guideline No. 17 of August 2001 (WA)

Description: Commonwealth

Foreign fishing vessels (13) seeking to undertake fishing activity in the Australian Fishing Zone must be authorised.

Where foreign fishing vessels are authorised to undertake such fishing activity, they may be subject to a levy (14).

(13) For the purposes of this reservation, a "foreign fishing vessel" is one that does not meet the definition of an Australian boat under the Fisheries Management Act 1991 (Cth), that is, an Australian-flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based, in Australia.

(14) The levy charged will be in accordance with the Foreign Fishing Licences Levy Act 1991 or any amendments thereto.

New South Wales

A foreign person or a foreign-owned body is not permitted to hold shares in a share management fishery.

Victoria

A fishery access licence or aquaculture licence can only be issued to a natural person who is an Australian resident, or to a single corporation that has a registered office in Australia.

Western Australia

Only an individual who is an Australian citizen or permanent resident may be a licensee within the Western Australian pearling industry.

In the case of corporations, partnerships or trusts holding licences, these must be Australian owned and/or controlled (at least 51 per cent of the issued share capital, partnership interest or trust property must be owned by Australians; the chairman, majority of the board of directors and all the company officers must be Australians and must be nominated by, and represent, Australian interests).

## 18.

Sector: Mining and Related Services

Obligations Concerned: National Treatment Prohibition of Performance Requirements (Article 14.9)

Level of Government: Regional

Source of Measure: Mount Isa Mines Limited Agreement Act 1985 (Qld)

Description: Queensland

The operator of Mount Isa Mines shall, so far as is reasonably and economically practicable:

(a) use the services of professional consultants resident and available within Queensland;

(b) use labour available within Queensland;

(c) when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies ensure that Queensland suppliers, manufacturers, and contractors are given reasonable opportunity to tender or quote; and

(d) give proper consideration and where possible preference to Queensland suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere.

## 19.

Sector: Distribution Services

Obligations Concerned: National Treatment

Level of Government: Regional

Source of Measure: Rice Marketing Act 1983 (NSW) Marketing of Potatoes Act 1946 (WA)

Description: New South Wales and Western Australia

New South Wales retains marketing board arrangements for rice and Western Australia retains marketing board arrangements for potatoes.

## 20.

Sector: Other Business Services

Obligations Concerned: Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Regional

Source of Measure: Prostitution Regulation Act (NT)

Description: Northern Territory

To be eligible for the grant of an operator's licence or a manager's licence in respect of an escort agency business, an individual must be resident in the Northern Territory.

For a body corporate to be granted an operator's licence, its officers must also meet the residency requirement.

## 21.

Sector: Communication

Obligations Concerned: Services Market Access (Article 9.3) National Treatment Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central

Source of Measure: Teistra Corporation Act 1991 (Cth)

Description: Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than five per cent of shares.

The chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

## 22.

Sector: Distribution Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Firearms Act (NT)

Description: Northern Territory

Grant of a firearms licence (15) requires residency in the Northern Territory. Licences and permits expire three months after the holder ceases to reside permanently in the Northern Territory.

(15) Firearms licences include but are not limited to firearms dealer's licence, armourer's licence, firearms museum licence, firearms collector's licence, firearms employee licence, and paintball operator's licence.

## 23.

Sector: Distribution Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Liquor Act (NT) and policy and practice Kava Management Act (NT) Tobacco Control Act (NT) and policy and practice

Description: Northern Territory

The Northern Territory Licensing Commission may require a liquor licensee where the licensee is an individual, or at least one of the licensees where the licence is held by a partnership, or the licence nominee where the licence is held by a corporation, to ordinarily reside within the general locality of the premises to which the licence relates.

The holder of a tobacco retail licence may only sell tobacco products from the premises specified in the licence.

A tobacco retail licence in relation to liquor licensed premises may only be granted to the liquor licensee of those premises.

An applicant for a retail licence for kava must ordinarily reside or carry on business in the relevant licence area in the Northern Territory.

## 24.

Sector: Distribution Services

Obligations Concerned: Performance Requirements (Article 14.9)

Level of Government: Regional

Source of Measure: Wine Industry Act 1994 (Qld)

Description: Queensland

In order to obtain a wine merchant's licence to sell wine, the business conducted by a person under the licence must contribute to the Queensland wine industry in a substantial way. In order to obtain a wine producer's licence to sell wine, a person must be selling wine made from fruit grown by the person on the premises to which the licence relates, or selling wine made by the person on the premises to which the licence relates.

## 25.

Sector: Health Services

Obligations Concerned: National Treatment Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central

Source of Measure: Commonwealth Serum Laboratories Act 1961 (Cth)

Description: The votes attached to significant foreign shareholdings (16) may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time. The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia. Two-thirds of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

(16) For the purposes of this entry, the term "significant foreign shareholding" means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least five per cent of the voting shares in CSL.

## 26.

Sector: Tourism and Travel-related Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Travel Agents Act 1988 (Qld) Travel Agents Act 1985 (WA) Travel Agents Regulations 1986 (WA)

Description: Queensland

In order to obtain a licence to operate as a travel agent, a person must have a business address in Queensland.

Western Australia

To carry on business in Western Australia as a travel agent, a person must have a principal place of business in the state.

## 27.

Sector: Recreational, Cultural and Sporting Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Nature Conservation Act 1992 (Qld) Nature Conservation (Wildlife Management) Regulation 2006 (Qld) Nature Conservation (Administration) Reguiation 2006 (Qld) Nature Conservation (Protected Plants) Conservation Plan 2000 (Qld)

Description:

Queensland

The Chief Executive of the Queensland Department of Environment and Heritage Protection may grant a wildlife authority,'' other than a wildlife movement permit, to a corporation only if the corporation has an office in the State.

The chief executive may approve a person to be an authorised cultivator or propagator for protected plants only if:

(a) in the case of a natural person, the person is a resident of the State; or

(b) if the person is a corporation, the corporation has premises in the State at which the plants are to be cultivated or propagated.

This term is defined in Schedule 7 of the Nature Conservation (Administration) Regulation 2006 (Qld).

An individual or corporation is only taken to be a "person aggrieved" by a decision, failure to make a decision or conduct under the Act if the individual is an Australian citizen or ordinarily resident in Australia or, ifa corporation, established in Australia.

## 28.

Sector: Transport Services

Type of Reservation: National Treatment Local Presence (Article 9.6)

Level of Government: Central

Source of Measure: Competition and Consumer Act 2010 (Cth)

Description: Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia.

Only a person (18) affected by a registered conference agreement or by a registered non-conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable. For greater certainty, matters which are relevant to the determination of ‘reasonable' include Australia's national interest and the

interests of Australian shippers.

(18) For the purposes of this entry, sections 10.48 and 10.58 of Part xX of the Competition and Consumer Act 2010 list the categories of persons to whom this reservation will apply.

## 29.

Sector: Transport Services

Obligations Concerned: Market Access (Article 9.3) National Treatment Senior Management and Boards of Directors (Article 14.8)

Level of Government:Central

Source of Measure: Air Navigation Act 1920 (Cth) Ministerial Statements

Description: Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.

Furthermore, it is required that:

(a) at least two-thirds of the board members must be Australian citizens;

(b) the chairperson of the board must be an Australian citizen;

(c) the airline's head office must be in Australia; and

(d) the airline's operational base must be in Australia.

## 30.

Sector: Transport Services

Obligations Concerned: Market Access (Article 9.3) National Treatment Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central

Source of Measure: Qantas Sale Act 1992 (Cth)

Description: Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent in aggregate, with individual foreign holdings limited to 25 per cent and aggregate holdings by foreign airlines to 35 per cent. In addition:

(a) the head office of Qantas must always be located in Australia;

(b) the majority of Qantas' operational facilities must be located in Australia;

(c) at all times, at least two- thirds of the directors of Qantas must be Australian citizens;

(d) at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and

(e) Qantas is prohibited from taking any action to become incorporated outside Australia.

## 31.

Sector: Transport Services

Obligations Concerned: National Treatment Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Commercial Passenger (Road Transport) Act (NT) Road Transport (Public Passenger Services) Regulations 2002 (ACT)

Description: Northern Territory

A taxi licence will be cancelled where the holder, being an individual, has not been ordinarily resident in the Northern Territory for more than 6 months or, being a body corporate, has ceased for more than 6 months to have its principal place of business in the Northern Territory.

Australian Capital Territory

An application for accreditation to run a public transport service must be made by an Australian citizen or permanent resident of Australia.

# Section 3.

## 32.

Sector: Financial Services

Obligations Concerned: National Treatment Market Access (Article 9.3)

Level of Government: Central

Source of Measure: Banking Act 1959 (Cth) Banking Amendment Regulations 2000 (No. 1) Payment Systems (Regulation) Act 1998 (Cth)

Description: To undertake banking business in Australia an entity must be a body corporate and authorised by the Australian Prudential Regulation Authority (APRA) as an authorised deposit-taking institution (ADI).

Foreign deposit-taking institution (including foreign banks) may only operate a banking business in Australia through locally incorporated deposittaking subsidiaries or authorised branches (foreign ADIs), or through both structures.

A foreign ADI is not permitted to accept initial deposits (and other funds) from individuals and noncorporate institutions of less than 250,000 Australian Dollars.

A foreign deposit-taking institution that operates a representative office in Australia is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.

Foreign banks located overseas may only raise funds in Australia through the issue of debt securities provided those securities are offered/traded in parcels of not less than 500,000 Australian Dollars and the securities and any associated information memoranda clearly state the issuing bank is not authorised under the Banking Act 1959 in Australia.

## 33.

Sector: Financial Services

Obligations Concerned: National Treatment

Level of Government: Central

Source of Measure: Commonwealth Banks Act 1959 (Cth)

Description: Liabilities of the Commonwealth Bank, previously Commonwealth Government-owned, are covered by transitional guarantee arrangements.

## 34.

Sector: Financial Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Credit (Administration) Act 1984 (WA) Credit (Administration) Regulations 1985 (WA) Debt Collectors Licensing Act 1964 (WA) Debt Collectors Licensing Regulations 1964 (WA) Finance Brokers Control Act 1975 (WA) Finance

Brokers (General) Regulations 1977 (WA)

Description: Western Australia

A natural person (whether alone or in partnership with other persons) or an incorporated body seeking to carry on a business of providing credit in Western Australia (including where the provision of the credit is connected with the carrying on of another business), must have a principal office in Australia and a principal place of business in Western Australia.

Any person (including an incorporated body) seeking to exercise or carry on the business or any functions of a debt collector in Western Australia, must have a principal place of business in the State.

A natural person seeking to carry on business as a finance broker in Western Australia must be ordinarily resident in Western Australia. A finance broker must have a registered office in Western Australia while carrying on business as a broker.

**35.**

Sector: Financial Services

Obligations concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: Second-hand Dealers and Pawnbrokers Act 2003 (Qld)

Description: Queensland

A person operating as a second-hand dealer or as a pawnbroker must have a principal place of business in Queensland where a document can be served personally. A post office box does not suffice.

# Part 2. Schedule of Japan

## Section 1. Notes for Section 2

1. Section 2 of the Schedule of Japan sets out, in accordance with Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), the reservations taken by Japan with respect to existing measures that do not conform with obligations imposed by:

(a) Article 9.3 (Trade in Services - Market Access);

(b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);

(c) Article 9.5 (Trade in Services - Most-FavouredNation Treatment) or 14.4 (Investment - MostFavoured-Nation Treatment);

(d) Article 9.6 (Trade in Services - Local Presence);

(e) Article 14.8 (Investment - Senior Management and Boards of Directors); or

(f) Article 14.9 (Investment - Prohibition of Performance Requirements).

2. Each reservation sets out the following elements:

(a) "Sector" refers to the general sector in which the reservation is taken;

(b) "Sub-Sector" refers to the specific sector in which the reservation is taken;

(c) "Industry Classification" refers, where applicable, and only for transparency purposes, to the activity covered by the reservation according to domestic or international industry classification codes;

(d) "Type of Reservation" specifies the obligations referred to in paragraph 1 for which the reservation is taken;

(e) "Level of Government" indicates the level of government maintaining the measure for which the reservation is taken;

(f) "Measures" identifies the existing laws, regulations or other measures for which the reservation is taken. A measure cited in the "Measures" element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) "Description" sets out, with regard to the obligations referred to in paragraph 1, the nonconforming aspects of the existing measures for which the reservation is taken.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Chapters against which the reservation is taken, and the "Measures" element shall prevail over all the other elements.

4. With respect to financial services:

(a) for prudential reasons within the context of Article 11.4 (Financial Services - Domestic Regulation), Japan shall not be prevented from taking measures such as non-discriminatory limitations on juridical forms of a commercial presence. For the same reasons, Japan shall not be prevented from applying non-discriminatory limitations concerning admission to the market of new financial services which shall be consistent with a regulatory framework aimed at achieving such prudential objectives. In this context, securities firms are allowed to deal in securities defined in the relevant laws of Japan, and banks are not allowed to deal in those securities unless allowed in accordance with those laws.

(b) services supplied in the Area of Australia to the service consumer in Japan without any active marketing from the service supplier are considered as services supplied under subparagraph (n)(ii) of Article 9.2 (Trade in Services - Definitions).

5. With respect to air transport services, measures affecting traffic rights or measures affecting services directly related to the exercise of traffic rights are not listed in this Schedule, as these are excluded from the scope of Chapter 9 (Trade in Services) pursuant to subparagraph 2(a) of Article 9.1 (Trade in Services - Scope).

6. Laws and regulations with regard to spectrum availability affecting obligations under Article 9.3 (Trade in Services - Market Access) are not included in this Schedule, taking into account the Attachment 6 of Guidelines for the Scheduling of Specific Commitments (WTO Document S/L/92, dated 28 March 2001).

7. For the purposes of this Part, the term "JSIC" means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised on 6 November 2007.

# Section 2.

## 1.

Sector: Agriculture, Forestry and Fisheries, and Related Services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in the reservation No. 12 in Part 2 (the Schedule of Japan) in Annex 7)

Sub-Sector:

Industry Classification: JSIC 01 Agriculture JSIC 02 Forestry JSIC 03 Fisheries, except aquaculture JSIC 04 Aquaculture JSIC 6324 Agricultural cooperatives JSIC 6325 Fishery and fishery processing cooperatives JSIC 871 Agriculture, forestry and fisheries cooperative associations, n.e.c.

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in Japan in agriculture, forestry and fisheries, and related services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in the reservation No. 12 in Part 2 (the Schedule of Japan) in Annex 7).

## 2.

Sector: Automobile Maintenance Business

Sub-Sector: Motor Vehicle Disassembling Repair Business

Industry Classification: JSIC 89 Automobile maintenance services

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Road Vehicle Law (Law No. 185 of 1951), Chapter 6

Description: Trade in Services

A person who intends to conduct motor vehicle disassembling repair businesses is required to establish a workplace in Japan and to obtain an approval of the Director-General of the District Transport Bureau having jurisdiction over the district where the workplace is located.

## 3.

Sector: Business Services

Sub-Sector:

Industry Classification: JSIC 9111 Employment services JSIC 9121 Worker dispatching services

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Employment Security Law (Law No. 141 of 1947), Chapters 3 and 3-3 Law Concerning Securing the Proper Operation of Worker Dispatching Undertakings and Protecting Dispatched Workers (Law No. 88 of 1985), Chapter 2 Port Labour Law (Law No. 40 of 1988), Chapter 4 Mariner's Employment Security Law (Law No. 130 of 1948), Chapter 3 Law Concerning the Improvement of Employment of Construction Workers (Law No. 33 of 1976), Chapters 5 and 6

Description: Trade in Services

A person who intends to supply the following services for enterprises in Japan is required to have an establishment in Japan and to obtain permission from, or to submit notification to, the competent authority, as applicable:

(a) private job placement services including fee-charging job placement services for construction workers; or

(b) worker dispatching services including stevedore dispatching services, mariner dispatching services and work opportunities securing services for construction workers.

Labour supply services may be supplied only by a labour union which has obtained permission from the competent authority pursuant to the Employment Security Law or Mariner's Employment Security Law.

## 4.

Sector: Collection Agency Services

Sub-Sector:

Industry Classification: JSIC 6619 Miscellaneous financial auxiliaries JSIC 7299 Professional services, n.e.c.

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Special Measures Law Concerning Credit Management and Collection Business (Law No. 126 of 1998), Articles 3 and 4 Attorney Law (Law No. 205 of 1949), Articles 72 and 73

Description: Trade in Services

A person who intends to supply collection agency services which constitute the practice of law in respect of legal cases is required to be qualified as a lawyer under the laws and regulations of Japan ("Bengoshi"), a legal professional corporation

under the laws and regulations of Japan ("Bengoshihojin") or an enterprise established under the Special Measures Law Concerning Credit Management and Collection Business and to establish an office in Japan.

No person may take over and recover other person's credits as business except an enterprise established under the Special Measures Law Concerning Credit Management and Collection Business that handles credits pursuant to provisions of that Law.

## 5.

Sector: Construction

Sub-Sector:

Industry Classification: JSIC 06 Construction work, general, including public and private construction work JSIC 07 Construction work by specialist contractor, except equipment installation work JSIC 08 Equipment installation work

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Construction Business Law (Law No. 100 of 1949), Chapter 2 Law Concerning Recycling of Construction Materials (Law No. 104 of 2000), Chapter 5

Description: Trade in Services

1. A person who intends to conduct construction business is required to establish a place of business in Japan and to obtain permission from the Minister of Land, Infrastructure, Transport and Tourism or from the prefectural governor having jurisdiction over the district where the place of business is located.

2. A person who intends to conduct demolition work business is required to establish a place of business in Japan and to be registered with the prefectural governor having jurisdiction over the district where the place of business is located.

## 6.

Sector: Distribution Services

Sub-Sector: Wholesale Trade Services, Retailing Services, Commission Agents' Services, Related to Alcoholic Beverages

Industry Classification: JSIC 5222 Liquors JSIC 5851 Liquor stores

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Liquor Tax Law (Law No. 6 of 1953), Articles 9, 10 and 11

Description: Trade in Services

The number of licences conferred to service suppliers in those sub-sectors may be limited.

## 7.

Sector: Distribution Services

Sub-Sector: Wholesale Trade Services supplied at Public Wholesale Market

Industry Classification: JSIC 521 Agricultural, animal and poultry farm and aquatic products

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Wholesale Market Law (Law No. 35 of 1971), Articles 15, 17 and 33

Description: Trade in Services

The number of licences conferred to wholesale trade service suppliers at public wholesale markets may be limited.

## 8.

Sector: Education, Learning Support Higher Educational Services

Sub-Sector:

Industry Classification: JSIC 816 Institution of higher education

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Fundamental Law of Education (Law No. 120 of 2006), Article 6 School Education Law (Law No. 26 of 1947), Article 2 Private School Law (Law No. 270 of 1949), Article 3

Description: Trade in Services

Higher educational services supplied as formal education in Japan must be supplied by formal education institutions. Formal education institutions must be established by school juridical persons.

The term "formal education institutions" means elementary schools, lower secondary schools, secondary schools, upper secondary schools, universities, junior colleges, colleges of technology, special support schools and kindergartens.

The term "school juridical person" means a non-profit juridical person established for the purposes of supplying educational services under the law of Japan.

## 9.

Sector: Financial Services

Sub-Sector: Banking and Other Financial Services (excluding Insurance and Insurance-Related Services)

Industry Classification: JSIC 622 Banks, except central bank JSIC 631 Financial institutions for small-businesses

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Deposit Insurance Law (Law No. 34 of 1971), Article 2

Description: Trade in Services and Investment

The deposit insurance system does not cover deposits taken by branches of foreign banks.

## 10.

Sector: Financial Services

Sub-Sector: Insurance and Insurance-Related Services

Industry Classification: JSIC 672 Non-life insurance institutions JSIC 6742 Non-life insurance agents and brokers

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Insurance Business Law (Law No. 105 of1995), Articles 185, 186, 275, 276,277, 286 and 287 Cabinet Order for Enforcement of Insurance Business Law (Cabinet Order No. 425 of 1995), Articles 19 and 39-2 Ministerial Ordinance for Enforcement of Insurance Business Law (Ministerial Ordinance of the Ministry of Finance No. 5 of 1996), Articles 116 and 212-6

Description: Trade in Services

Commercial presence is in principle required for insurance contracts on the following items and any liability arising

therefrom:

(a) goods being transported within Japan; and

(b) ships of Japanese registration which are not used for international maritime transport.

## 11.

Sector: Heat Supply

Sub-Sector:

Industry Classification: JSIC 3511 Heat supply

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the heat supply industry in Japan.

## 12.

Sector: Information and Communications Telecommunications

Sub-Sector:

Industry Classification: JSIC 3700 Head offices primarily engaged in managerial operations JSIC 3711 Regional telecommunications, except wired broadcast telephones JSIC 3731 Services incidental to telecommunications

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Law Concerning Nippon Telegraph and Telephone Corporation, etc. (Law No. 85 of 1984), Articles 6 and 10

Description: Trade in Services and Investment

1. Nippon Telegraph and Telephone Corporation may not enter the name and address in its register of shareholders if the aggregate of the ratio of the voting rights directly and/or indirectly held by the persons set forth in subparagraphs (a) through (c) reaches or exceeds one third:

(a) a natural person who does not have Japanese nationality;

(b) a foreign government or its representative; and

(c) a foreign legal person or a foreign entity.

2. Any natural person who does not have Japanese nationality may not assume the office of director or auditor of Nippon Telegraph and Telephone Corporation, Nippon Telegraph and Telephone East Corporation and Nippon Telegraph and Telephone West Corporation.

## 13.

Sector: Information and Communications

Sub-Sector: Telecommunications and Internet Based Services

Industry Classification: JSIC 3711 Regional telecommunications, except wired broadcast telephones JSIC 3712 Long-distance telecommunications JSIC 3719 Miscellaneous fixed telecommunications JSIC 3721 Mobile telecommunications JSIC 401

Internet based services

Note: The activities covered by the reservation under JSIC 3711, 3712, 3719, 3721 or 401 are limited to the activities which are subject to the registration obligation under Article 9 of the Telecommunications Business Law (Law No. 86 of 1984).

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in telecommunications business and internet based services in Japan.

## 14.

Sector: Manufacturing

Sub-Sector: Shipbuilding and Repairing, and Marine Engines

Industry Classification: JSIC 3131 Shipbuilding and repairing

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Shipbuilding Law (Law No. 129 of 1950), Articles 2, 3 and 3-2

Description: Trade in Services

A person who intends to establish or extend docks, which can be used to manufacture or repair vessels of 500 gross tonnage or more and/or 50 metres in length or more, is required to obtain permission from the Minister of Land, Infrastructure, Transport and Tourism. The issuance of a licence is subject to the requirements of an economic needs test.

## 15.

Sector: Manufacturing Drugs and Medicines Manufacturing

Sub-Sector:

Industry Classification: JSIC 1653 Biological preparations

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the biological preparations manufacturing industry in Japan. For greater certainty, "biological preparations manufacturing industry" deals with economic activities in establishment which mainly produces vaccine, serum, toxoid, antitoxin and some preparations similar to the aforementioned products, or blood products.

## 16.

Sector: Manufacturing

Sub-Sector: Leather and Leather Products Manufacturing

Industry Classification: JSIC 1189 Textile apparel and accessories, n.e.c. JSIC 1694 Gelatine and adhesives JSIC 192 Rubber

and plastic footwear and its findings JSIC 2011 Leather tanning and finishing JSIC 2021 Mechanical leather products, except gloves and mittens JSIC 2031 Cut stock and findings for boots and shoes JSIC 2041 Leather footwear JSIC 2051 Leather gloves and mittens JSIC 2061 Baggage JSIC 207 Handbags and small leather cases JSIC 2081 Fur skins JSIC 2099 Miscellaneous leather products JSIC 3253 Sporting and athletic goods

Note 1: The activities covered by the reservation under JSIC 1189 or 3253 are limited to the activities related to leather and leather products manufacturing.

Note 2: The activities covered by the reservation under JSIC 1694 are limited to the activities related to animal glue (nikawa) and gelatine manufacturing.

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the leather and leather products manufacturing industry in Japan.

## 17.

Sector: Matters Related to the Nationality of a Ship

Sub-Sector:

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Ship Law (Law No. 46 of 1899), Article 1

Description: Trade in Services and Investment

Nationality requirement applies to the supply of international maritime transport services (including services of passenger transportation and freight transportation) through establishment of a registered company operating a fleet flying the flag of Japan.

The term "nationality requirement" means that the ship must be owned by a Japanese national, or a company established under the laws and regulations of Japan, of which all the representatives and not less than two- thirds of the executives administering the affairs are Japanese nationals.

## 18.

Sector: Measuring Services

Sub-Sector:

Industry Classification: JSIC 7441 Commodity inspection service JSIC 745 Surveyor certification Market Access (Article 9.3)

Type of Reservation: Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Measurement Law (Law No. 51 of 1992), Chapters 3, 5, 6 and 8 Regulations on Measurement Law (Ministerial Ordinance of the Ministry of International Trade and Industry No. 69 of 1993) Ministerial Ordinance for Designated Inspection Body, Designated Verification Body, Designated Measurement Certification Inspection Body and Specified Measurement Certification Accreditation Body (Ministerial Ordinance of the Ministry of International Trade and Industry No. 72 of 1993)

Description: Trade in Services

1. A person who intends to supply services of conducting the periodic inspection of specified measuring instruments is required to establish a legal person in Japan and to be designated by the prefectural governor having jurisdiction over the district where the person intends to conduct such inspection, or by the head of a specified municipality in case the place where the person intends to conduct such inspection is located within the district of such specified municipality.

2. A person who intends to supply services of conducting the verification of specified measuring instruments is required to establish a legal person in Japan and to be designated by the Minister of Economy, Trade and Industry.

3. A person who intends to conduct measurement certification business, including specified measurement certification business, is required to have an establishment in Japan and to be registered with the prefectural governor having jurisdiction over the district where the establishment is located.

4. A person who intends to supply services of conducting the inspection of specified measuring instruments used for the measurement certification is required to establish a legal person in Japan and to be designated by the prefectural governor having jurisdiction over the district where the person intends to conduct such inspection.

5. A person who intends to supply services of conducting the accreditation for a person engaged in specified measurement certification business is required to establish a legal person in Japan, and to be designated by the Minister of Economy, Trade and Industry.

6. A person who intends to supply services of conducting the calibration of measuring instruments is required to establish a legal person in Japan and to be designated by the Minister of Economy, Trade and Industry.

## 19.

Sector: Medical, Health Care and Welfare

Sub-Sector:

Industry Classification: JSIC 8599 Miscellaneous social insurance, social welfare and care services

Type of reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Law Concerning Collection of Labour Insurance Premium (Law No. 84 of 1969), Chapter 4 Enforcement Regulations for the Law Concerning Collection of Labour Insurance Premium (Ministerial Ordinance of the Ministry of Labour No. 8 of 1972)

Description: Trade in Services

Only an association of business proprietors or a federation of such associations approved by the Minister of Health, Labour and Welfare under the laws and regulations of Japan may conduct labour insurance businesses entrusted by business proprietors. An association which intends to conduct such labour insurance businesses under the laws and regulations of Japan is required to establish an office in Japan, and to obtain the approval of the Minister of Health, Labour and Welfare.

## 20.

Sector: Mining

Sub-Sector:

Industry Classification: JSIC 05 Mining and quarrying of stone and gravel

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Mining Law (Law No. 289 of 1950), Chapters 2 and 3

Description: Trade in Services and Investment

Only a Japanese national or an enterprise of Japan may have mining rights or mining lease rights.

## 21.

Sector: Oil Industry

Sub-Sector:

Industry Classification: JSIC 053 Crude petroleum and natural gas production JSIC 1711 Petroleum refining JSIC 1721 Lubricating oils and greases (not made in petroleum refineries) JSIC 1741 Paving materials JSIC 1799 Miscellaneous petroleum and coal products JSIC 4711 Ordinary warehousing JSIC 4721 Refrigerated warehousing JSIC 5331 Petroleum JSIC 6051 Petrol stations (gasoline service stations) JSIC 6052 Fuel stores, except gasoline service stations JSIC 9299 Miscellaneous business services, n.e.c.

Note 1: The activities covered by the reservation under JSIC 1741, 1799, 4711, 4721 or 6052 are limited to those related to the oil industry.

Note 2: The activities covered by the reservation under JSIC 9299 are limited to those related to the liquefied petroleum gas industry.

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the oil industry in Japan. All organic chemicals such as ethylene, ethylene glycol and polycarbonates are outside the scope of the oil industry. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law is not required for investments in the manufacture of these products.

## 22.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7211 Lawyers' offices

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Attorney Law (Law No. 205 of 1949), Chapters 3, 4, 4-2, 5 and 9

Description: Trade in Services

A natural person who intends to supply legal services is required to be qualified as a lawyer under the laws and regulations of Japan ("Bengoshi") and to establish an office within the district of the local bar association to which the natural person belongs.

An enterprise which intends to supply legal services is required to establish a legal professional corporation under the laws and regulations of Japan ("Bengoshi- Hojin").

## 23.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7211 Lawyers' offices

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Law on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers (Law No. 66 of 1986), Chapters 2 and 4

Description: Trade in Services

A natural person who intends to supply legal advisory services concerning foreign laws is required to be qualified as a registered foreign lawyer under the laws and regulations of Japan ("Gaikoku-Ho-Jimu-Bengoshi") and to establish an office within the district of the local bar association to which the natural person belongs.

A registered foreign lawyer under the laws and regulations of Japan is required to stay in Japan for not less than 180 days per year.

## 24.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7212 Patent attorneys' offices

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Patent Attorney Law (Law No. 49 of 2000), Chapters 3, 6 and 8

Description: Trade in Services

A natural person who intends to supply patent attorney services is required to be qualified as a patent attorney under the laws and regulations of Japan ("Benrishi").

An enterprise which intends to supply patent attorney services is required to establish a patent business corporation under the laws and regulations of Japan ("Tokkyo-Gyomu- Hojin").

## 25.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7221 Notaries public's and judicial scriveners' offices

Type of Reservation: Market Access (Article 9.3) National Treatment (Article 9.4) Local Presence (Article 9.6) Central Government

Level of Government: Notary Law (Law No. 53 of 1908), Chapters 2 and 3

Measures:

Description: Trade in Services

Only a Japanese national may be appointed as a notary in Japan.

The notary is required to establish an office in the place designated by the Minister of Justice.

## 26.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7221 Notaries public's and judicial scriveners' offices

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Judicial Scrivener Law (Law No. 197 of 1950), Chapters 3, 4, 5, 7 and 10

Description: Trade in Services

A natural person who intends to supply judicial scrivener services is required to be qualified as a judicial scrivener under the laws and regulations of Japan ("Shiho-Shoshi") and to establish an office within the district of the judicial scrivener association to which the natural person belongs.

An enterprise which intends to supply judicial scrivener services is required to establish a judicial scrivener corporation under the laws and regulations of Japan ("Shiho-Shoshi-Hojin")

## 27.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7241 Certified public accountants' offices

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Certified Public Accountant Law (Law No. 103 of 1948), Chapters 3, 5-2 and 7

Description: Trade in Services

A natural person who intends to supply certified public accountants services is required to be qualified as a certified public accountant under the laws and regulations of Japan ("Koninkaikeishi").

An enterprise which intends to supply certified public accountants services is required to establish an audit corporation under the laws and regulations of Japan ("Kansa-Hojin")

## 28.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7242 Auditors' offices

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Certified Public Tax Accountant Law (Law No. 237 of 1951), Chapters 3, 4, 5-2, 6 and 7 Enforcement Regulation on Certified Public Tax Accountant Law (Ministerial Ordinance of the Ministry of Finance No. 55 of 1951)

Description: Trade in Services

A natural person who intends to supply certified public tax accountant services is required to be qualified as a certified public tax accountant under the laws and regulations of Japan ("Zeirishi") and to establish an office within the district of certified public tax accountant association to which the natural person belongs.

An enterprise which intends to supply certified public tax accountant services is required to establish a certified public tax accountant corporation under the laws and regulations of Japan ("Zeirishi- Hojin").

## 29.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7231 Administrative scriveners' offices JSIC 7294 Certified real estate appraisers JSIC 7299

Professional services, n.e.c. JSIC 7421 Architectural design services

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Architect and/or Building Engineer Law (Law No. 202 of 1950), Chapters 1, 2 and 6

Description: Trade in Services

An architect and/or building engineer, qualified as such under the laws and regulations of Japan ("Kenchikushi"), or a person employing such an architect and/or building engineer, who intends to conduct business of design, superintendence of construction work, administrative work related to construction work contracts, supervision of building construction work, survey and evaluation of buildings, and representation in procedure under the laws and regulations concerning construction, upon request from others for remuneration, is required to establish an office in Japan.

## 30.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7251 Certified social insurance and labour consultants' offices

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Certified Social Insurance and Labour Consultant Law (Law No. 89 of 1968), Chapters 2-2, 4-2, 4-3 and 5

Description: Trade in Services

A natural person who intends to supply social insurance and labour consultant services is required to be qualified as a certified social insurance and labour consultant under the laws and regulations of Japan ("Shakai-Hoken- Romushi") and to establish an office in Japan.

An enterprise which intends to supply social insurance and labour consultant services is required to establish a certified social insurance and labour consultant corporation under the laws and regulations of Japan ("Shakai- Hoken-Romushi-Hojin").

## 31.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7231 Administrative scriveners' office

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Administrative Scrivener Law (Law No. 4 of 1951), Chapters 3, 4, 5 and 8

Description: Trade in Services

A natural person who intends to supply administrative scrivener services is required to be qualified as an administrative scrivener under the laws and regulations of Japan ("Gyousei-Shoshi") and to establish an office within the district of the administrative scrivener association to which the natural person belongs.

An enterprise which intends to supply administrative scrivener services is required to establish an administrative scrivener corporation under the laws and regulations of Japan ("Gyousei-Shoshi-Hojin").

## 32.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7299 Professional services n.e.c.

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Maritime Procedure Agents Law (Law No. 32 of 1951), Article 17

Description: Trade in Services

Maritime procedure agent services must be supplied by a natural person who is qualified as a maritime procedure agent under the laws and regulations of Japan ("Kaijidairishi").

## 33.

Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7222 Land and house surveyors' offices

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Land and House Surveyor Law (Law No. 228 of 1950), Chapters 3, 4, 5, 7 and 10

Description: Trade in Services

A natural person who intends to supply land and house surveyor services is required to be qualified as a land and house surveyor under the laws and regulations of Japan ("Tochi-Kaoku- Chosashi") and to establish an office within the district of the land and house surveyor association to which the natural person belongs.

An enterprise which intends to supply land and house surveyor services is required to establish a land and house surveyor corporation under the laws and regulations of Japan ("Tochi- Kaoku-Chosashi-Hojin").

## 34.

Sector: Real Estate

Sub-Sector:

Industry Classification: JSIC 6811 Sales agents of buildings and houses JSIC 6812 Land subdividers and developers JSIC 6821 Real estate agents and brokers JSIC 6941 Real estate managers

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Building Lots and Buildings Transaction Business Law (Law No. 176 of 1952), Chapter 2 Real Estate Syndication Law (Law No. 77 of 1994), Chapters 2 and 4-2 Law Concerning Improving Management of Condominiums (Law No. 149 of 2000), Chapter 3

Description: Trade in Services

1. A person who intends to conduct building lots and buildings transaction business is required to establish an office in Japan and to obtain a licence from the Minister of Land, Infrastructure, Transport and Tourism or from the prefectural governor having jurisdiction over the district where the office is located.

2. A person who intends to conduct real estate syndication business is required to establish an office in Japan, and to obtain permission from the competent Minister or from the prefectural governor having jurisdiction over the district where the office is located or to submit notification to the competent Minister.

3. A person who intends to conduct condominiums management business is required to establish an office in Japan and to be registered in the list maintained by the Ministry of Land, Infrastructure, Transport and Tourism.

## 35.

Sector: Real Estate Appraisal Services

Sub-Sector:

Industry Classification: JSIC 7294 Certified real estate appraisers

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government:Central Government

Measures: Law Concerning the Appraisal of Real Estate (Law No. 152 of 1963), Chapter 3

Description: Trade in Services

A person who intends to supply real estate appraisal services is required to establish an office in Japan and to be registered in the list maintained by the Ministry of Land, Infrastructure, Transport and Tourism or the prefecture having jurisdiction over the district where the office is located.

## 36.

Sector: Seafarers

Sub-Sector:

Industry Classification: JSIC 031 Marine fisheries JSIC 451 Oceangoing transport JSIC 452 Coastwise transport

Type of Reservation: Market Access (Article 9.3) National Treatment (Article 9.4)

Level of Government: Central Government

Measures: Mariners Law (Law No. 100 of 1947), Chapter 4 Official Notification of the Director General of Seafarers Department, Maritime Technology and Safety Bureau of the Ministry of Transport, No. 115, 1990 Official Notification of the Director General of Seafarers Department, Maritime Technology and Safety Bureau of the Ministry of Transport, No. 327, 1990 Official Notification of the Director General of Maritime Bureau of the Ministry of Land, Infrastructure and Transport, No. 153, 2004

Description: Trade in Services

Foreign nationals employed by Japanese enterprises except for the seafarers referred to in the relevant official notifications may not work on vessels flying the Japanese flag.

## 37.

Sector: Security Guard Services

Sub-Sector:

Industry Classification: JSIC 923 Guard services

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in security guard services in Japan.

## 38.

Sector: Services Related to Occupational Safety and Health

Sub-Sector:

Industry Classification: JSIC 7299 Professional services, n.e.c. JSIC 7441 Commodity inspection services JSIC 7452 Environmental surveying certification JSIC 8222 Vocational guidance centers

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Industrial Safety and Health Law (Law No. 57 of 1972), Chapters 5 and 8 Ministerial Ordinance for Registration and Designation related to Industrial Safety and Health Law and Orders based on the Law (Ministerial Ordinance of the Ministry of Labour No. 44 of 1972) Working Environment Measurement Law (Law No. 28 of 1975), Chapters 2 and 3 Enforcement Regulation of the Working Environment Measurement Law (Ministerial Ordinance of the Ministry of Labour No. 20 of 1975)

Description: Trade in Services

A person who intends to supply inspection or verification services for working machines, skill training courses and other related services in connection with occupational safety and health, or working environment measurement services is required to be resident or to establish an office in Japan, and to be registered with the Minister of Health, Labour and Welfare or Director-General of the Prefectural Labour Bureau.

## 39.

Sector: Surveying Services

Sub-Sector:

Industry Classification: JSIC 7422 Surveying services

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Survey Law (Law No. 188 of 1949), Chapter 6

Description: Trade in Services

A person who intends to supply surveying services is required to establish a place of business in Japan and to be registered with the Minister of Land, Infrastructure, Transport and Tourism.

## 40.

Sector: Transport Air Transport

Sub-Sector:

Industry Classification: JSIC 4600 Head office primarily engaged in managerial operations JSIC 4611 Air transport National Treatment (Article 14.3)

Type of Reservation: Most-Favoured-Nation Treatment (Article 14.4) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Civil Aeronautics Law (Law No. 231 of 1952), Chapters 7 and 8

Description: Investment

1. The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who

intend to make investments in air transport businesses in Japan.

2. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting air transport businesses as a Japanese air carrier is not granted to the following natural persons or entities applying for the permission:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of voting rights are held by natural persons or entities referred to in subparagraph (a), (b) or (c).

In the event an air carrier falls into a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies such as holding companies, which have substantial control over the air carriers.

3. A Japanese air carrier or a company having substantial control over such air carrier, such as a holding company, may reject the request from a natural person or an entity set forth in subparagraphs 2(a) through (c), who owns equity investments in such air carrier or company, to enter its name and address in the register of shareholders, in the event such air carrier or company falls into a legal person referred to in subparagraph 2(d) by accepting such request.

4 Foreign air carriers are required to obtain permission of the Minister of Land, Infrastructure, Transport and Tourism to conduct international air transport businesses.

5. Permission of the Minister of Land, Infrastructure, Transport and Tourism is required for the use of foreign aircraft for air transportation of passengers or cargoes to and from Japan for remuneration.

6. A foreign aircraft may not be used for a flight between points within Japan.

## 41.

Sector: Transport

Sub-Sector: Air Transport

Industry Classification: JSIC 4600 Head offices primarily engaged in managerial operations JSIC 4621 Aircraft service, except air transport

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and14.3) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of1980), Article 3 Civil Aeronautics Law (Law No. 231 of 1952), Chapters 7 and 8

Description: Trade in Services and Investment

1. The prior notification requirement under the Foreign Exchange and ForeignTrade Law applies to foreign investors who intend to make investments in aerial work business in Japan.

2. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting aerial work business is not granted to the following natural persons or entities applying for the permission:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities

referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

In the event a person conducting aerial work business falls into a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies, such as holding companies, which have substantial control over the person conducting aerial work business.

3. A foreign aircraft may not be used for a flight between points within Japan.

## 42.

Sector: Transport

Sub-Sector: Air Transport (Registration of Aircraft in the National Register)

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Civil Aeronautics Law (Law No. 231 of 1952), Chapter 2

Description: Trade in Services and Investment

1. An aircraft owned by any of the following natural persons or entities may not be registered in the national register:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2. A foreign aircraft may not be registered in the national register.

## 43.

Sector: Transport Customs Brokerage

Sub-Sector:

Industry Classification: JSIC 4899 Services incidental to transport, n.e.c.

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Customs Brokerage Law (Law No. 122 of 1967), Chapter 2

Description: Trade in Services

A person who intends to conduct customs brokerage business is required to have a place of business in Japan and to obtain permission of the Director-General of Customs having jurisdiction over the district where the person intends to conduct customs brokerage business.

## 44.

Sector: Transport

Sub-Sector: Freight Forwarding Business {excluding freight forwarding business using air transportation)

Industry Classification: JSIC 4441 Collect-and-deliver freight transport JSIC 4821 Deliver freight transport, except collect-and-deliver freight transport

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Most-Favoured-Nation Treatment (Articles 9.5 and 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Freight Forwarding Business Law (Law No. 82 of 1989), Chapters 2, 3 and 4 Enforcement Regulation of Freight Forwarding Business Law (Ministerial Ordinance of the Ministry of Transport No. 20 of 1990)

Description: Trade in Services and Investment

1. The following natural persons or entities are required to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism for conducting freight forwarding business using international shipping. Such registration shall be made, or such permission or approval shall be granted, on the basis of reciprocity:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2. A person who intends to conduct freight forwarding business is required to establish an office in Japan, and to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism.

## 45.

Sector: Transport

Sub-Sector: Freight Forwarding Business (only freight forwarding business using air transportation)

Industry Classification: JSIC 4441 Collect-and-deliver freight transport JSIC 4821 Deliver freight transport, except collect-and-deliver freight transport

Type of Reservation: National Treatment (Article 14.3) Most-Favoured-Nation Treatment {Article 14.4) Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Freight Forwarding Business Law (Law No. 82 of 1989), Chapters 2, 3 and 4 Enforcement Regulation of Freight Forwarding Business Law (Ministerial Ordinance of Ministry of Transport No. 20 of 1990)

Description: Investment

1. The following natural persons or entities may not conduct freight forwarding businesses using air transportation between points within Japan:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2. The natural persons or entities referred to in subparagraphs 1 (a) through (d) are required to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism for conducting freight

forwarding businesses using international air transportation. Such registration shall be permitted, or such permission or approval shall be granted, on the basis of reciprocity.

## 46.

Sector: Transport

Sub-Sector: Railway Transport

Industry Classification: JSIC 421 Railway transport JSIC 4851 Railway facilities services

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the railway transport industry in Japan. The manufacture of vehicles, parts and components for the railway transport industry is not included in the railway transport industry. Therefore, the prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

## 47.

Sector: Transport

Sub-Sector: Road Passenger Transport

Industry Classification: JSIC 4311 Common omnibus operators

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the omnibus industry in Japan. The manufacture of vehicles, parts and components for the omnibus industry is not included in the omnibus industry. Therefore, the prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

## 48.

Sector: Transport

Sub-Sector: Road transport

Industry Classification: JSIC 431 Common omnibus operators JSIC 432 Common taxicab operators JSIC 433 Contracted omnibus operators JSIC 4391 Motor passenger transport (particularly-contracted) JSIC 441 Common motor trucking JSIC 442 Motor trucking (particularly- contracted) JSIC 443 Mini-sized vehicle freight transport

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Road Transport Law (Law No. 183 of 1951), Chapter 2 Special Measures Law Concerning the Proper Management and Revitalization of the Taxi Business in Specified and Semi-specified Regions (Law No. 64 of 2009) (hereinafter referred to in this reservation as "the Law"), Chapters 2 and Trucking Business Law (Law No. 83 of 1989), Chapter 2

Description: Trade in Services

1. A person who intends to conduct road passenger transport business or road freight transport business is required to establish a place of business in Japan, and to obtain permission of, or to submit notification to, the Minister of Land, Infrastructure, Transport and Tourism.

2. In respect of common taxicab operators business, Infrastructure, Land, the Minister of Transport and Tourism may not grant permission to a person who intends businesses, or may to conduct the not approve a modification of the business plan of such businesses in the "specified regions" and in the "semi-specified regions" designated by the Minister of Land, Tourism. granted, Infrastructure, Such permission may be or such modification of the Transport and business plan may be approved with respect to "semi-specified regions" when the standards are met, including capacity of common businesses in that exceed the volumes set out in the Law those that the taxicab operators region does not of the traffic demand.

Such designation would be made when the capacity of common taxicab transportation businesses in that region exceeds or is likely to exceed the volumes of traffic demand to the extent that it would become difficult to secure the safety of transportation and the benefits of passengers.

3. In respect of common motor trucking business or motor trucking business (particularly-contracted), the Minister of Land, Infrastructure, Transport and Tourism may not grant permission to a person who intends to conduct the businesses, or may not approve a modification of the business plan of such businesses, in the "emergency supply/demand adjustment area" designated by the Minister of Land, Infrastructure, Transport and Tourism. Such designation would be made when the capacity of common motor trucking businesses or motor trucking businesses (particularly-contracted) in that area has significantly exceeded the volumes of transportation demand to the extent that the operation of existing businesses would become difficult.

## 49.

Sector: Transport

Sub-Sector: Services Incidental to Transport

Industry Classification: JSIC 4852 Fixed facilities for road transport

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Road Transport Law (Law No. 183 of 1951), Chapter 4

Description: Trade in Services

A person who intends to conduct motorway businesses is required to obtain a licence from the Minister of Land, Infrastructure, Transport and Tourism. The issuance of a licence is subject to an economic needs test, such as whether the proposed motorway is appropriate in scale compared with the volume and nature of traffic demand in the proposed area.

## 50.

Sector: Transport

Sub-Sector: Services Incidental to Transport

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Article 9.4) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Pilotage Law (Law No. 121 of 1949), Chapters 2, 3 and 4

Description: Trade in Services

Only a Japanese national may become a pilot in Japan.

Pilots directing ships in the same pilotage district are required to establish a pilot association for the pilotage district.

## 51.

Sector: Transport

Sub-Sector: Water Transport

Industry Classification: JSIC 451 Oceangoing transport

Type of Reservation: Market Access (Article 9.3) National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central Government

Measures: Law Concerning Special Measures Against Unfavourable Treatment to Japanese Oceangoing Ship Operators by Foreign Government (Law No. 60 of 1977)

Description: Trade in Services

Australian oceangoing ship operators may be restricted or prohibited from entering ports in Japan or from loading and unloading cargoes in Japan in cases where Japanese oceangoing ship operators are prejudiced by Australia.

## 52.

Sector: Transport

Sub-Sector: Water Transport

Industry Classification: JSIC 452 Coastwise transport JSIC 453 Inland water transport JSIC 4542 Coastwise ship leasing

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the water transport industry in Japan. For greater certainty, "water transport industry" refers to the oceangoing/seagoing transport, the coastwise transport (i.e. maritime transport between ports in Japan), the inland water transport and the ship leasing industry. However, the oceangoing/seagoing transport industry and the ship leasing industry excluding the coastwise ship leasing industry are exempted from the prior notification requirement.

## 53.

Sector: Transport

Sub-Sector: Water Transport

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Most-Favoured-Nation Treatment (Articles 9.5 and 14.4)

Level of Government: Central Government

Measures: Ship Law (Law No. 46 of 1899), Article 3

Description: Trade in Services and Investment

Unless otherwise specified in the laws and regulations of Japan, or international agreements to which Japan is a party, ships not flying the Japanese flag are prohibited from entering ports in Japan which are not open to foreign commerce and from carrying cargoes or passengers between ports in Japan.

## 54.

Sector: Vocational Skills Test

Sub-Sector:

Industry Classification:

Type of Reservation: Market Access (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Human Resources Development Promotion Law (Law No. 64 of 1969), Chapter 5

Description: Trade in Services

Some specific types of non-profit organization (the employers' organizations or federations thereof, general incorporated associations or general incorporated foundations, labour unions that are juridical persons, or other non-profit juridical persons) can supply the service. Any such organization which intends to carry out the vocational skills test for workers is required to establish an office in Japan and to be designated by the Minister of Health, Labour and Welfare.

## 55.

Sector: Water Supply and Waterworks

Sub-Sector:

Industry Classification: JSIC 3611 Water for end users, except industrial users

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the water supply and waterworks industry in Japan

## 56.

Sector: Wholesale and Retail Trade

Sub-Sector: Livestock

Industry Classification: JSIC 5219 Miscellaneous agricultural, animal and poultry farm and aquatic products

Type of Reservation: Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Livestock Dealer Law (Law No. 208 of 1949), Article 3

Description: Trade in Services

A person who intends to conduct livestock trading business is required to be resident in Japan, and to obtain a licence from the prefectural governor having jurisdiction over the place of residence. For greater certainty, the term "livestock trading" means the trading or exchange of livestock, or the good offices for such trading or exchange.

# Annex 7. Referred to in chapter 9 (trade in services) and chapter 14 (investment)

NON-CONFORMING MEASURES RELATING TO PARAGRAPH 2 OF ARTICLES 9.7 AND 14.10

# Part 1. Schedule of Australia

PART 1

## Section 1. Notes for Sections 2 and 3

1. Section 2 of the Schedule of Australia sets out, pursuant to Articles 9.7 (Trade in Services - Non- Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions) the specific sectors, sub-sectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 9.3 (Trade in Services - Market Access);

(b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);

(c) Article 9.5 (Trade in Services - Most-FavouredNation Treatment) or 14.4 (Investment - MostFavoured-Nation Treatment);

(d) Article 9.6 (Trade in Services - Local Presence);

(e) Article 14.8 (Investment - Senior Management and Boards of Directors); or

(f) Article 14.9 (Investment – Prohibition of Performance Requirements)

2. Section 3 of the Schedule of Australia sets out, pursuant to Articles 9.7 (Trade in Services - Non- Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), additional financial services sectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 9.3 (Trade in Services Market Access);

(b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment) ;

(c) Article 9.5 (Trade in Services - Most-Favoured-— Nation Treatment) or 14.4 (Investment - Most- Favoured-Nation Treatment);

(d) Article 9.6 (Trade in Services - Local Presence);

(e) Article 14.8 (Investment - Senior Management and Boards of Directors); or

(f) Article 14.9 (Investment - Prohibition of Performance Requirements).

Note 1: Commitments on financial services are undertaken subject to the limitations and conditions set forth in Chapter 9 (Trade in Services), Chapter 11 (Financial Services), Chapter 14 (Investment), this Section and the Schedule below.

Note 2: To clarify Australia's commitment with respect to Article 9.3 (Trade in Services - Market Access), enterprises supplying financial services and constituted under the laws of Australia are subject to non-discriminatory limitations on juridical form. (1)

(1) For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This note is not itself intended to affect, or otherwise limit, a choice by a financial service supplier of the other Party between branches or subsidiaries.

Note 3: Without prejudice to other means of prudential regulation of cross-border trade in financial services, Australia reserves the right to require the non-discriminatory licensing or registration of cross-border financial service suppliers of Japan and of financial instruments in accordance with Article 11.4 (Financial Services - Domestic Regulation).

Note 4: Australia reserves the right to adopt or maintain non-discriminatory limitations concerning admission to the market of new financial services where such measures are required to achieve prudential objectives. Australia may determine the institutional and juridical form through which a new financial service may be supplied and may require authorisation for the supply of the service. Where authorisation to supply a new financial service is required, the authorisation may only be refused for prudential reasons.

3. Each Schedule entry sets out the following elements:

(a) "Sector" refers to the sector for which the entry is made;

(b) "Obligations Concerned" specifies the obligation(s) referred to in paragraph 1 that, pursuant to paragraph 2 of Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), do not apply to the sectors, sub- sectors or activities listed in the entry;

(c) "Description" sets out the scope of the sector, sub-sector or activities covered by the entry; and

(d) "Existing Measures" identifies for transparency purposes, where relevant and practical, existing measures that apply to the sector, sub-sector or activities covered by the entry.

Note 1: In accordance with Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), the articles of this Agreement specified in the "Obligations Concerned" element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

Note 2: A reference to National Treatment in the "Obligations Concerned" element of an entry specifies Australia's obligations under Article 9.4 (Trade in Services - National Treatment) and Article 14.3 (Investment - National Treatment) .

# Section 2.

## 1.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3)

Description: Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, or other movement of natural persons, including entry or temporary stay, subject to the provisions of Chapter 12 (Movement of Natural Persons).

Existing Measures:

## 2.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3) National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure according preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector.

Australia reserves the right to adopt or maintain any measure with respect to investment that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation.

For the purpose of this reservation, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.

Existing Measures: Legislation and ministerial statements at all levels of government including:

Australia's Foreign Investment Policy Native Title Act 1993 (Cth) Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)

Aboriginal Land Rights Act 1983 (NSW) Native Title (New South Wales) Act 1994 (NSW)

Aboriginal Land Act 1991 (Qld)

Torres Strait Islander Land Act 1991 (Qld)

Native Title (South Australia) Act 1994 (SA)

Maralinga Tjarutja Land Rights Act 1984 (SA)

Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)

Anangu Pitjantjatjara Yankunytjatjara Land Rights Regulations 2010 (SA) Pitjantjatjara Land Rights Regulations 2003 (SA)

The statutory bodies that administer the Anangu Pitjantjatjara Yankunytjatjara lands and the Maralinga Tjarutja lands

Mining Act 1971 (SA)

Opal Mining Act 1995 (SA)

Aboriginal Lands Act 1995 (Tas) Traditional Owner Settlement Act 2010 (Vic)

## 3.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3)

Description: Australia reserves the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia's Revised Services Offer of 31 May 2005 in the World Trade Organization Doha Development Agenda negotiations (WTO Document - TN/S/O/AUS/Rev.1).

Existing Measures:

## 4.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3) National Treatment Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to proposals by foreign persons (2) and foreign government investors to invest in Australian urban land (3) (including interests that arise via leases, financing and profit sharing arrangements, and the acquisition of interests in urban land corporations and trusts), other than developed non-residential commercial real estate.

Existing Measures: Australia's foreign investment policy, which includes the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA); Foreign Acquisitions and Takeovers Regulations 1989 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements.

Economic Development Act 2012 (Qld) Sustainable Planning Act 2009 (Qld) Integrated Resort Development Act 1997 (Qld)

Mixed Use Development Act 1992 (Qld) Sanctuary Cove Resort Act 1995 (Qld) Townsville City Council (Douglas Land Development) Act 1993 (Qld)

(2) The term "foreign person" has the meaning set out in the FATA.

(3) The term "Australian urban land" has the meaning set out in the FATA.

## 5.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 14.4)

Local Presence (Article 9.6)

Senior Management and Boards of Directors (Article 14.8)

Prohibition of Performance Requirements {Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure that it considers necessary for the protection of

its essential security interests with respect to proposals by foreign persons (4) and foreign government investors to invest in Australia.

Existing Measures: Australia's foreign investment policy, which includes the Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulations 1989 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements.

(4) The term "foreign person" has the meaning set out in the FATA.

## 6.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment {Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure to allow the screening of proposals, by foreign persons (5), to invest 15 million Australian Dollars or more in Australian agricultural land and 53 million Australian Dollars or more in Australian agribusinesses.

Existing Measures: Australia's foreign investment policy, which includes the Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulations 1989 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth) and Ministerial Statements.

(5) The term "foreign person" has the meaning set out in the FATA.

## 7.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3) National Treatment Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements {Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to:

(a) the devolution to the private sector of services provided in the exercise of governmental authority at the time that the Agreement comes into force; and

(b) the privatisation of government owned entities or assets.

Existing Measures:

## 8.

Sector: All Sectors

Obligations Concerned: Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services (6) to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

Existing Measures:

(6) For the avoidance of doubt, this includes any measure with respect to: the collection of blood and its components; the distribution of blood and blood-related products, including plasma derived products; plasma fractionation services; and the procurement of blood and blood-related products and services.

## 9.

Sector: Broadcasting and Audiovisual Services (7) Advertising Services Live Performance (8)

Obligations Concerned: Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) (9) Local Presence (Article 9.6) (10) Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to:

(a) transmission quotas for local content on free-to-air commercial television broadcasting services;

(b) non-discriminatory expenditure requirements for Australian production on subscription television broadcasting services;

(c) transmission quotas for local content on free-to-air radio broadcasting services;

(d) other audiovisual services transmitted electronically, in order to make Australian audiovisual content reasonably available to Australian consumers; (11)

(e) spectrum management and licensing of broadcasting services; and (12)

(f) subsidies or grants for investment in Australian cultural activity.

This entry does not apply to foreign investment restrictions in the broadcasting and audiovisual services sector.

Existing Measures:

Broadcasting Services Act 1992(Cth) Radiocommunications Act 1992 (Cth) Income Tax Assessment Act 1936 (Cth) Income Tax Assessment Act 1997 (Cth) Screen Australia Act 2008 (Cth) Broadcasting Services (Australian Content) Standard 2005 Children's Television Standards 2009 Television Program Standard 23 - Australian Content in Advertising Commercial Radio Codes of Practice and Guidelines Community Broadcasting Codes of Practice

(7) For greater certainty, Australia reserves the right to adopt or maintain measures under subparagraphs (a)-(f) with respect to the services supplied by the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation.

(8) Applies only in respect of subparagraph (f).

(9) Applies only to the treatment as local content of New Zealand programs or productions.

(10) Applies only in respect of subparagraph (e) and in respect of the licensing of services covered by subparagraph (d).

(11) Any such measure will be implemented in a manner that is consistent with Australia's commitments under Articles XVI and XVII of the GATS.

(12) In respect of subparagraph (e), Australia's entry applies only in respect of the Market Access and Local Presence obligations.

## 10.

Sector: Broadcasting and Audiovisual Services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain, under the International Co-Production Program, preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production arrangements, confers national treatment on works covered by these arrangements.

Existing Measures: International Co-Production Program

## 11.

Sector: Recreational, Cultural and Sporting Services (other than Audiovisual Services)

Obligations Concerned: Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to the creative arts (13) and cultural heritage (14).

Existing Measures:

(13) For the purposes of this entry, the term "creative arts" means: the performing arts (including live theatre, dance and music); visual arts and craft; literature; Indigenous traditional cultural expressions and; hybrid art work, including those that use new technologies to transcend discrete art form divisions.

(14) For the purposes of this entry, the term "cultural heritage" means: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.

## 12.

Sector: Distribution Services

Obligations Concerned:Market Access (Article 9.3)

Description: Australia reserves the right to adopt or maintain any measure with respect to wholesale and retail trade services of tobacco products, alcoholic beverages, or firearms.

Existing Measures:

## 13.

Sector: Education Services

Obligations Concerned: Market Access (Article 9.3) National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to primary education.

Existing Measures:

## 14.

Sector: Education Services

Obligations Concerned: National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements {Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to:

(a) the ability of individual education and training institutions to maintain autonomy in admissions policies (including in relation to considerations of equal opportunity for students and recognition of credits and degrees), in setting tuition rates and in the development of curricula or course content;

(b) non-discriminatory accreditation and quality assurance procedures for education and training institutions and their programs, including the standards that must be met;

(c) government funding, subsidies or grants, such as land grants, preferential tax treatment and other public benefits, provided to education and training institutions; or

(d) the need for education and training institutions to comply with non-discriminatory requirements related to the establishment and operation of a facility in a particular jurisdiction.

Existing Measures:

## 15.

Sector: Gambling and Betting

Obligations Concerned: Market Access (Article 9.3) National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.

Existing Measures: Legislation and ministerial statements including:

Interactive Gambling Act 2001(Cth) Gambling and Racing Control Act 1999 (ACT) Unlawful Gambling Act 2009 (ACT) Race & Sports Bookmaking Act 2001 (ACT) Betting (ACTTAB Limited) Act 1964 (ACT) Racing Act 1999 (ACT) Casino Control Act 2006 (ACT) Gaming Machine Act 2004 (ACT) Interactive Gambling Act 1998 (ACT) Lotteries Act 1964 (ACT) Pool Betting Act 1964 (ACT) Casino Control Act 1992 (NSW) Gaming Machines Act 2001 (NSW) Public Lotteries Act 1996 (NSW) Lotteries and Art Unions Act 1901 (NSW) Racing Administration Act 1998 (NSW) Greyhound Racing Act 2009 (NSW) Harness Racing Act 2009 (NSW) Thoroughbred Racing Act 1996 (NSW) Totalizator Act 1987 (NSW) Unlawful Gambling Act 1998 (NSW) Gambling Control Act (NT) Gaming Machine Act (NT) Racing and Betting Act (NT) Totaliser Licensing and Regulation Act (NT) Soccer Football Pools Act (NT) TAB Queensland Limited Privatisation Act 1999 (Qld) Casino Control Act 1982 (Qld) Jupiters Casino Agreement Act 1983 (Qld) Brisbane Casino Agreement Act 1992 (Qld) Breakwater Island Casino Agreement Act 1984 (Qld) Lotteries Act 1997 (Qld) Cairns Casino Agreement Act 1993 (Qld) Charitable and Non-Profit Gaming Act 1999 (Qld) Keno Act 1996 (Qld) Wagering Act 1998 (Qld) Gaming Machine Act 1991 (Qld) Racing Act 2002 (Qld) Casino Act 1997 (SA) Lottery and Gaming Act 1936 (SA) Independent Gambling Authority Act 2001 (SA) Gaming Machines Act 1992 (SA) State Lotteries Act 1966 (SA) Racing (Proprietary Business Licensing) Act 2000 (SA) Racing Act 1976 (SA) Authorised Betting Operations Act 2000 (SA) TAB (Disposal) Act 2000 (SA) Gaming Control Act 1993 (Tas) TT-Line Gaming Act 1993 (Tas) Gambling Regulation Act 2003 (Vic) Racing Act 1958 (Vic) Casino Control Act 1991 (Vic) Casino (Management Agreement) Act 1993 (Vic) Casino (Burswood Island) Agreement Act 1985 (WA) Racing and Wagering Western Australia Act 2003 (WA) Gaming and Wagering Commission Act 1987 (WA) Betting Control Act 1954 (WA) Casino Control Act 1984 (WA) Lotteries Commission Act 1990 (WA)

## 16.

Sector: Maritime Transport

Obligations Concerned: Market Access (Article 9.3) National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services. (15)

Existing Measures: Customs Act 1901 (Cth) Workplace Relations Act 1996 (Cth) Seafarers' Compensation and Rehabilitation Act 1992 (Cth) Occupational Health and Safety (Maritime Industry) Act 1993 (Cth) Shipping Registration Act 1981 (Cth) Income Tax Assessment Act 1936 (Cth) Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth) Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012 (Cth) Shipping Reform (Tax Incentive) Act 2012 (Cth)

(15) For the purposes of this entry, the term "cabotage" means the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia. The term "offshore transport" means shipping services involving the transportation of passengers or goods between a port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea and the subsoil of that seabed.

## 17.

Sector: Maritime Transport

Obligations Concerned: National Treatment

Description: Australia reserves the right to adopt or maintain any measure with respect to the registration of vessels in Australia.

Existing Measures:

### 18.

Sector: Transport Services

Obligations Concerned: Market Access (Article 9.3) National Treatment Senior Management and Boards of Directors (Article 14.8)

Description: Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.

Existing Measures: Airports Act 1996 (Cth)

Airports (Ownership-Interests in Shares) Regulations 1996 (Cth) Airports Regulations 1997 (Cth)

### 19.

Sector: All Sectors

Obligations Concerned: Most-Favoured-Nation Treatment(Article 9.5 and Article 14.4)

Description: Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non- Parties under any bilateral or multilateral international agreement in force on, or signed prior to, the date of entry into force of this Agreement. (16)

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non- Parties under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Existing Measures:

(16) For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement. For the avoidance of doubt, this includes measures adopted or maintained under any existing or future protocol to the Australia New Zealand Closer Economic Relations - Trade Agreement (ANZCERTA).

## Section 3.

### 20.

Sector: Financial Services

Obligations Concerned: National Treatment

Description: Australia reserves the right to adopt or maintain any measure' (17) with respect to the guarantee by government of government-owned entities, including guarantees related to the privatisation of such entities, which may conduct financial operations.

Existing Measures:

(17) That is, measures that would be excluded from the application of Chapter 9 (Trade in Services) under subparagraph 2(e) of Article 9.1, (Trade in Services - Scope) as modified by subparagraph 2(c) and paragraph 3 of Article 11.2 (Financial Services - Definitions), except for the application of Australia's policy on competitive neutrality which in general allows competition and avoids providing a net competitive advantage to an entity by virtue of its public sector ownership.

## 21.

Sector: Financial Services

Obligations Concerned: Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Banking and other Financial Services (excluding Insurance and Insurance-— related Services):

Description: Except as provided in paragraphs 2 and 3 Australia reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n) (i) of Article 9.2 (Trade in Services - Definitions) ("cross-border supply mode") for banking and other financial services.

Australia shall permit, under terms and conditions that accord national treatment, a services supplier of Japan to undertake the cross-border provision and transfer of financial information and financial data processing as referred to in paragraph (0) of Annex 9 (Financial Services) and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in paragraph (p) of Annex 9 (Financial Services).

In relation to the following services Australia shall ensure a services supplier of Japan, upon obtaining an Australian financial services licence and any other necessary authorisations, or exemptions therefrom, in accordance with prescribed Australian laws and regulations, may undertake:

(a) securities related transactions on a wholesale basis between and among financial institutions and other entities;

(b) the following services to a collective investment scheme located in Australia:

(i) investment advice; and

(ii) portfolio management services, excluding:

(A) trustee services; and

(B) custodial services and execution services that are not related to managing a collective investment scheme.

Note: For the purposes of this entry, the term "collective investment scheme" means a managed investment scheme as defined under section 9 of the Corporations Act 2001 (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the Corporations Act 2001 (Cth), or an entity that:

(i) carries ona business of investment in securities, interests in land, or other investments; and

(ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Corporations Act 2001 (Cth)) made on terms that the funds subscribed would be invested.

Existing Measures:

## 22.

Sector: Financial Services

Obligations Concerned: Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)

Description: Insurance and Insurance-related Services:

Except as provided in paragraph 2, Australia reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n) (i) of Article 9.2 (Trade in Services - Definitions) ("cross-border supply mode") and in subparagraph (n) (ii) of Article 9.2 (Trade in Services - Definitions) ("consumption abroad mode") in each case for insurance and insurance related services.

Australia shall ensure a services supplier of Japan, under terms and conditions that accord national treatment may provide via cross-border supply mode or consumption abroad mode and whether as a principal, through an intermediary or as an intermediary, the following services:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession and the services auxiliary to insurance as referred to in paragraph (d) of Annex 9 (Financial Services); and

(c) insurance intermediation, such as brokerage and agency as referred to in paragraph (c) of Annex 9 (Financial Services) in relation to the services referred to in subparagraphs (a) and (b).

Existing Measures:

### 23.

Sector: Financial Services

Obligations Concerned: Prohibition of Performance Requirements (Article 14.9)

Description: Australia reserves the right to adopt or maintain any measure with respect to financial services.

Existing Measures:

### 24.

Sector: Financial Services

Obligations Concerned: Market Access (Article 9.3) National Treatment Most-Favoured-Nation Treatment (Article 9.5 and Article 14.4) Local Presence (Article 9.6)

Description: Australia reserves the right to adopt or maintain any measure regarding solicitation in its Area.

Existing Measures:

# Part 2. Schedule of Japan

## Section 1. Notes for Section 2

1. Section 2 of the Schedule of Japan sets out, in accordance with Articles 9.7 (Trade in Services - Non- Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), the reservations taken by Japan with respect to specific sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 9.3 (Trade in Services - Market Access);

(b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment) ;

(c) Article 9.5 (Trade in Services - Most-Favoured-— Nation Treatment) or 14.4 (Investment - Most- Favoured-Nation Treatment);

(d) Article 9.6 (Trade in Services - Local Presence);

(e) Article 14.8 (Investment - Senior Management and Boards of Directors); or

(f) Article 14.9 (Investment - Prohibition of Performance Requirements).

2. Each reservation sets out the following elements:

(a) "Sector" refers to the general sector in which the reservation is taken;

(b) "Sub-Sector" refers to the specific sector in which the reservation is taken;

(c) "Industry Classification" refers, where applicable, and only for transparency purposes, to the activity covered by the reservation according to domestic or international industry classification codes;

(d) "Type of Reservation" specifies the obligations referred to in paragraph 1 for which the reservation is taken;

(e) "Description" sets out, the scope of the sector, sub-sector or activities covered by the reservation; and

(f) "Existing Measures" identifies, for transparency purposes, existing measures that apply to the sector, sub-sector or activities covered by the reservation.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. The "Description" element shall prevail over all other elements.

4. With respect to financial services:

(a) for prudential reasons within the context of Article 11.4 (Financial Services - Domestic Regulation), Japan shall not be prevented from taking measures such as non-discriminatory limitations on juridical forms of a commercial presence. For the same reasons, Japan shall not be prevented from applying non-discriminatory limitations concerning admission to the market of new financial services which shall be consistent with regulatory framework aimed at achieving such prudential objectives. In this context, securities firms are allowed to deal in securities defined in the relevant laws of Japan, and banks are not allowed to deal in those securities unless allowed in accordance with those laws.

(b) services supplied in the Area of Australia to the service consumer in Japan without any active marketing from the service supplier are considered as services supplied under subparagraph (n) (ii) of Article 9.2 (Trade in Services - Definitions).

5. With respect to air transport services, measures affecting traffic rights or measures affecting services directly related to the exercise of traffic rights are not listed in this Schedule, as these are excluded from the scope of Chapter 9 (Trade in Services) pursuant to subparagraph 2(a) of Article 9.1 (Trade in Services - Scope) .

6. Laws and regulations with regard to spectrum availability affecting obligations under Article 9.3 (Trade in Services - Market Access) are not included in the Schedule, taking into account the Attachment 6 of Guidelines for the Scheduling of Specific Commitments (WTO Document S$/L/92, dated 28 March 2001).

7. For the purposes of this Part:

(a) the term "JSIC" means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised on 6 November 2007; and

(b) the term "CPC" means the Provisional Central Product Classification (Statistical paper Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

# Section 2.

## 1.

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Senior Management and Boards of Directors (Article 14.8)

Description: Trade in Services and Investment

When transferring or disposing of its equity interests in, or the assets of, a state enterprise or a governmental entity, Japan reserves the right to:

(a) prohibit or impose limitations on the ownership of such interests or assets by investors of Australia or their investments;

(b) impose limitations on the ability of investors of Australia or their investments as owners of such interests or assets to

control any resulting enterprise; or

(c) adopt or maintain any measure relating to the nationality of executives, managers or members of the board of directors of any resulting enterprise.

Existing Measures:

## 2.

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)

Description: Trade in Services and Investment

1. Japan reserves the right to adopt or maintain any measure relating to investments in or the supply of telegraph services, postal services, betting and gambling services, manufacture of tobacco products, manufacture of Bank of Japan notes and minting and sale of coinage in Japan, which are restricted to designated enterprises or governmental entities.

2. In the event where the supply of telegraph services, postal services, betting and gambling services, manufacture of tobacco products, manufacture of Bank of Japan notes, and minting and sale of coinage in Japan, which are restricted to designated enterprises or governmental entities, are liberalised to those other than the designated enterprises or governmental entities, or in the event where such designated enterprises or governmental entities no longer operate on a non-commercial basis, Japan reserves the right to adopt or maintain any measure relating to those activities.

Existing Measures: Telecommunications Business Law (Law No. 86 of 1984) Supplementary Provisions, Article 5 Postal Law (Law No. 165 of 1947), Article 2 Horse Racing Law (Law No. 158 of 1948), Article 1 Law relating to Motorboat Racing (Law No. 242 of 1951), Article 2 Bicycle Racing Law (Law No. 209 of 1948), Article 1 Auto Racing Law (Law No. 208 of 1950), Article 3 Lottery Law (Law No. 144 of 1948), Article 4 The Law relating to Unit of Currency and Issue of Coin (Law No. 42 of 1987), Article 10

## 3.

Sector: All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation: Most-Favoured-Nation Treatment (Articles 9.5 and 14.4)

Description: Trade in Services and Investment

1. Japan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement in force on, or signed prior to, the date of entry into force of this Agreement.

Note: This reservation does not include the differential treatment accorded as a result of subsequent reviews, amendments, or liberalisation under the framework of any such agreement, to the extent that the differential treatment is newly accorded as a result of such subsequent reviews, amendments, or liberalisation.

2. Notwithstanding the Note to paragraph 1, Japan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Existing Measures:

## 4.

Sector: All Sectors (Unrecognised or Technically Unfeasible Services)

Sub-Sector:

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Article 9.4) Most-Favoured-Nation Treatment {Article 9.5) Local Presence (Article 9.6)

Description: Trade in Services

1. Japan reserves the right to adopt or maintain any measure relating to services other than those recognised or other than those should have been recognised owing to the circumstances at the time of entry into force of this Agreement by the Government of Japan.

Any services classified positively and explicitly in JSIC or CPC, at the time of entry into force of this Agreement should have been recognised by the Government of Japan at that time.

2. Japan reserves the right to adopt or maintain any measure relating to the supply of services in any mode of supply in which those services were not technically feasible at the time of entry into force of this Agreement.

Note: This reservation does not apply to new financial services covered by Article 11.3 (Financial Services - New Financial Services).

Existing Measures:

## 5.

Sector: Aerospace Industry Aircraft Industry

Sub-Sector: Space Industry

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

1. Japan reserves the right to adopt or maintain any measure relating to investments in the aircraft industry and the space industry.

2. Japan reserves the right to adopt or maintain any measure relating to the supply of services in the aircraft industry to the extent not inconsistent with its obligations under Articles XVI and XVII of the GATS, and the space industry, including:

(a) services based on technological inducement contracts for importing technology for development, production or use;

(b) production services on fee or contract basis;

(c) repair and maintenance services; and

(d) space transportation services.

Existing Measures:

Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Articles 27 and 30 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Articles 3 and 5 Aircraft Manufacturing Industry Law (Law No. 237 of 1952), Articles 2 through 5

## 6.

Sector: Arms and Explosives Industry Arms Industry

Sub-Sector: Explosives Manufacturing Industry

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

1. Japan reserves the right to adopt or maintain any measure relating to investment in the arms industry and the explosives manufacturing industry.

2. Japan reserves the right to adopt or maintain any measure relating to the supply of services in the arms industry and the explosives manufacturing industry, including:

(a) services based on technological inducement contracts for importing technology for development, production or use;

(b) production services on fee or contract basis; and

(c) repair and maintenance services.

Existing Measures: Ordnance Manufacturing Law (Law No. 145 of 1953), Article 5 Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Articles 27 and 30 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Articles 3 and 5

## 7.

Sector: Information and Communications

Sub-Sector: Broadcasting Industry

Industry Classification: JSIC 380 Establishments engaged in administrative or ancillary economic activities JSIC 381 Public broadcasting, except cablecasting JSIC 382 Private-sector broadcasting, except cablecasting JSIC 383 Cablecasting Market Access (Article 9.3)

Type of Reservation: National Treatment (Articles 9.4 and 14.3) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in broadcasting industry.

Existing Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Radio Law (Law No. 131 of 1950), Chapter 2 Broadcast Law (Law No. 132 of 1950), Chapters 2 and 5 through 8

## 8.

Sector: Education, Learning Support

Sub-Sector: Primary and Secondary Educational Services

Industry Classification: JSIC 811 Kindergartens JSIC 812 Elementary schools JSIC 813 Lower secondary schools JSIC 814 Upper secondary schools, secondary schools JSIC 815 School for special needs education

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Local Presence (Article 9.6)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments in, or the supply of, primary and secondary educational services.

Existing Measures: Fundamental Law of Education (Law No. 120 of 2006), Article 6 School Education Law (Law No. 26 of 1947), Article 2 Private School Law (Law No. 270 of 1949), Article 3

## 9.

Sector: Energy

Sub-Sector: Electricity Utility Industry Gas Utility Industry Nuclear Energy Industry

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Most-Favoured-Nation Treatment (Articles 9.5 and 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in the energy industry listed in the "sub-sector" element.

Existing Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Articles 27 and 30 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Articles 3 and 5 Electricity Business Law (Law No. 170 of 1964), Articles 3 and 5 Gas Business Law (Law No. 51 of 1954), Articles 3 and 5 Specified Radioactive Waste Final Disposal Act (Law No. 117 of 2000), Chapter 5

## 10.

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding Insurance)

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Article 9.4) Local Presence (Article 9.6) Trade in Services

Description: Japan reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n) (i) of Article 9.2 (Trade in Services - Definitions) for banking and other financial services, other than:

(a) securities-related transactions with financial institutions and other entities in Japan as prescribed by the relevant laws and regulations of Japan;

(b) sales of a beneficiary certificate of an investment trust and an investment security, through securities firms in Japan;

Note: Solicitation must be conducted by securities firms in Japan.

(c) the following services to a collective investment scheme; and

(i) investment advice; and

(ii) portfolio management services, excluding:

(A) trustee services; and

(B) custodial services and execution services that are not related to managing a collective investment scheme.

Note: The term "collective investment scheme" in this reservation is construed as a financial instruments business operator engaged in investment management business under the Financial Instruments and Exchange Law (Law No. 25 of 1948).

(d) provision and transfer of financial information and financial data processing as referred to in paragraph (0) of Annex 9 (Financial Services) and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in paragraph (p) of Annex 9 (Financial Services).

Note: With respect to paragraphs (a) through (d) of this reservation, Japan may require the registration or authorization of cross-border financial service suppliers of Australia and of financial instruments.

Japan reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n) (ii) of Article 9.2 (Trade in Services - Definitions) of banking and other financial services, other than the services as referred to in paragraphs (e) through (p) of Annex 9 (Financial Services).

Existing Measures: Financial Instruments and Exchange Law, Articles 29, 29bis and 61

## 11.

Sector: Financial Services

Sub-Sector: Insurance and Insurance-Related Services

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Article 9.4) Local Presence (Article 9.6) Trade in Services

Description: Japan reserves the right to adopt or maintain any measure with respect to trade in services as defined in subparagraph (n) (i) of Article 9.2 (Trade in Services - Definitions) and trade in services as defined in subparagraph (n) (ii) of Article 9.2 (Trade in Services - Definitions) for insurance and insurance-related services, other than the following services supplied by a financial service supplier of Australia established in Australia:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance, retrocession and the services auxiliary to insurance as referred to in paragraph (d) of Annex 9 (Financial Services); and

(c) insurance intermediation, such as brokerage and agency as referred to in paragraph (c) of Annex 9 (Financial Services), of insurance risks related to services listed in subparagraphs (a) and (b) of this reservation.

Note: Insurance intermediation services may be supplied only for insurance contracts allowed to be supplied in Japan.

Existing Measures: Insurance Business Law (Law No. 105 of 1995), Article 185, 277, 286 and 287

## 12.

Sector: Fisheries and Services Incidental to Fisheries

Sub-Sector: Fisheries within the Territorial Sea, Internal Waters, Exclusive Economic Zone and Continental Shelf

Industry Classification: JSIC 031 Marine fisheries JSIC 032 Inland water fisheries JSIC 041 Marine aquaculture JSIC 042 Inland water aquaculture JSIC 8093 Recreational fishing guide business

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Most-Favoured-Nation Treatment (Articles 9.5 and 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in fisheries in the territorial sea, internal waters, exclusive economic zone and continental shelf of Japan.

For the purposes of this reservation, the term "fisheries" means the work of taking and cultivation of aquatic resources, including the following fisheries related services:

(a) investigation of aquatic resources without taking such resources;

(b) luring of aquatic resources;

(c) preservation and processing of fish catches;

(d) transportation of fish catches and fish products; and

(e) provision of supplies to other vessels used for fisheries.

Existing Measures: Foreign Exchange and Foreign Trade Law {Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Law for Regulation of Fishing Operation by Foreign Nationals (Law No. 60 of 1967), Articles 3, 4 and 6 Law concerning the Exercise of Sovereign Rights concerning Fisheries in the Exclusive Economic Zones (Law No. 76 of 1996), Articles 4, 5, 7, 8, 9, 10, 11, 12 and 14

### 13.

Sector: Land Transaction

Sub-Sector:

Industry Classification:

Type of Reservation: National Treatment (Articles 9.4 and 14.3) Most-Favoured-Nation Treatment (Articles 9.5 and 14.4)

Description: Trade in Services and Investment

With respect to the acquisition or lease of land properties in Japan, prohibitions or restrictions may be imposed by Cabinet Order on foreign nationals or legal persons, where Japanese nationals or legal persons are placed under identical or similar prohibitions or restrictions in the foreign country.

Existing Measures: Alien Land Law (Law No. 42 of 1925), Article 1

### 14.

Sector: Public Law Enforcement and Correctional Services and Social Services

Sub-Sector:

Industry Classification:

Type of Reservation: Market Access (Article 9.3) National Treatment (Articles 9.4 and 14.3) Most-Favoured-Nation Treatment (Articles 9.5 and 14.4) Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8) Prohibition of Performance Requirements (Article 14.9)

Description: Trade in Services and Investment

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in public law enforcement and correctional services, and in social services such as income security or insurance, social security or insurance, social welfare, public training, health and child care.

Existing Measures:

### 15.

Sector: Security Guard Services

Sub-Sector:

Industry Classification: JSIC 923 Guard Services

Type of Reservation: Market Access (Article 9.3) National Treatment (Article 9.4) Local Presence (Article 9.6)

Description: Trade in Services

Japan reserves the right to adopt or maintain any measure relating to the supply of security guard services.

Existing Measures: Security Business Law (Law No. 117 of 1972), Articles 4 and 5

## Annex 8. Referred to in chapter 9 (trade in services)

RECOGNITION OF QUALIFICATIONS OF SERVICE SUPPLIERS

### 1. Scope

Further to Articles 9.8 (Trade in Services - Domestic Regulation) and 9.9 (Trade in Services - Recognition), this Annex shall apply to measures by a Party relating to recognition of qualifications of service suppliers obtained in the other Party by natural persons of either Party.

## 2. Provision of Information

1. Each Party shall designate one or more enquiry points that provide, on request of a service supplier of the other Party, information, including reference to the applicable legal basis, on:

(a) standards and criteria for the licensing and certification of professionals, which may include requirements regarding education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection;

(b) the appropriate competent authority or other body to consult regarding the standards and criteria referred to in subparagraph (a); and

(c) requirements and procedures to obtain, renew or retain any licence or qualification requirements, at least for regulated services.

2. Each Party shall provide the other Party with the contact details of such enquiry points.

3. On request of the other Party, a Party shall hold consultations regarding its procedures for recognising qualifications and provide any relevant information regarding recognition to the other Party.

## 3. Recognition of Qualifications

1. Each Party shall encourage the competent authorities and the professional bodies in its Area to recognise qualifications of services suppliers obtained in the other Party, based inter alia upon equivalence, for the purposes of the fulfilment, in whole or in part, of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, in particular in the sector of professional services. Such recognition could be accorded unilaterally, or through bilateral or multilateral recognition agreements or arrangements.

2. Each Party shall support mutual recognition initiatives led by professional bodies of the Party subject to its available resources.

## Annex 9. Referred to in chapter 11 (financial services)

FINANCIAL SERVICES

*Insurance and insurance-related services*

(a) direct insurance (including co-insurance):

(i) life;

(ii) non-life;

(b) reinsurance and retrocession;

(c) insurance intermediation, such as brokerage and agency;

(d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

*Banking and other financial services (excluding insurance)*

(e) acceptance of deposits and other repayable funds from the public;

(f) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(g) financial leasing;

(h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(i) guarantees and commitments;

(j) trading for own account or for account of customers, whether on an exchange, in an over- the-counter market or otherwise, the following:

(i) money market instruments (including cheques, bills, certificates of deposits);

(ii) foreign exchange;

(iii) derivative products including, but not limited to, futures and options;

(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(v) transferable securities;

(vi) other negotiable instruments and financial assets, including bullion;

(k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l) money broking;

(m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

### Annex 10. Referred to in chapter 12 (movement of natural persons)

SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS

# Part 1. Specific Commitments of Australia

1. Australia requires a natural person of Japan seeking entry and temporary stay in Australia under the provisions of Chapter 12 (Movement of Natural Persons) and this Annex to obtain, prior to entry, an appropriate visa or permit or other document or electronic authority granting entry and temporary stay and comply with any relevant requirements.

2. For the categories of specific commitments in Part 1 of this Annex Australia shall not impose or maintain any limitations on the total number of visas to be granted to natural persons in the formof numerical quotas or the requirement of an economic needs test.

Note: For the purposes of this Part, the term "actively operating" means that the enterprise concerned is engaged in substantive business operations in Australia.

## Section 1. Business Visitors of Japan

1. Entry and temporary stay shall be granted to a natural person of Japan referred to in subparagraph 3(a) for a period of up to 90 days.

2. Entry and temporary stay shall be granted to a natural person of Japan referred to in subparagraph 3(b) for a period of up to six months, with the possibility of further stay.

3. Abusiness visitor of Japan means a natural person of Japan who is:

(a) a natural person seeking to travel to Australia for business purposes, including for investment purposes, whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who must not engage in making direct sales to the general public or in supplying goods or services themselves; or

(b) a service seller, who is a natural person not based in Australia whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who is a sales representative of a service supplying enterprise, seeking entry and temporary stay for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplying enterprise.

## Section 2. Intra-corporate Transferees of Japan

1. Entry and temporary stay shall be granted to an intra-corporate transferee of Japan referred to in subparagraph 3(a) for a period of up to four years, with the possibility of further stay.

2. Entry and temporary stay shall be granted to an intra-corporate transferee of Japan referred to in subparagraph 3(b) for a period of up to two years, with the possibility of further stay.

3. An intra-corporate transferee of Japan means an employee of an enterprise of Japan established in Australia through a branch, subsidiary or affiliate which is lawfully and actively operating in Australia, who is transferred to fill a position in the branch, subsidiary or affiliate of the enterprise in Australia, and who is:

(a) an executive or a senior manager, who is a natural person responsible for the entire or a substantial part of the operations of the enterprise in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise ora department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; or

(b) a specialist, who is a natural person with advanced trade, technical or professional skills and experience who must be assessed as having the necessary qualifications, or alternative credentials accepted as meeting the domestic standards in Australia, for that occupation, and who must have been employed by the employer for not less than two years immediately preceding the date of the application for entry and temporary stay.

4. Entry and temporary stay of such a natural person who is seeking entry and temporary stay in accordance with paragraph 1 or 2 is subject to employer sponsorship. Full details of employer sponsorship requirements, including the list of eligible occupations for sponsorship, are available on the website of the Australian government department responsible for immigration matters. Employer sponsorship requirements and eligible occupations may change from time to time.

## Section 3. Investors of Japan

1. Entry and temporary stay shall be granted to an investor of Japan for a period of up to two years.

2. An investor of Japan means an executive of an enterprise headquartered in Japan who is establishing a branch or subsidiary of that enterprise in Australia, and who is anatural person that will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.

3. Entry and temporary stay of a natural person who is seeking entry and temporary stay pursuant to paragraph 1 is subject to employer sponsorship. Full details of employer sponsorship requirements, including the list of eligible occupations for sponsorship, are available on the website of the Australian government department responsible for immigration matters. Employer sponsorship requirements and eligible occupations may change from time to time.

## Section 4. Contractual Service Suppliers of Japan

1. Entry and temporary stay shall be granted to a contractual service supplier of Japan for a period of up to one year, with the possibility of further stay.

2. A contractual service supplier of Japan means a natural person of Japan:

(a) who has trade, technical or professional skills and experience and:

(i) who is an employee of an enterprise of Japan that has concluded a contract for the supply of a service within Australia and which does not have a commercial presence within Australia; or

(ii) who is engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia; and

(b) who is assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in Australia for their nominated occupation.

3. Entry and temporary stay of a natural person who is seeking entry and temporary stay pursuant to paragraph 1 is subject to employer sponsorship. Full details of employer sponsorship requirements, including the list of eligible occupations for sponsorship, are available on the website of the Australian government department responsible for immigration matters. Employer sponsorship requirements and eligible occupations may change from time to time.

## Section 5. Accompanying Spouse and Dependents

For a natural person of Japan who has been granted the right of entry and temporary stay under this Chapter for a period of longer than 12 months and who has a spouse or dependent, Australia shall, upon application, grant the accompanying spouse or dependent the right of entry and temporary stay, movement and work for an equal period to that of the natural person.

# Part 2. Specific Commitments of Japan

Japan may require a natural person of Australia seeking entry and temporary stay under the terms and conditions set out in each Section of this Part to obtain an appropriate visa or its equivalent prior to entry.

## Section 1. Short-term Business Visitors of Australia

Entry and temporary stay for a period not exceeding 90 days, which may be extended, shall be granted to a natural person of Australia who stays in Japan without acquiring remuneration from within Japan and without engaging in making direct sales to the general public or in supplying goods or services himself or herself, for the purposes of participating in business contacts including negotiations for the sale of goods or services, or other similar activities including those to prepare for establishing commercial presence in Japan.

## Section 2. Intra-corporate Transferees of Australia

1. Entry and temporary stay for a period of one or three years, which may be extended, shall be granted to a natural person of Australia who has been employed by an enterprise that supplies goods or services in Japan or by an enterprise that invests in Japan for a period of not less than one year immediately preceding the date of his or her application for entry and temporary stay in Japan, who is being transferred to its branch office or its representative office in Japan, or an enterprise constituted or organised in Japan owned or controlled by or affiliated with the aforementioned enterprise, and who will engage in one of the following activities during his or her temporary stay in Japan:

(a) activities to direct a branch office or a representative office as its head;

(b) activities to direct an enterprise as its board member or auditor;

(c) activities to direct one or more departments of an enterprise;

(d) activities which require technology or knowledge at an advanced level pertinent to physical sciences, engineering or other natural sciences, recognised under the status of residence of "Engineer" provided for in the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of 1951); or

(e) activities which require knowledge at an advanced level pertinent to human science, including jurisprudence, economics, business management and accounting, or which require ideas and sensitivity based on culture of a country other than Japan, recognised under the status of residence of "Specialist in Humanities/International Services" provided for in the Immigration Control and Refugee Recognition Act.

Note: For the purposes of this Annex, an enterprise is "affiliated" with another enterprise when the latter can significantly affect the decision making of the former on finance and business policy.

2. Activities which require technology or knowledge at an advanced level pertinent to natural or human sciences referred to in subparagraphs 1(d) and (e) mean activities in which the natural person may not be able to engage without the application

of specialised technology or knowledge of natural or human sciences acquired by him or her, by, in principle, completing college education (i.e. bachelor's degree) or higher education.

## Section 3. Investors of Australia

Entry and temporary stay for a period of one or three years, which may be extended, shall be granted to a natural person of Australia who will engage in one of the following activities during his or her temporary stay in Japan:

(a) activities to invest in business in Japan and manage such business;

(b) activities to manage business in Japan on behalf of a person other than that of Japan who has invested in such business; or

(c) conduct of business in Japan in which a person other than that of Japan has invested.

## Section 4. Natural Persons of Australia Who Engage In Professional Services

Entry and temporary stay for a period of one or three years, which may be extended, shall be granted to a natural person of Australia who is a legal, accounting or taxation service supplier qualified under the laws and regulations of Japan (as specified in the subparagraphs below) and who, not necessarily obtaining a contract to provide services, will engage in one of the following activities during his or her temporary stay in Japan:

(a) legal services supplied by a lawyer qualified as "Bengoshi";

(b) legal advisory services on law of jurisdiction where the service supplier is a qualified lawyer on condition that the service supplier is qualified as "Gaikoku-Ho-Jimu-Bengoshi";

(c) legal services supplied by a patent attorney qualified as "Benrishi";

(d) legal services supplied by amaritime procedure agent qualified as "Kaijidairishi";

(e) accounting, auditing and bookkeeping services supplied by an accountant qualified as "Koninkaikeishi";

(f) taxation services supplied by a tax accountant qualified as "Zeirishi";

(g) legal services supplied by a judicial scrivener qualified as "Shiho-Shoshi";

(h) legal services supplied by an administrative scrivener qualified as "Gyousei-Shoshi";

(i) legal services supplied by a certified social insurance and labour consultant qualified as "Shakai-Hoken-Romushi"; or

(3) legal services supplied by a land and house surveyor qualified as "Tochi-Kaoku-Chosashi".

## Section 5. Natural Persons of Australia Who Engage In Business Activities, Which Require Technology or Knowledge at an Advanced Level, on the Basis of a Personal Contract with Public or Private Organisations In Japan

1. Entry and temporary stay for a period of one or three years, which may be extended, shall be granted to a natural person of Australia who will engage in one of the following business activities, during his or her temporary stay in Japan on the basis of a personal contract with a public or private organisation in Japan:

(a) activities which require technology or knowledge at an advanced level pertinent to physical sciences, engineering or other natural sciences under the status of residence of "Engineer" provided for in the Immigration Control and Refugee Recognition Act; or

(b) activities which require knowledge at an advanced level pertinent to human science, including jurisprudence, economics, business management and accounting, or which require ideas and sensitivity based on culture of a country other than Japan, under the status of residence of "Specialist in Humanities/International Services" provided for in the Immigration Control and Refugee Recognition Act.

2. Activities which require technology or knowledge at an advanced level pertinent to natural or human sciences referred to in paragraph 1 mean activities in which the natural person may not be able to engage without the application of specialised technology or knowledge of natural or human sciences acquired by him or her, by, in principle, completing college education (i.e. bachelor's degree) or higher education.

Note: Activities that meet the requirement specified in subparagraph 1(a) include those related to architectural services, civil engineering services, and urban planning and landscape architectural services. Activities that meet the requirement specified in subparagraph 1 (b) include those related to accounting, auditing and bookkeeping services, specialty design services, trade fair and exhibition organisation services, travel agencies and tour operator services, and tourist guide services.

# Section 6. Accompanying Spouse and Children

1. Entry and temporary stay shall be granted to a spouse and children accompanying a natural person of Australia who has been granted entry and temporary stay in accordance with Sections 2 through 5, in principle for the same period as the period of temporary stay granted to the natural person, provided that such spouse and children obtain maintenance from the natural person and engage in daily activities recognised under the status of residence of "Dependent" provided for in the Immigration Control and Refugee Recognition Act.

2. A spouse who has been granted entry and temporary stay in accordance with paragraph 1 may, upon application, have his or her status of residence changed to that under which he or she is allowed to work, subject to the approval of the Government of Japan in accordance with the Immigration Control and Refugee Recognition Act.

Note: For the purposes of this Section, the terms "spouse" and "children" respectively mean a spouse or children recognised as such in accordance with the laws and regulations of Japan.

## Annex 12. Referred to in chapter 14 (investment)

EXPROPRIATION

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Paragraph 1 of Article 14.11 (Investment - Expropriation and Compensation) addresses two situations:

(a) direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by- case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(b) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(c) the character of the government action, including its objectives.

4. Except in rare circumstances, such as when an action or a series of actions by a Party is so severe in light of its purpose that it cannot be reasonably viewed as having been applied in good faith, non-discriminatory regulatory actions designed and applied by the Party for the purpose of legitimate public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute indirect expropriation.

## Implementing agreement between the government of japan and the government of australia pursuant to article 1.12 of the agreement between japan and australia for an economic partnership

PREAMBLE

The Government of Japan and the Government of Australia (hereinafter referred to as "the Parties"),

In accordance with Article 1.12 (General Provisions - Implementing Agreement) of the Agreement between Japan and Australia for an Economic Partnership (hereinafter referred to as "the Basic Agreement"),

HAVE AGREED as follows:

# Chapter 1. General Provisions

## 1.1. Scope and Relationship to the Basic Agreement

1. This Agreement sets out the details and procedures for the implementation of certain provisions of the Basic Agreement.

2. Unless otherwise provided for in this Agreement, the definitions set out in the Basic Agreement shall apply to this Agreement, mutatis mutandis.

3. Chapter 19 (Dispute Settlement) of the Basic Agreement shall apply mutatis mutandis with respect to the settlement of disputes between the Parties concerning the implementation, interpretation or application of this Agreement.

# Chapter 2. Rules of Origin

## 2.1. Issuance of Certificate of Origin

1. Signatures of the representatives of the authorised body of the exporting Party or its other certification bodies on a Certificate of Origin shall be autographed or electronically printed. Stamps or official seals of the authorised body or other certification bodies may be printed electronically as well.

2. In principle, a Certificate of Origin shall be issued by the time of shipment.

3. In exceptional cases where the Certificate of Origin has not been issued by the time of shipment, on request of the exporter or producer, the Certificate of Origin may be issued retrospectively in accordance with the domestic laws and regulations of the exporting Party within 12 months from the date of shipment, in which case it shall be necessary to indicate "ISSUED RETROSPECTIVELY" in the relevant field of the Certificate of Origin. The Certificate of Origin issued retrospectively shall indicate the date of shipment in the relevant field of the Certificate of Origin.

4. A Certificate of Origin issued retrospectively shall remain valid for one year from the date of shipment.

5. In the event of theft, loss or destruction of an issued Certificate of Origin before the expiration of its validity, the exporter, the producer or their authorised representative may request the authorised body of the exporting Party or its other certification bodies to issue a new Certificate of Origin as a duplicate of the original Certificate of Origin on the basis of the documents in their possession. The Certificate of Origin issued in this way shall bear the word "DUPLICATE OF THE ORIGINAL CERTIFICATE OF ORIGIN NUMBER_DATED_" in the relevant field of the Certificate of Origin. The date of issuance of the original Certificate of Origin shall be indicated in the new Certificate of Origin. The new Certificate of Origin shall be valid during the term of the validity of the original Certificate of Origin.

## 2.2. Modification

1. In case a Documentary Evidence of Origin contains incorrect information:

(a) the exporter, producer or their authorised representative may request the issuance of a new Certificate of Origin and the invalidation of the original Certificate of Origin; or

(b) the importer, exporter, or producer may complete a new origin certification document and withdraw the original origin certification document.

2. Notwithstanding paragraph l(a), the authorised body of the exporting Party or its other certification bodies may, in response to the request for the issuance of a new Certificate of Origin or at their own initiative, make modifications to the Certificate of Origin by striking out errors and making any additions required. Such modifications shall be certified by the authorised signature and stamp or official seal of the authorised body of the exporting Party or its other certification bodies.

3. Erasures, superimpositions and modifications other than those referred to in paragraph 2 shall not be allowed on the

issued Certificate of Origin.

## 2.3. Language of Documentary Evidence of Origin

1. The Documentary Evidence of Origin shall be completed in the English language.

2. Notwithstanding paragraph 1, in the case of importation into Japan, an importer may complete an origin certification document in the Japanese language.

## 2.4. Consignment

For the purposes of subparagraph (a) of Article 3.8 (Rules of Origin - Consignment) of the Basic Agreement, in case a good undergoes repacking, relabeling or splitting up, an importer shall provide, on request of the customs administration of the importing Party, a Documentary Evidence of Origin which is consistent with the state of consignment after such operations.

## 2.5. Minor Errors

The customs administration of the importing Party shall disregard minor errors, such as slight discrepancies or omissions, typing errors or protrusions from the designated field, provided that these minor errors are not such as to create doubts concerning the accuracy of the information included in the Documentary Evidence of Origin.

## 2.6. Communications on Origin Verification

1. For the purposes of Articles 3.21 (Rules of Origin - Origin Verification) and 3.22 (Rules of Origin - Verification Visit) of the Basic Agreement, communication between the customs administration of the importing Party and the exporters, the producers, the authorised body or the customs administration of the exporting Party shall be made through diplomatic channels unless otherwise agreed by the Parties.

2. Notwithstanding paragraph 1, for the purposes of Articles 3.21 (Rules of Origin - Origin Verification) and 3.22 (Rules of Origin - Verification Visit) of the Basic Agreement, the customs administration of the importing Party may communicate with the authorised body or the customs administration of the exporting Party and the exporter or the producer of the good who applied for the Certificate of Origin or completed the origin certification document, by any method with a confirmation of receipt, in parallel with the communications set out in paragraph 1.

3. Notwithstanding paragraphs 1 and 2, the customs administration of Australia may access the EPA CO Reference System provided by the Ministry of Economy, Trade and Industry of Japan for the purposes of verifying the authenticity of Certificates of Origin issued in Japan.

4. The language to be used for communications between the Parties in accordance with Articles 3.21 (Rules of Origin - Origin Verification) and 3.22 (Rules of Origin - Verification Visit) of the Basic Agreement shall be English.

# Chapter 3. Customs Procedures

## 3.1. Mutual Assistance

1. To the extent permitted by the competence and available resources of their respective customs administrations, the Parties shall assist each other through their customs administrations to ensure proper application of customs laws, and to prevent, investigate and combat any violation or attempted violation of customs laws.

2. The Parties shall cooperate through their customs administrations, when necessary and appropriate, in the area of research, development, and testing of new customs procedures and new enforcement aids and techniques, training activities of customs officers, and exchange of personnel between them.

## 3.2. Information and Communications Technology

1. The customs administrations of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures, including possible electronic data interchange between the customs administrations, taking into account international standards or methods developed under the auspices of international organisations or fora such as the Customs Cooperation Council, the International Organization for Standardization, and the United Nations Centre for Trade Facilitation and Electronic Business.

2. The customs administrations of the Parties shall exchange information, including best practices, on the use of information and communications technology for the purpose of improving customs procedures.

3. The introduction and enhancement of individual information and communications technology by the customs administrations of the Parties shall, to the greatest extent possible, be carried out taking into account the views expressed by relevant parties.

## 3.3. Risk Management

1. In order to facilitate customs clearance of goods traded between Australia and Japan, the customs administrations of the Parties shall continue to use risk management and promote the improvement of risk management techniques.

2. The customs administrations of the Parties shall exchange information, including best practices, on risk management techniques and other enforcement techniques.

## 3.4. Advance Rulings

1. For the purposes of paragraph 2 of Article 4.5 (Customs Procedures - Advance Rulings) of the Basic Agreement, procedures for issuing advance rulings shall ensure that:

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

(b) the customs administration of the importing Party is allowed to request, at any time during the course of the evaluation of the application for an advance ruling, the applicant to provide additional information deemed necessary for such evaluation;

(c) an advance ruling is based on the facts and circumstances presented by the applicant and any other relevant information in the possession of the customs officers responsible for the issuance of the advance rulings;

(d) the customs administration of the importing Party endeavours to issue an advance ruling within 30 days, or 90 days for customs valuation, from the date of receipt of the application with all the necessary information, and in cases where the customs administration of the importing Party fails to issue the advance ruling within the aforementioned 30 or 90 days, the applicant is informed accordingly;

(e) an issued advance ruling is provided in writing and includes the reasons for the ruling; and

(f) the conditions for the use of an issued advance ruling, such as the period of validity thereof, are specified.

2. For the purposes of paragraph 4 of Article 4.5 (Customs Procedures - Advance Rulings) of the Basic Agreement, the customs administration of the importing Party may modify or revoke the issued advance ruling in the following cases:

(a) if the advance ruling has been issued based on erroneous facts or the applicant for the advance ruling omitted to provide all relevant information;

(b) if there has been a change in the law, facts or circumstances on which the issued advance ruling was based;

(c) if there has been an amendment of the Basic Agreement or this Agreement which affects the issued advance ruling, since the issuance of the ruling;

(d) if there has been a change in the procedures relating to advance rulings which affects the issued advance ruling, since the issuance of the ruling, provided that such change is not inconsistent with the provisions of the Basic Agreement and this Agreement, including the requirements specified in paragraph 1; or

(e) if the customs administration of the importing Party has other reasonable grounds to modify or revoke the issued advance ruling.

## 3.5. Enforcement Against Illegal Trafficking

1. The Parties shall, to the extent permitted by the competence and available resources of their respective customs administrations, cooperate and exchange information in their enforcement against:

(a) the trafficking of illicit drugs and other prohibited goods; and

(b) the illegal trafficking of controlled goods.

2. The Parties shall endeavour to promote regional cooperation under the Customs Cooperation Council in combating trafficking of illicit drugs and other prohibited goods.

### 3.6. Intellectual Property Rights

The customs administrations of the Parties shall, within their respective competence and available resources, cooperate and exchange information in the application of border measures under the provisions of Article 16.18 {Intellectual Property - Enforcement - Border Measures) of the Basic Agreement.

### 3.7. Exchange of Information and Confidentiality

1. Neither Party shall use or disclose information provided pursuant to this Chapter except for the purpose of discharging the functions of its customs administration in accordance with its customs laws, or otherwise with the consent of the providing customs administration.

2. Each Party may limit the information it communicates to the other Party when the other Party is unable to give the assurance requested by the former Party with respect to the maintenance of confidentiality or the limitations of purposes for which the information will be used.

3. If a Party that requests information would be unable to comply with a similar request in case such a request were made by the other Party, the requesting Party shall draw attention to that fact in its request. Responding to such a request shall be at the discretion of the other Party.

4. Information provided by the customs administration of a Party to the customs administration of the other Party pursuant to this Chapter shall not be used by the other Party in criminal proceedings carried out by a court or a judge, unless the other Party has obtained prior written consent of the customs administration which provided the information.

5. Nothing in paragraph 4 shall prevent a Party from submitting a request for such information to the other Party through diplomatic channels or other channels established in accordance with the domestic laws and regulations of the other Party.

6. This Article shall not preclude the use or disclosure of information provided pursuant to this Chapter to the extent such use or disclosure is required by the domestic laws and regulations of the Party of the customs administration receiving the information. Such customs administration shall, wherever possible, give advance notice of any such disclosure to the customs administration providing the information.

7. The Parties may refuse to communicate information pursuant to this Chapter, where to do so would:

(a) be likely to prejudice sovereignty, public policy, security or other essential interests;

(b) violate or prejudice a legitimate industrial, commercial or professional interest;

(c) be contrary to the domestic laws and regulations of the Party receiving the request for information; or

(d) impede law enforcement.

## Chapter 4. Final Provisions

### 4.1. Implementation

This Agreement shall be implemented by the Parties in accordance with the Basic Agreement and their respective domestic laws and regulations in force.

### 4.2. Entry Into Force

This Agreement shall enter into force at the same time as the Basic Agreement and shall remain in force as long as the Basic Agreement remains in force.

### 4.3. Amendment

This Agreement may be amended by written agreement between the Parties. The Parties shall, on request of a Party,

consult as to whether to amend this Agreement.

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

DONE at Canberra on this eighth day of July in the year 2014, in duplicate in the Japanese and English languages, both texts being equally authentic.

For the Government of Australia:

Tony Abbott

For the Government of Japan:

Shinzo Abe