

# INDIA - AUSTRALIA ECONOMIC COOPERATION AND TRADE AGREEMENT

## PREAMBLE

The Government of the Republic of India ("India") and the Government of Australia ("Australia"), hereinafter referred to individually as a "Party" and collectively as "the Parties":

BUILDING upon the historic ties and friendship between the Parties, and progress made by both the Parties during their previous bilateral negotiations;

RESOLVING to strengthen their economic relations, further liberalise and expand trade and investment, enhance economic growth, create opportunities for workers and business, improving living standards, and promote sustainable growth;

RECALLING the Parties' commitment under the Joint Statement on a Comprehensive Strategic Partnership between India and Australia made in June 2020 and at the 17th India-Australia Joint Ministerial Commission in September 2021;

DECIDING to establish an agreement that will ultimately lead to the conclusion of a fuller Comprehensive Economic Cooperation Agreement;

FURTHER RESOLVING that the fuller Comprehensive [Economic Cooperation Agreement will aim to promote further economic integration to liberalise trade and investment;

RECOGNISING the need for a balanced trade agreement that encourages trade and investment flows that will benefit the economies of both the Parties;

MINDFUL of their commitments in international and regional organisations, especially aware of the increasing importance of trade for the future prosperity of the economies of the Asia-Pacific region;

ACKNOWLEDGING the important role and contribution of business in expanding trade between the Parties, and the need to further promote and facilitate cooperation and utilisation of the greater business opportunities provided by this Agreement;

DESIRING to explore new areas of economic cooperation and develop appropriate measures for closer economic cooperation between the Parties;

RECOGNISING their right to regulate in order to meet national policy objectives, and determining to preserve their flexibility in setting legislative and regulatory priorities to protect legitimate public welfare objectives; and

REAFFIRM their commitment to work together, protect, shape, and strengthen the rules-based, transparent, non-discriminatory, and inclusive multilateral trading system embodied by the WTO;

HAVE AGREED, AS FOLLOWS:

## Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

### Article 1.1. Establishment of a Free Trade Area

The Parties, consistent with Article XXIV of GATT 1994 and Article V of GATS, hereby establish a free trade area in accordance with the provisions of this India-Australia Economic Cooperation and Trade Agreement.

### Article 1.2. Objectives

The Objectives of this Agreement Are to:

- (a) establish a framework for strengthening and enhancing the economic, trade and investment relationship between the Parties;
- (b) liberalise and promote trade in goods in accordance with Article XXIV of the GATT 1994;
- (c) liberalise and promote trade in services in accordance with Article V of GATS;
- (d) improve the efficiency and competitiveness of their manufacturing and services sectors and to expand trade and investment between the Parties; and
- (e) facilitate, enhance and explore new areas of economic cooperation and develop appropriate measures for closer economic cooperation between the Parties.

### **Article 1.3. General Definitions**

For the purposes of this Agreement, unless otherwise specified:

- 1. (a) Agreement means the India-Australia Economic Cooperation and Trade Agreement;
- 2. (b) Anti-Dumping Agreement means the Agreement on Implementation of Article VI of GATT 1994, set out in Annex 1A to the WTO Agreement;
- 3. (c) Agreement on Agriculture means the Agreement on Agriculture, set out in Annex 1A to the WTO Agreement;
- 4. (d) Customs Valuation Agreement means the Agreement on Implementation of Article VII of GATT 1994, set out in Annex 1A of the WTO Agreement;
- 5. (e) days means calendar days, including weekends and holidays;
- 6. (f) GATS means the General Agreement on Trade in Services, set out in Annex 1B of the WTO Agreement;
- 7. (g) GATT 1994 means the General Agreement on Tariffs and Trade 1994, set out in Annex 1A of the WTO Agreement;
- 8. (h) goods means any merchandise, product, article or material;
- 9. (i) Harmonized System ("HS") means the Harmonized Commodity Description and Coding System defined in the International Convention on the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, and legal notes which includes Section Notes and Chapter Notes, as adopted and implemented by the Parties in their respective laws;
- 10. (j) IMF Articles of Agreement means the Articles of Agreement of the International Monetary Fund adopted at Bretton Woods on 22 July 1944;
- 11. (k) Joint Committee means the Joint Committee established pursuant to Article 12.1 (Establishment of the Joint Committee - Administrative and Institutional Provisions);
- 12. (l) measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- 13. (m) originating goods means goods that qualify as originating in accordance with Chapter 4 (Rules of Origin);
- 14. (n) perishable goods means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions;
- 15. (o) Safeguards Agreement means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement;
- 16. (p) SCM Agreement means Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement;
- 17. (q) Subcommittee on Trade in Goods means the subcommittee established pursuant to Article 2.12 (Subcommittee on Trade in Goods - Trade in Goods);
- 18. (r) Subcommittee on Trade in Services means subcommittee established pursuant to Article 8.24 (Subcommittee on Trade in Services - Trade in Services);
- 19. (s) territory means:

(i) in respect of Australia, the territory 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 sovereignty, sovereign rights or jurisdiction in accordance with international law including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982; and

(ii) in respect of India, the territory of the Republic of India, in accordance with the Constitution of India, including its land territory, its territorial waters, and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights, and/or exclusive jurisdiction, in accordance with its laws and regulations in force, and international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay, 10 December 1982.

(t) WTO means the World Trade Organization; and

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

## **Article 1.4. Relation to other Agreements**

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

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

# **Chapter 2. TRADE IN GOODS**

## **Article 2.1. Definitions**

For the purposes of this Chapter:

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

(b) customs duty means any duty or charge of any kind imposed on or in connection with the importation of a good, and any cess, surtax or surcharge imposed in connection with such importation, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;

(ii) fee or other charge in connection with the importation commensurate with the cost of services rendered; or

(iii) anti-dumping or countervailing duty applied pursuant to the laws of a Party and applied consistently with the provisions of Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement;

(c) goods of a Party means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of a Party.

## **Article 2.2. Scope**

Unless otherwise provided in this Agreement, this Chapter shall apply to trade in goods of a Party.

## **Article 2.3. Elimination or Reduction of Customs Duties**

1. Unless otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Each Party shall progressively eliminate or reduce its customs duties on originating goods in accordance with its Schedule

in Annex 2A (Tariff Commitments).

3. On request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules in Annex 2A (Tariff Commitments). An agreement by the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined in accordance with their Schedules in Annex 2A (Tariff Commitments) for that good when approved by each Party in accordance with its applicable domestic requirements, including internal legal procedures.

4. A Party may at any time unilaterally accelerate the elimination of customs duties set out in its Schedule in Annex 2A (Tariff Commitments) on originating goods of the other Party. The Party shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

5. If the most-favoured-nation rate of customs duty applied by a Party on a particular good is lower than the rate of customs duty provided for in its Schedule in Annex 2A (Tariff Commitments), that Party shall apply the lower rate to the originating good of the other Party.

## **Article 2.4. National Treatment**

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

## **Article 2.5. Administrative Fees and Formalities**

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

2. Neither Party shall require consular transactions, including any related fees and charges, in connection with the importation of any good of the other Party.

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

## **Article 2.6. Customs Valuation**

Each Party shall determine the customs value of goods traded between the Parties in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement.

## **Article 2.7. Classification of Goods**

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

## **Article 2.8. Import and Export Restrictions**

Unless otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, and to this end Article XI of GATT 1994, is incorporated into and made part of this Agreement, *mutatis mutandis*.

## **Article 2.9. Application of Non-Tariff Measures**

1. A Party shall not adopt or maintain any non-tariff measure on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with the WTO Agreement or this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 1 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 2.10. Publication and Administration of Trade Regulations**

1. Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings respecting any matter covered by this Chapter. To this end, Article X of GATT 1994 is incorporated into and made 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. Agricultural Cooperation**

The Parties shall undertake cooperation and capacity building activities in areas related to agriculture and agricultural trade for mutual benefit.

## **Article 2.12. Subcommittee on Trade In Goods**

1. The Parties hereby establish a Subcommittee on Trade in Goods ("the Subcommittee on Goods") composed of government representatives of each Party.
2. The Subcommittee on Goods' functions shall include:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) promoting trade in both agricultural and non-agricultural goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement, and addressing non-tariff barriers to trade in goods between the Parties;
  - (c) addressing issues relating to the administration and operation of tariff rate quotas; and
  - (d) reporting on its activities and work programme to the Joint Committee.
3. The Subcommittee on Goods shall meet within one year of the date of entry into force of this Agreement and thereafter at such times as the Parties may agree. Meetings may occur in person, or by any other means as mutually determined by the Parties.
4. The Subcommittee on Goods may establish technical working groups to consider any matter relating to this Chapter that creates disruption or may affect trade in goods between the Parties. Any technical working group established shall report to the Subcommittee on Goods on the progress of its work.

# **Chapter 3. TRADE REMEDIES**

## **Section A. Anti-dumping, Subsidies and Countervailing Measures**

### **Article 3.1. Anti-Dumping Measures**

Nothing in this Agreement affects the rights and obligations of the Parties under Article VI of GATT 1994 and the Anti-Dumping Agreement with regard to the application of anti-dumping measures.

### **Article 3.2. Subsidies and Countervailing Measures**

Nothing in this Agreement affects the rights and obligations of the Parties under Article VI of GATT 1994 and the SCM Agreement with regard to the application of countervailing duty measures.

### **Article 3.3. Lesser Duty Rule**

If a Party takes a decision to impose anti-dumping or countervailing duty, it may consider applying a duty less than the margin of dumping or the amount of the subsidy, as relevant, where such lesser duty would be adequate to remove the injury to the domestic industry in accordance with the Party's laws and regulations.

## **Section B. Global Safeguard Measures**

## **Article 3.4. Global Safeguard Measures**

Nothing in this Agreement affects the rights and obligations of the Parties under Article XIX of GATT 1994, the Safeguards Agreement and the Agreement on Agriculture.

## **Section C. Bilateral Safeguard Measures**

### **Article 3.5. Definitions**

For the purposes of this Section:

- (a) customs duty reduction or elimination means any customs duty reduction or elimination in accordance with paragraph 2 of Article 2.3 (Elimination or Reduction of Customs Duties - Trade in Goods);
- (b) domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of the good;
- (c) serious injury means a significant overall impairment in the position of a domestic industry;
- (d) threat of serious injury means serious injury that is clearly imminent, in accordance with paragraph 1 of Article 3.7 (Conditions and Limitations). A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and
- (e) transition period means, in relation to a good, the period from the date of entry into force of this Agreement until fourteen (14) years after the date on which the elimination or reduction of the customs duty on that good is completed.

### **Article 3.6. Application of a Bilateral Safeguard Measure**

1. If as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to be a cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may during the transition period, apply one of the following bilateral safeguard measures:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
  - (i) the most-favoured-nation applied rate of customs duty on the good in effect at the time the bilateral safeguard measure is applied; and
  - (ii) the most-favoured-nation applied rate of customs duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

2. Neither Party shall apply or maintain a bilateral safeguard measure or provisional bilateral safeguard measure under this Chapter to any good imported under a tariff rate quota established by the Party under this Agreement.

### **Article 3.7. Conditions and Limitations**

1. A Party may apply a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with the procedures and requirements provided for in Articles 3 and 4.2 of the Safeguards Agreement, and to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

2. A Party shall notify the other Party immediately in writing upon it initiating an investigation described in paragraph 1 and shall provide adequate opportunity for prior consultations with the other Party in advance of applying a bilateral safeguard measure, with a view to reviewing the information arising from the investigation and exchanging views on the bilateral safeguard measure.

3. Each Party shall ensure that its competent authorities complete any such investigation within one year of the date of its initiation.

4. Neither Party shall apply or maintain a bilateral safeguard measure:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry;

(b) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of the applying Party determine, in conformity with the procedures specified in this Article, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting.

5. Regardless of its duration, any bilateral safeguard measure or provisional bilateral safeguard measure shall terminate at the end of the transition period.

6. No bilateral safeguard measure shall be applied again to the import of a good which has been previously subject to such a measure, for a period of time equal to that during which such measure was applied, or one year since the expiry of such measure, whichever is longer.

7. Notwithstanding the provisions of paragraph 6, a bilateral safeguard measure with a duration of 180 days or less may be applied again to the import of a good if:

(a) at least one year has elapsed since the date of introduction of a bilateral safeguard measure on the import of that good; and

(b) a bilateral safeguard measure has not been applied on the same good more than twice in the five-year period immediately preceding the date of the first imposition of the bilateral safeguard measure.

8. A Party shall not apply a bilateral safeguard measure or provisional bilateral safeguard measure on a good that is subject to a global safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement. A Party shall not continue to maintain a bilateral safeguard measure or provisional bilateral safeguard measure on a good that becomes subject to a global safeguard measure.

9. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is more than one year, the Party that applies the measure shall progressively liberalise it at regular intervals during its period of application.

10. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect but for the bilateral safeguard measure, according to the Party's Schedule to Annex 2A (Tariff Commitments).

### **Article 3.8. Provisional Bilateral Safeguard Measure**

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a provisional bilateral safeguard measure pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and have caused serious injury, or threat of serious injury, to its domestic industry.

2. Before applying a provisional bilateral safeguard measure the applying Party shall notify the other Party of the preliminary determination and shall immediately initiate consultations after applying the provisional bilateral safeguard measure.

3. The duration of any provisional bilateral safeguard measure shall not exceed 200 days, during which time the applying Party shall comply with the requirements of Article 3.6 (Application of a Bilateral Safeguard Measure) and Article 3.7 (Conditions and Limitations) and Article 3.9 (Compensation).

4. The applying Party shall promptly refund any duty collected as a result of a provisional bilateral safeguard measure if the investigation conducted does not result in a finding that the requirements of Article 3.6 (Application of a Bilateral Safeguard Measure) have been met. The duration of any provisional bilateral safeguard measure shall be counted as part of the period described in subparagraph 4(b) of Article 3.7 (Conditions and Limitations).

### **Article 3.9. Compensation**

A Party applying a bilateral safeguard measure shall, in consultation with the other Party, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or are equivalent to the

value of the additional duties expected to result from the bilateral safeguard measure. The Party shall provide an opportunity for such consultations no later than 30 days after the application or the extension of the bilateral safeguard measure.

If the consultations under paragraph 1 do not result in the Parties agreeing on trade liberalising compensation within 30 days, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects.

The right to take action referred to in paragraph 2 shall not be exercised for the first two years that the measure is in effect, which includes the period of time that any provisional bilateral safeguard measure has been in effect.

### **Article 3.10. Agricultural Safeguards**

Originating agricultural goods from a Party shall not be subject to any duties applied by a Party pursuant to a special safeguard taken under the Agreement on Agriculture.

### **Article 3.11. Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 13 (Dispute Settlement) for any matter arising under Section A or B.

## **Chapter 4. RULES OF ORIGIN**

### **Article 4.1. Definitions and Interpretation**

For the Purposes of this Chapter:

(a) aquaculture including mariculture, means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock, including seed stock imported from non-parties, such as eggs, fry, fingerlings, or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

(b) CIF value or Cost, Insurance and Freight value means the price actually paid or payable to the exporter for a good when the good is loaded out of the carrier, at the port of importation, including the cost of the good, insurance, and freight necessary to deliver the good to the named port of destination;

(c) competent authority means for India, the Department of Commerce;

(d) customs administration means:

(i) for Australia, the Department of Home Affairs and its successors;

(ii) for India, the Central Board of Indirect Taxes and Customs (CBIC);

(e) FOB value or Free-On-Board value means the price actually paid or payable to the exporter for a good when the good is loaded onto the carrier at the named port of exportation, including the cost of the good and all costs necessary to bring the good onto the carrier;

(f) fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(g) Generally Accepted Accounting Principles means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

(h) indirect materials means a material used in the production, testing or inspection of a good but not physically incorporated into the good; or a material used in the maintenance of buildings or the operation of equipment, associated with the production of a good, including:

(i) fuel, energy, catalysts and solvents;



- (ii) equipment, devices and supplies used to test or inspect the good;
  - (iii) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (iv) tools, dies and moulds;
  - (v) spare parts and materials used in the maintenance of equipment and buildings;
  - (vi) lubricants, greases, compounding materials and \_ other materials used in production or used to operate equipment and buildings; and
  - (vii), any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;
- (i) issuing body or authority (as appropriate) means the body or authority designated by each Party for issuance of Certificates of Origin, as notified from time to time;
- (j) material means a good that is consumed in the production, physically incorporated or used in the production of another good;
- (k) non-originating good or non-originating material means a good or material that does not qualify as originating in accordance with this Chapter, which includes a good or material of undetermined origin;
- (l) originating good or originating material means a good or material that qualifies as originating in accordance with this Chapter;
- (m) packing materials and containers for transportation and shipment means goods used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;
- (n) producer means a person who engages in the production of a good;
- (o) production means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling a good;
- (p) preferential tariff treatment means the customs duty rate applicable to an originating good, pursuant to each Party's Schedule in Annex 2A (Tariff Commitments);
- (q) QVC is the qualifying value content of a good, expressed as a percentage;
- (r) value of non-originating materials is the value of non-originating materials, including materials of undetermined origin, used in the production of the good; and
- (s) value of originating materials is the value of originating materials used in the production of the good in the territory of one or both Parties.

2. For the purposes of this Chapter:

- (a) the basis for tariff classification is the Harmonized System; and
- (b) any cost and value referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

## **Article 4.2. Originating Goods**

Except as otherwise provided in this Chapter, a good shall be regarded as originating if it is:

- (a) wholly obtained or produced in the territory of one or both of the Parties, as provided for in Article 4.4 (Wholly Obtained or Produced Goods); or
- (b) produced entirely in the territory of one or both of the Parties, using non-originating materials, provided the good satisfies all applicable requirements of Article 4.3 (Goods not Wholly Produced or Obtained) or Annex 4B (Product Specific Rules of Origin).

## **Article 4.3. Goods Not Wholly Produced or Obtained**

1. For goods that do not have originating status under subparagraph (a) of Article 4.2 (Originating Goods) and are not

covered under Annex 4B (Product Specific Rules of Origin), a good shall be considered originating if all non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level of the Harmonized System, and the QVC of the good is not less than 35 per cent of the FOB value as per build-up formula or 45 per cent of the FOB value calculated as per build-down formula under Article 4.6 (Calculation of Qualifying Value Content), provided that the final production process of the manufacture of the good is performed within the territory of the exporting Party.

2. Upon the entry into force of this Agreement, the Parties shall enter into negotiations, on a without prejudice basis, on the following:

(a) a Product Specific Rules Schedule that shall contain product specific rules for all tariff lines in the Harmonized System; and

(b) appropriate amendments to this Chapter relevant to that Schedule including:

(i) a provision that would confer origin on goods produced entirely in the territory of one or both of the Parties, exclusively from originating materials; and

(ii) a provision that would regard a good or material as originating if it is produced in the territory of one or both of the Parties by one or more producers, provided that it satisfies the requirements of Article 4.2 (Originating Goods) and all other applicable requirements in this Chapter.

Upon the conclusion of the negotiations referred to paragraph 2, the Parties agree to incorporate the negotiated Product Specific Rules Schedule in Annex 4B (Product Specific Rules of Origin) and make any appropriate amendments to this Chapter, in accordance with Article 14.3 (Amendments - Final Provisions).

## **Article 4.4. Wholly Obtained or Produced Goods**

For the purposes of subparagraph (a) of Article 4.2 (Originating Goods), the following goods shall be considered to be wholly obtained or produced in the territory of one or both of the Parties if they are:

(a) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi, algae and live plants grown and harvested, picked, or gathered there;

(b) live animals born and raised there;

(c) goods obtained from live animals born and raised there;

(d) goods obtained by hunting, trapping, fishing, aquaculture, gathering, or capturing there;

(e) minerals and other naturally occurring substances, not included in subparagraphs (a) to (d), extracted or taken from the soil or waters, seabed or subsoil beneath the seabed there;

(f) fish, shellfish, and other marine life extracted or taken from the sea, seabed or subsoil beyond the outer limits of the territories of each Party and, in accordance with international law, outside the territorial sea of non-parties by vessels that are registered, listed or recorded with a Party and entitled to fly the flag of that Party;

(g) goods produced on board a factory ship registered, listed or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in subparagraphs (f);

(h) goods other than fish, shellfish and other marine life extracted or taken from the sea-bed or subsoil beneath the sea-bed outside the territorial sea of a Party, provided that the Party has rights to exploit such sea-bed or subsoil beneath the sea-bed in accordance with relevant international law;

(i) waste and scrap derived from production or consumption there, provided that such goods are fit only for the recovery of raw materials, or for recycling purposes; and

(j) goods produced in the territory of one or both Parties solely from products referred to in subparagraphs (a) to (i) or from their derivatives at any stage of production.

## **Article 4.5. Accumulation**

Goods and materials originating exclusively in the territory of a Party under the terms of this Agreement, and incorporated in the production of a good in the territory of the other Party shall be considered to originate in the territory of the other Party.

## Article 4.6. Calculation of Qualifying Value Content

1. Where a qualifying value content requirement is specified in this Chapter, including related Annexes, to determine whether a good is originating, the qualifying value content shall be calculated using one of the following methods:

(a) Build-Down Formula based on the value of non-originating materials

[QVC = FOB Value - Value of Non Originating materials / FOB Value x 100]

(b) Build-up Formula: based on the value of originating materials

[QVC = Value of Originating materials / FOB Value x 100]

2. All values for the purposes of calculating qualifying value content shall be determined in accordance with the Customs Valuation Agreement.

3. All costs shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of a Party where the good is produced.

4. If a non-originating material is used in the production of a good, the following may be added to the value of originating materials in determining whether the good meets the QVC requirement:

(a) the value of production of the non-originating materials undertaken in the territory of one or both Parties; and

(b) the value of originating materials used in the production of the non- originating material in the territory of one or both Parties by one or more producers.

5. The value of the materials used in production shall be:

(a) for imported materials, the CIF value;

(b) for materials obtained within the territory of a Party:

(i) the price paid or payable by the producer in the Party where the producer is located;

(ii) the value as determined for an imported material in subparagraph (a); or

(iii) the earliest ascertainable price paid or payable in the territory of the Party; and

(c) for materials that are self-produced, all the costs incurred in the production of the material, which includes general expenses.

6. For originating materials, the following expenses may be added to the value of the material, if not included under paragraph 5:

(a) the costs of freight, insurance, packing, and other transport-related costs incurred in transporting the good to the location of the producer of the good;

(b) duties, taxes, and customs brokerage fees on the material, paid in the territory of a Party, other than duties that are waived, refunded, refundable, or otherwise recoverable, which includes credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by- product.

7. For non-originating materials or materials of undetermined origin, the following expenses may be deducted from the value of the material:

(a) the costs of freight, insurance, packing, and other transport-related costs incurred in transporting the good to the location of the producer of the good;

(b) duties, taxes, and customs brokerage fees on the material, paid in the territory of a Party, other than duties that are waived, refunded, refundable, or otherwise recoverable, which includes credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by- product.

8. Where the expenses listed in paragraphs 5 through 7 are unknown or evidence is not available, then no adjustment is

allowed for those costs.

## **Article 4.7. Minimal Operations**

1. Notwithstanding any provisions of this Chapter, the following operations when undertaken on non-originating materials to produce a good shall be considered as insufficient working or processing to confer on that good the status of an originating good:

- (a) preserving operations to ensure that the good remains in good condition for the purposes of transport or storage;
- (b) packaging or presenting goods for transportation or sale;
- (c) simple (1) processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling, or uncoiling;
- (d) for textiles: attaching accessory articles such as straps, beads, cords, rings and eyelets; ironing or pressing of textiles;
- (e) affixing or printing of marks, labels, logos, or other like distinguishing signs on goods or their packaging;
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (g) disassembly of products into parts;
- (h) slaughtering (2) of animals;
- (i) simple painting and polishing operations;
- (j) simple peeling, stoning, or shelling;
- (k) simple mixing (3) of goods, whether or not of different kinds; or
- (l) any combination of two or more operations referred to in subparagraphs (a) through (k).

2. All operations carried out in a Party on a given good shall be considered together when determining whether the working or processing undergone by that good is to be regarded as insufficient within the meaning of paragraph 1.

(1) For the purposes of this Article, "simple" describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.

(2) For the purposes of this Article, "slaughtering" means the mere killing of animals.

(3) For the purposes of this Article, "simple mixing" describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include a chemical reaction. Chemical reaction means a process, including a biochemical process, which results in a molecule with a new structure, by breaking intra-molecular bonds and by forming new intra-molecular bonds, or by altering the spatial arrangement of atoms in a molecule.

## **Article 4.8. De Minimis**

1. A good, except for those falling within Chapters 50 through 63 of the Harmonized System, that does not satisfy a change in tariff classification pursuant to Annex 4B (Product Specific Rules of Origin) shall nonetheless be an originating good if the value of non-originating materials used in the production of the good does not exceed 10 per cent of the FOB value of the good as defined under Article 4.1 (Definitions and Interpretation) and the good meets all of the other applicable requirements in this Chapter.

2. A good classified in Chapters 50 through 63 of the Harmonized System that does not qualify as originating good because certain non-originating materials used in the production of the good do not fulfil the requirements set out in Annex 4B (Product Specific Rules of Origin), shall nonetheless be an originating good if the total weight of all such material does not exceed 10 per cent of the total weight of that good.

3. If a good described in paragraph 1 or 2 is also subject to a qualifying value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable qualifying value content

requirement.

## **Article 4.9. Treatment of Packaging Materials and Containers for Retail Sale**

1. Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 4B (Product Specific Rules of Origin), or whether the good is wholly obtained or produced.
2. If the good referred to in paragraph 1 is subject to the qualifying value content requirement, the value of such packaging materials and containers shall be taken into account as value of the originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

## **Article 4.10. Treatment of Packing Materials and Containers for Transportation and Shipment**

Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining whether the good is originating.

## **Article 4.11. Accessories, Spare Parts and Tools**

1. The origin of the accessories, spare parts or tools presented with a good:
  - (a) shall be disregarded if the good is subject to a change in tariff classification requirement or production process requirements for origin specified in Annex 4B (Product Specific Rules of Origin), and
  - (b) 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, if the good is subject to a qualifying value content requirement.
2. Paragraph 1 of this Article shall only apply where:
  - (a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and
  - (b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

## **Article 4.12. Indirect Materials**

An indirect material shall be considered to be originating without regard to where it is produced.

## **Article 4.13. Fungible Goods**

1. Fungible goods or materials shall be treated as originating based on the:
  - (a) physical separation of the good or material; or
  - (b) use of any inventory management method recognised in the Generally Accepted Accounting Principles of the Party where the production is performed, if originating and non-originating fungible goods or materials are comingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.
2. An inventory management system under subparagraph 1 (a) must ensure that no more goods or materials receive originating status than would have been the case if the fungible goods or materials had been physically segregated.

## **Article 4.14. Consignment**

1. A good shall retain its originating status as determined under Article 4.2 (Originating Goods) if either of the following conditions have been met:
  - (a) the good has been transported directly from the exporting Party to the importing Party; or

(b) the good has been transported through one or more non-Parties provided that the good has not undergone any subsequent production or other operation outside the territories of the Parties other than unloading, reloading, storing, repacking, relabelling in accordance with the laws and regulations of the importing Party, splitting up of loads, consolidation of loads or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party and the good has remained under customs control in the non-Parties.

2. Compliance with subparagraph 1(b) shall be evidenced by presenting the customs administration of the importing Party either with customs documents of the non-Parties, or with any other appropriate documentation on request of the customs administration of the importing Party.

3. Appropriate documentation referred to in paragraph 2 may include commercial shipping or freight documents such as airway bills, bills of lading, multimodal or combined transport documents, a copy of the original commercial invoice in respect of the good, financial records, a non-manipulation certificate, or other relevant supporting documents as may be requested by the customs administration of the importing Party.

## **Article 4.15. Certificate of Origin**

1. The Certificate of Origin shall be issued by an issuing body or authority, as appropriate, of an exporting Party, upon an application by an exporter, producer, or their authorised representative. It shall bear an authorised signature and official seal of the issuing body or authority, as appropriate. The signature and seal shall be applied manually or electronically. A Certificate of Origin shall:

(a) be in writing or electronic format;

(b) be in the English language;

(c) specify that the good is originating and meets the requirements of this Chapter;

(d) contain information, as set out in Annex 4A (Minimum Information Requirements) and presented in the same format as provided for in Annex 4A (Minimum Information Requirements);

(e) remain valid for 12 months from the date on which it is completed or issued;

(f) apply to single importation of one or multiple goods provided that each good qualifies as an originating good separately in its own right; and

(g) bear a unique Certificate of Origin number, affixed by the issuing body or authority, as appropriate, in the exporting Party.

4. A Certificate of Origin may indicate two or more invoices issued for single importation.

5. The Parties shall commence a review of this Article on completion of 2 years from the date of entry into force of this Agreement. This review will consider the introduction of Declaration of Origin by an approved exporter as a Proof of Origin.

## **Article 4.16. Certification Procedures**

1. The Certificate of Origin shall be forwarded by the exporter or producer to the importer. The customs administration may require the original copy.

2. Neither erasures nor superimposition shall be allowed on the Certificate of Origin. Any alterations shall be made by striking out the erroneous material and making any addition(s) that may be required. Such alterations shall be approved by a person authorised to sign the Certificate of Origin and certified by the appropriate issuing body or authority. A new certificate may be issued to replace the erroneous one. Unused spaces shall be crossed out to prevent any subsequent addition(s).

3. The Certificate of Origin shall be issued prior to or within 5 working days of the date of exportation. However, under exceptional cases, where a Certificate of Origin has not been issued at the time of exportation or within 5 working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively, bearing the words "ISSUED RETROSPECTIVELY" in the Certificate of Origin, with the issuing body or authority also recording the reasons in writing on the exceptional circumstances due to which the certificate was issued retrospectively. The Certificate of Origin can be issued retrospectively no later than 12 months from the date of shipment.

4. In cases of theft, loss or accidental destruction of a Certificate of Origin, the exporter, producer or an authorised

representative thereof may, within the term of validity of the original Certificate of Origin, make a written request to the issuing body or authority that issued the original certificate for a certified copy. The certified copy shall bear the words "CERTIFIED TRUE COPY". The certified copy shall have the same term of validity as the original Certificate of Origin.

#### **Article 4.17. Application for Certificate of Origin**

1. For the issue of a Certificate of Origin, the exporter or producer of the goods shall present, or submit electronically through the approved channel, to the issuing body or authority of the exporting Party the following:

(a) an application, together with appropriate supporting information and documents for proving origin, including but not limited to, the breakup of costs and any other relevant elements such as profits;

(b) information outlined in Annex 4A (Minimum \_ Information Requirements) and consistent with the description in the invoice; and

(c) the corresponding commercial invoice and other documents necessary to establish the origin of the good.

2. Multiple items declared on the same Certificate of Origin shall be allowed, provided that each item must qualify separately in its own right.

3. Each Party may, in accordance with its domestic procedures and if it deems appropriate, allow its issuing body or authority to apply a risk management system to selectively conduct pre-export verification of the minimum information requirements filed by an exporter or producer.

4. The issuing body or authority, as appropriate, may, to the best of their competence and ability, carry out proper examination of each application for a Certificate of Origin to ensure that:

(a) the application has been duly completed and signed by the authorised signatory;

(b) the origin of the good is in conformity with the requirements of this Chapter; and

(c) the information furnished in the Certificate of Origin corresponds to supporting information and documents submitted.

#### **Article 4.18. Non-Party Invoicing**

1. An importing Party shall not deny a claim for preferential tariff treatment for the sole reason that an invoice was not issued by the exporter or producer provided that the goods meet the requirements of this Chapter.

2. The exporter of the goods shall indicate "non-party invoicing" and the name, address, and country of the company issuing the invoice shall appear in a separate column in the Certificate of Origin.

#### **Article 4.19. Authorities**

1. The Certificate of Origin shall be issued by an issuing body or authority, as appropriate.

2. Each Party shall within 30 days of the date of entry into force of this Agreement inform the customs administration of the other Party of the issuing body or authority, as appropriate, and contact details of the authorised persons of such body or authority, designated to issue Certificates of Origin under this Agreement.

3. The Parties shall exchange specimen seals and signatures of the authorised signatories issuing Certificates of Origin.

4. Each Party shall promptly notify the other Party of any change to its issuing body or authority, as appropriate, and the names, designations, addresses, specimen signatures of authorised persons or seals of such issuing body or authority.

#### **Article 4.20. Claims for Preferential Tariff Treatment**

1. Except as otherwise provided in Article 4.27 (Denial of Preferential Tariff Treatment), each Party shall grant preferential tariff treatment in accordance with this Chapter to an originating good on the basis of a Certificate of Origin.

2. Unless otherwise provided in this Chapter, for the purposes of claiming preferential tariff treatment, an importing Party shall provide that an importer:

(a) make a declaration that the good qualifies as an originating good;

- (b) have a valid Certificate of Origin in its possession at the time the declaration referred to in subparagraph (a) is made;
  - (c) provide a copy of the Certificate of Origin to the importing Party if required by the Party; and
  - (d) if required by an importing Party, demonstrate that the requirements in Article 4.14 (Consignment) have been satisfied.
3. An importing Party may require that an importer who claims preferential tariff treatment shall provide documents and other information to support the claim.

#### **Article 4.21. Record Keeping Requirements**

1. Each Party shall require that:

- (a) its exporters, producers and issuing bodies or authorities, as appropriate, retain for at least 5 years from the date of issuance of the Certificate of Origin, or a longer period in accordance with its relevant laws and regulations, all records necessary to prove that the good for which the Certificate of Origin was issued was originating; and
  - (b) its importers retain, for at least 5 years from the date of importation of the good, or a longer period in accordance with its relevant laws and regulations, all records necessary to prove that the good for which preferential tariff treatment was claimed was originating.
2. The records referred to in paragraph 1 may be maintained in any medium that allows for prompt retrieval, including in digital, electronic, optical, magnetic, or written form, in accordance with the Party's laws and regulations.

#### **Article 4.22. Waiver of Certificate of Origin**

A Party shall not require a Certificate of Origin if the importing Party has waived the requirement or does not require the importer to present a Certificate of Origin as per their national laws.

#### **Article 4.23. Obligations of Exporter or Producer**

1. The exporter or producer shall submit the minimum \_ information requirements, as referred to in Annex 4A (Minimum Information Requirements), and supporting information and documents, as referred to in Article 4.17 (Application for Certificate of Origin) for the issuance of a Certificate of Origin pursuant to the procedure established by the issuing body or authority, as appropriate, in the exporting Party, consistent with the provisions of this Agreement.
2. Any exporter or producer who incorrectly represents any material information relevant to the determination of origin of a good may be liable to be penalised under the laws and regulations of the exporting Party.
3. The exporter or producer shall keep the minimum required information, and supporting documents for a period no less than 5 years, starting from the end of the year of the date of issue of the Certificate of Origin.
4. For the purpose of determination of origin, the exporter or producer applying for a Certificate of Origin under this Agreement shall maintain appropriate commercial accounting records for the production and supply of goods (as well as relevant records and documents from the suppliers) qualifying for preferential treatment and keep all commercial and customs documentation relating to the material(s) used in the production of the good, including but not limited to breakup of costs relating to material(s), labour, other overheads and any other relevant elements such as profits and related components for at least 5 years from the date of issue of the Certificate of Origin. The exporter or producer shall, upon request of the issuing body or authority, of the exporting Party or the customs administration of the importing Party, make available records for inspection to enable verification of the origin of the good.
5. If the exporter or producer has reason(s) to believe that the Certificate of Origin is based on incorrect information that could affect the accuracy or validity of the Certificate of Origin, they shall be obliged to immediately notify the importer, the issuing body or authority and the customs administration of the importing Party in writing of any change affecting the originating status of each good to which the Certificate of Origin applies.

#### **Article 4.24. Post Importation Claim for Preferential Tariff Treatment**

1. Each Party shall provide for an importer of a Party to apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into its territory.



2. As a condition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer, not later than 12 months after the date of importation or a longer period if specified in the importing Party's laws and regulations, to:

(a) make a claim for preferential tariff treatment;

(b) where applicable, provide a copy of Certificate of Origin; and

(c) provide such other documentation relating to the importation of the good as the importing Party may require.

3. Each Party shall provide that if the importer has reason(s) to believe that the claim for preferential tariff treatment is based on incorrect information that could affect the accuracy or validity of the Certificate of Origin, the importer shall correct the importation document, and pay any customs duty and, if applicable, penalties owed.

4. When considering imposing a penalty in relation to a claim for preferential tariff treatment, the customs administrations of the Parties are encouraged to consider a voluntary notification given prior to the discovery of that error by the Party and in accordance with paragraph 3 or paragraph 5 of Article 4.23 (Obligations of Exporter or Producer), as a mitigating factor, provided that in the case of a notification given by an importer, the importer corrects the error and repays any duties owed.

## **Article 4.25. Verification of Origin**

### **Initiating a Verification of Origin**

1. For the purposes of determining whether goods imported into the territory of a Party from the territory of the other Party qualify as originating goods, the customs administration of the importing Party may conduct a verification process by proceeding in sequence, when required, with:

(a) a written request or written requests for information from the importer of the good;

(b) a written request or written requests for information from the competent authority and issuing body or authority, as appropriate, of the exporting Party where the customs administration of the importing Party considers the information obtained under subparagraph (a) is not sufficient to make a determination and requires additional information including the breakup of costs and any other relevant elements such as profits;

(c) a written request or written requests for information from the exporter or producer of the goods, where the customs administration of the importing Party considers the information obtained under subparagraphs (a) and (b) is not sufficient to make a determination and requires additional information including the breakup of costs and any other relevant elements such as profits for the determination of origin of the good under Article 4.2 (Originating Goods) and Article 4.3 (Goods not Wholly Produced or Obtained) irrespective of the method adopted under Article 4.6 (Calculation of Qualifying Value Content);

(d) visits to the premises of an exporter or a producer in the territory of another Party; or

(e) any other procedures to which the Parties may agree.

2. A verification under paragraph 1 may be conducted at the time that the customs import declaration is lodged, or before or after the release of the good by the customs administration of the importing Party.

3. For the purposes of subparagraph 1(b), the customs administration of the importing Party:

(a) may request the competent authority or the issuing body or authority, as appropriate, of the exporting Party to assist it in verifying:

(i) the authenticity of a Certificate of Origin;

(ii) the accuracy of any information contained in the Certificate of Origin; or

(iii) the authenticity and accuracy of the supporting information and documents, which may relate to the breakup of costs and any other relevant elements such as profits for the determination of origin of the good under Article 4.3 (Goods not Wholly Produced or Obtained) irrespective of the method adopted; and

(b) shall provide the competent authority or the issuing body or authority, as appropriate, with:

(i) the reasons why such assistance is sought;

(ii) the Certificate of Origin, or a copy thereof; and

(iii) any information and documents as may be necessary for the purpose of providing such assistance.

4. Where a written request is made under paragraph 1(c), the customs administration of the importing Party shall:

(a) ensure that the information requested is limited to information pertaining to the fulfilment of the requirements of this Chapter as follows:

(i) Certificate of Origin;

(ii) information supporting a claim that the good is originating under Article 4.2 (Originating Goods);

(iii) information on any tolerances relied on under Article 4.8 (De Minimis); and

(iv) information confirming compliance with the non-alteration provisions under Article 4.14 (Consignment);

(b) allow the exporter or producer at least 30 days from the date of receipt of the request to provide the requested information; and

(c) notify the customs administration of the exporting Party of the request.

Release of goods subject to verification

5. During verification, the importing Party shall allow the release of the good, subject to payment of any duties or provision of any security as provided for in its laws and regulations. If as a result of the verification, the importing Party determines that the good is an originating good, it shall grant preferential tariff treatment to the good and refund any excess duties paid or release any security provided, unless the security also covers other obligations as provided for in the Party's laws and regulations.

## **Article 4.26. Procedure for Verification**

1. Any request for information made by the customs administration of the importing Party pursuant to Article 4.25 (Verification of Origin) shall be in accordance with the following procedures:

(a) if requested, the issuing body or authority, as appropriate, of the exporting Party shall provide the following information within 90 days:

(i) a confirmation pertaining to the authenticity or otherwise of the Certificate of Origin along with a copy of the minimum required information; and

(ii) if the request is on the grounds of suspicion of the accuracy of the determination of origin of the good, this period can be extended for a period of no more than 60 days;

(b) if the importing Party is not satisfied with the verification undertaken in accordance with subparagraph 1(a) through (c) of Article 4.25 (Verification of Origin), it may, under exceptional circumstances, request the exporter or producer for a verification visit. The importing Party shall notify in writing the exporter or producer whose premises are to be visited, the issuing body or authority, the customs administration of the exporting Party and the importer of its intention to conduct the verification visit.

2. The importing Party shall obtain the written consent of the exporter or producer whose premises are to be visited. When a written consent from the exporter or producer is not received within 30 days of receipt of the written request, the importing Party may deny preferential treatment on goods subject to the verification visit.

3. The written notification shall include the name of the exporter or producer whose premises are to be visited, the proposed date and time of visit, the purpose for the visit, reference to the goods subjected to verification, and a list of officials participating and their designations.

4. The exporter or producer shall identify two or more independent witnesses to be present during the verification visit.

5. The importing Party conducting the verification visit shall provide the exporter or producer as well as the issuing body or authority of the exporting Party with a written determination of whether the good qualifies as an originating good.

6. The above-mentioned verification visit process including the actual visit and notification of written determination of the origin of the good shall be completed within a maximum period of six months from the date when the verification visit was

conducted.

Completion of verification procedure

7. The customs administration of the importing Party shall:

(a) endeavour to make a determination following a verification as expeditiously as possible and in accordance with its laws and regulations; and

(b) provide the importer with a written determination of whether the good is originating that includes the basis for the determination.

## **Article 4.27. Denial of Preferential Tariff Treatment**

The importing Party may deny a claim for preferential tariff treatment if:

(a) it determines that the good does not qualify as originating within the terms of this Chapter or does not satisfy the requirement(s) of this Chapter;

(b) pursuant to a verification under Article 4.25 (Verification of Origin), it has not received sufficient information, including minimum required information as provided in Annex 4A (Minimum Information Requirements), to determine that the good qualifies as originating;

(c) the exporter or producer fails to respond to or refuses a written request for information in accordance with Article 4.25 (Verification of Origin);

(d) the exporter or producer fails to comply with any of the relevant requirements for obtaining preferential tariff treatment;

(e) the exporter or producer or the issuing bodies or authorities, as appropriate, of the exporting Party fail to provide sufficient information and documents, within the timelines prescribed in paragraph 4(b) of Article 4.25 (Verification of Origin) or paragraph 1 of Article 4.26 (Procedure for Verification). This may include but not be limited to the breakup of costs and any other relevant elements such as profits that the importing Party requested in order to determine that the good qualifies as originating, pursuant to initiation of verification under Article 4.25 (Verification of Origin); or

(f) the exporter or producer fails to give consent or respond to a request for a verification visit within 30 days of receipt of a request pursuant to paragraph 2 of Article 4.26 (Procedure for Verification).

2. If an importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the exporter or producer that includes the reasons for the determination.

## **Article 4.28. Temporary Suspension of Preferential Treatment**

1. The importing Party may suspend the tariff preference in respect of a good originating in the exporting Party, when the suspension is justified due to persistent failure to comply with the provisions of these rules by an exporter or producer or a persistent failure on part of the competent authority or the issuing bodies or authorities, as appropriate, of the exporting Party to respond to a request for verification.

2. Upon receipt of the notification of suspension, the exporting Party may request consultations through the Joint Technical Subcommittee established under Article 4.32 (Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation).

3. Pursuant to consultations between the Parties, and such measures as the Parties may agree, the Parties may resolve to extend preferential benefit to the good with retrospective or prospective effect.

## **Article 4.29. Non-compliance of Goods with Rules of Origin and Penalties**

1. If the verification under Article 4.25 (Verification of Origin) establishes non-compliance of the goods with the rules of origin, duties shall be levied in accordance with the laws and regulations of the importing Party.

2. Each Party shall also adopt or maintain measures that provide for the imposition of civil, administrative, and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing rules of origin, and the entitlement to preferential tariff treatment under this Agreement.

## **Article 4.30. Goods In Transport or Storage**

In accordance with Article 4.24 (Post Importation Claim for Preferential Tariff Treatment), 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 an originating good stored in a bonded warehouse regulated by the customs administration of the importing Party.

## **Article 4.31. Minor Discrepancies or Errors**

A Party shall not reject a Certificate of Origin due to minor errors or discrepancies, such as slight discrepancies between documents, minor omissions of information, spelling, typing or formatting errors, or protrusions from the designated field, provided these minor discrepancies or errors do not create doubt as to the originating status of the good.

## **Article 4.32. Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation**

1. The Parties hereby establish a Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation ("Joint Technical Subcommittee") composed of government representatives of each Party responsible for rules of origin and customs and trade facilitation matters to consider any matters arising under this Chapter or Chapter 5 (Customs Procedures and Trade Facilitation).
2. The Joint Technical Subcommittee shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement and shall cooperate in the administration of this Chapter and mutually resolve any issues that may arise.
3. The Joint Technical Subcommittee shall consult to discuss possible amendments or modifications to this Chapter, Annex 4A (Minimum Information Requirements) or Annex 4B (Product Specific Rules of Origin), that are necessary to reflect changes to the Harmonized System and taking into account developments in technology, production processes or other related matters.
4. The Joint Technical Subcommittee shall meet promptly when a request is received from a Party to have product specific rules for any goods.
5. The Joint Technical Subcommittee shall consider any matters referred to it by the Subcommittee on Trade in Goods or the Joint Committee.

# **Chapter 5. CUSTOMS PROCEDURES AND TRADE FACILITATION**

## **Article 5.1. Definitions**

For the purposes of this Chapter:

- (a) customs administration has the same meaning as in paragraph (d) of Article 4.1 (Definitions and Interpretation - Rules of Origin);
- (b) customs laws means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit or transshipment of goods;
- (c) customs procedures means the measures applied by the customs authority of each Party; and
- (d) Trade Facilitation Agreement means the Agreement on Trade Facilitation, set out in Annex 1A of the WTO Agreement.

## **Article 5.2. Scope**

1. This Chapter shall apply to customs procedures applied to goods traded between the Parties.
2. This Chapter shall be implemented in accordance with the Parties' customs laws, subject to the competence and available

resources of the customs administration of each Party.

3. The Parties affirm their rights and obligations under the Trade Facilitation Agreement.

### **Article 5.3. Customs Procedures and Facilitation of Trade**

1. Each Party shall endeavour to apply its customs procedures and practices in a predictable, consistent, and transparent manner, and to facilitate trade including through the expeditious clearance of goods where possible.

2. Each Party shall ensure that its customs procedures, where possible and to the extent permitted by its customs laws, conform with the standards and recommended practices of the World Customs Organization ("WCO").

3. The customs administration of each Party shall, to the extent possible, review its customs procedures with a view to simplifying such procedures to facilitate trade.

### **Article 5.4. Transparency**

1. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall publish in advance on the internet, or otherwise make publicly available, draft laws and regulations of general application relevant to trade between the Parties, with a view to affording the public, especially interested persons, an opportunity to become acquainted with them.

2. To the extent possible, each Party shall publish regulations of general application governing customs matters that it proposes to adopt in order to enable all interested parties to become acquainted with them. Each Party shall provide, to the extent possible, and in a manner consistent with its laws and legal system, interested persons the opportunity to comment before it adopts the regulation.

3. Each Party shall, subject to its available resources, establish or maintain one or more enquiry points to address reasonable enquiries from interested persons concerning customs matters and shall make information concerning the enquiry points available online.

### **Article 5.5. Release of Goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if the Party's requirements for release of the good have not been met.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide, in normal circumstances, for the release of goods within a period no longer than that required to ensure compliance with the customs laws of a Party and as rapidly as possible after the arrival of the goods, provided that:

(i) all information and documentation necessary to release the goods has been submitted on or prior to arrival of the goods;

(ii) the goods are not subject to physical examination or inspection; and

(iii) the goods are otherwise admissible under the importing Party's laws and regulations;

(b) if applicable and to the extent possible, provide for electronic submission and processing of customs information relating to an import in advance of the arrival of the goods to expedite the release of goods from customs control upon arrival;

(c) endeavour to allow goods to be released without temporary transfer to warehouses or other facilities, to the extent possible, and where consistent with its laws and regulations and customs procedures;

(d) allow for the release of goods prior to the final determination of customs duties, taxes, fees, and charges not determined prior to or promptly upon arrival, provided that the goods are otherwise eligible for release and any security required by the importing Party has been provided. Before releasing the goods, a Party may require that an importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument; and

(e) if applicable and to the extent possible, provide for, in accordance with its laws and regulations, clearance of certain goods with a minimum of documentation.

3. If a Party allows for the release of goods conditioned on the provision of a security, that Party shall adopt or maintain procedures that:

(a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;

(b) ensure that the security shall be discharged after that Party's customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) allow importers to provide security using a form other than cash, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

4. Nothing in paragraph 2 or 3 shall:

(a) affect the right of a Party to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems; or

(b) prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

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

(a) under normal circumstances, in the shortest possible time after the arrival of the goods and submission of the information required for release;

(b) in exceptional circumstances, where it would be appropriate to do so, outside the business hours of its customs authority.

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

7. Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of goods to such storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. Each Party shall, where practicable and consistent with its laws and regulations, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

## **Article 5.6. Risk Management**

1. Each Party shall, to the extent possible, adopt or maintain a risk management system for customs control that enables its customs authority to focus its inspection activities on high-risk consignments and expedite the release of low-risk consignments.

2. Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.

3. Each Party shall base risk management on the assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

## **Article 5.7. Data, Documentation and Automation**

Each Party shall endeavour to provide a facility that allows importers and exporters to electronically provide standardised information related to imported goods and export goods at a single-entry point or single window that:

(a) uses international standards with respect to procedures for the release of goods;

(b) makes electronic systems accessible to customs users; (c) allows a customs declaration to be submitted in electronic format;

(d) employs electronic or automated systems for risk analysis and targeting;

(e) implements common standards and elements for import and export data in accordance with the WCO Data Model; and

(f) takes into account, as appropriate, standards, recommendations, models and methods developed by various international organisations such as the WCO, United Nations Centre for Trade Facilitation and Electronic Business, and the

WTO.

## **Article 5.8. Temporary Admission of Goods**

1. Each Party shall allow, as provided for in its laws and regulations, goods to be brought into its territory conditionally relieved, totally or partially, from payment of import duties and taxes, if such goods:

- (a) are brought into its customs territory for a specific purpose;
- (b) have not undergone any change except normal depreciation and wastage due to the use made of them; and
- (c) are intended for re-exportation within a specific period.

2. Each Party shall continue to facilitate procedures for the temporary admission of goods traded between the Parties in accordance with its laws and regulations, and international obligations.

## **Article 5.9. Pre-Arrival Processing**

1. Each Party shall adopt or maintain procedures allowing for the submission of documents and other information required for the importation of goods, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

2. Each Party shall provide, as appropriate, for advance lodging of documents and the other information referred to in paragraph 1 in electronic format for pre-arrival processing of such documents.

## **Article 5.10. Customs Cooperation**

1. The Parties shall, in accordance with their laws, regulations and customs procedures and subject to the availability of resources, encourage cooperation and exchange of information with each other on customs matters.

2. The customs administration of each Party shall assist each other, in accordance with its laws, regulations and customs procedures and subject to the availability of resources, in relation to:

- (a) the implementation and operation of this Chapter;
- (b) developing and implementing customs best practice and risk management techniques;
- (c) simplifying and harmonising customs procedures;
- (d) application of the Customs Valuation Agreement;
- (e) exchanging information, including information on best practices, relating to customs matters. Such exchanges of information shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the Memorandum of Understanding between the Central Board of Excise and Customs of the Republic of India and the Australian Customs Service on Customs Cooperation and Mutual Administrative Assistance in Customs Matters signed at New Delhi on 06 March 2006, as amended on 18 November 2013; and
- (f) such other customs issues as may be mutually determined by the Parties.

## **Article 5.11. Review and Appeal**

1. Each Party shall ensure that any person to whom it issues an administrative decision (1) on a customs matter has the right to:

- (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; or
- (b) a judicial appeal or review of the decision.

2. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given within the period of time provided for in its laws and regulations or without undue delay, the person has the right to further administrative or judicial appeal or review or any other recourse to a judicial authority in accordance with that Party's laws and regulations.

3. Each Party shall provide a person to whom it issues an administrative decision on the basis of a review or appeal referred to in paragraph 1 with the reasons for the administrative decision, so as to enable such a person to have recourse to appeal procedures where necessary.

(1) An administrative decision in this Article means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a Party's laws and regulations and legal system. For addressing such failure, a Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

## **Article 5.12. Advance Rulings**

1. Each Party shall issue, prior to the importation of a good of the other Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or any person with a justifiable cause to the satisfaction of the respective Party, or a representative thereof, who has submitted a written request containing all necessary information, in the territory of the other Party (each an "applicant") with regard to:

(a) tariff classification;

(b) whether a good is originating in accordance with Chapter 4 (Rules of Origin);

(c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts, in accordance with the Customs Valuation Agreement; and

(d) any other matters as the Party may specify under its domestic advance ruling system.

2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 3 months after it receives a request, provided that the applicant has submitted all the information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the applicant is seeking an advance ruling if requested by the receiving Party. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the applicant has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review or where the application is not based on factual information, or does not relate to an intention to import or export. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and circumstances, and the basis for its decision to decline to issue the advance ruling.

3. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least 3 years provided that the law, facts and circumstances on which the ruling is based remain unchanged.

4. The importing Party may:

(a) modify an advance ruling in such respects as it considers appropriate and as per its laws and regulations or system on advanced ruling, if the ruling was based on incorrect facts or mistake of law;

(b) revoke or find the advance ruling non-binding if there is a change in the material facts or circumstances or law on which the ruling was based; or

(c) revoke the advance ruling from when it was issued if the advance ruling has been obtained by fraud or misrepresentation of facts.

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

6. Neither Party shall apply a revocation, modification, or invalidation retroactively to the detriment of the applicant unless the ruling was based on incomplete, incorrect, inaccurate, false, or misleading information provided by the applicant.

7. Each Party shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

8. Each Party shall publish online, at least:



- (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
- (b) the time period by which it will issue an advance ruling; and
- (c) the length of time for which the advance ruling is valid.

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

10. Each Party shall provide, upon written request of an applicant, an opportunity to review an advanced ruling, or the decision to revoke, modify or invalidate it (2)

(2) Under this paragraph, a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and a Party is not required to provide the applicant with recourse to paragraph 1 of Article 5.11 (Review and Appeal).

## **Article 5.13. Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation**

The Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation established pursuant to Article 4.32 (Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation â Rules of Origin) shall consider any matters arising under this Chapter.

# **Chapter 6. SANITARY AND PHYTOSANITARY MEASURES**

## **Article 6.1. Definitions**

1. For the purposes of this Chapter:

- (a) the definitions set out in Annex A to the SPS Agreement shall apply;
- (b) competent authorities mean those authorities within each Party recognised by the national government as responsible for developing and administering sanitary and phytosanitary ("SPS") measures within that Party;
- (c) an emergency measure means a sanitary or phytosanitary measure that is applied by the importing Party to the products of the exporting Party to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the Party applying the measure; and
- (d) SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, set out in Annex 1A to the WTO Agreement.

2. The Parties shall take into consideration the terms and definitions of relevant international organisations, such as the Codex Alimentarius Commission ("Codex"), the World Organisation for Animal Health ("OIE") and the International Plant Protection Convention ("IPPC"). In the event of an inconsistency between these terms and definitions and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

## **Article 6.2. Objectives**

The objectives of this Chapter are to:

- (a) reaffirm the rights and obligations of both Parties under the SPS Agreement, while supporting its enhanced implementation;
- (b) provide a framework to facilitate bilateral trade between the Parties, while protecting human, animal or plant life or health;
- (c) enhance transparency and deepen mutual understanding of each Party's regulations and procedures relating to SPS measures, and ensure that such measures do not create unjustified barriers to trade; and
- (d) strengthen cooperation, communication and consultation between the Parties.

## **Article 6.3. Scope**

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

## **Article 6.4. Affirmation of the SPS Agreement**

1. The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.
2. Nothing in this Chapter shall affect the rights and obligations of each Party under the SPS Agreement.

## **Article 6.5. Adaptation to Regional Conditions**

1. The Parties recognise the concepts of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence, as set out in Article 6 of the SPS Agreement, and that the adaptation of SPS measures to recognise regional conditions is an important means of facilitating trade. In developing SPS measures based on regionalisation, the Parties shall take into account the relevant decisions of the WTO SPS Committee and relevant international standards, guidelines and recommendations.
2. The Parties may cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each other for such recognition.
3. When the importing Party establishes or maintains an SPS measure applicable to the exporting Party, the exporting Party may request the importing Party recognise its regional conditions for any relevant pest or disease.
4. When the importing Party has received such a request for recognition of regional conditions from the exporting Party, and has determined that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time. If the exporting Party so requests, the importing Party shall also explain the process it undertakes for recognising regional conditions.
5. Reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures for the assessment.
6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment.
7. When the importing Party adopts a measure that recognises specific regional conditions of the exporting Party, the importing Party shall communicate that decision to the exporting Party in writing and implement the measures within a reasonable period of time.
8. If the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognise the regional conditions of the exporting Party the importing Party shall provide the exporting Party the rationale for its decision in writing within a reasonable period of time.
9. If there are circumstances that result in a Party modifying or revoking a determination recognising regional conditions of the other Party, and if the other Party requests, the Parties shall cooperate to assess whether the determination can be reinstated.

## **Article 6.6. Equivalence**

1. The Parties shall strengthen cooperation on equivalence, in accordance with the SPS Agreement taking into account relevant decisions of the WTO SPS Committee and relevant international standards, guidelines and recommendations, in order to facilitate trade between them.
2. Where a Party has concluded an equivalence determination of the other Party's measures, that Party shall notify the other Party in writing. If it does not recognise the other Party's measures as equivalent, it shall provide reasons for that determination.
3. The importing Party shall recognise the equivalence of an individual SPS measure, group of measures or systems if the exporting Party objectively demonstrates to the importing Party that its measure achieves the same level of protection as the importing Party's measure or that its measure has the same effect in achieving the objective as the importing Party's measure.
4. In determining equivalence, the importing Party shall take into account available knowledge, information and experience as well as the regulatory competence of the exporting Party.

5. A Party shall, upon request, enter into consultation with the aim of achieving bilateral recognition arrangements of equivalence on the specified SPS measures.

6. As part of consultations on request by the exporting Party, the importing Party shall explain and provide:

(a) the rationale and objective of its measures; and

(b) the specific risks its measures are intended to address.

7. The exporting Party shall provide necessary information in order for the importing Party to commence an equivalence assessment. Once the assessment commences, the importing Party shall upon request without undue delay explain the process and plan for making an equivalence determination.

8. The consideration by a Party of a request from the other Party for recognition of equivalence of its measures with regard to a specific product, or group of products, shall not be in itself a reason to disrupt or suspend ongoing imports from the Party of the product or products in question.

9. When the importing Party has concluded its assessment, it shall notify the equivalence determination to the exporting Party in writing. If an equivalence determination does not result in recognition by the exporting Party, the importing Party shall provide the exporting Party with the rationale for its decision.

10. If a Party proposes to adopt, modify, amend, repeal or remove an SPS measure which it considers may have a significant impact on trade in goods that are the subject of an equivalence arrangement between the Parties, it shall notify the other Party and indicate its likely effect on recognition of equivalence.

11. Following such a notification from the exporting Party, the importing Party shall continue to apply its determination of equivalence unless it considers that the equivalence arrangement is no longer sufficient to meet its appropriate level of protection. If the importing Party considers that equivalence can be maintained under new or revised conditions it shall consult with the exporting Party on their development.

12. If the importing Party considers that equivalence cannot be maintained and it can no longer apply its determination of equivalence, the exporting Party may request consultations with the aim of once again achieving a bilateral recognition arrangement of equivalence, consistent with the provisions of this Article.

13. The final determination of equivalence rests with the importing Party which shall adhere to international guidelines, standards and recommendations.

## **Article 6.7. Contact Points and Competent Authorities**

1. By the date of entry into force of this Agreement, each Party shall:

(a) designate a contact point to facilitate communication and the exchange of information between the Parties on matters arising under this Chapter; and

(b) provide the other Party with a list of its competent authorities responsible for developing and administering SPS measures within its territory, including a description of their structure, organisation and division of functions and responsibilities.

2. Each Party shall notify the other Party of any changes to its contact point and significant changes in the structure, organisation and division of responsibility within its competent authorities.

## **Article 6.8. Transparency and Exchange of Information**

1. Each Party shall, in accordance with the transparency obligations contained in the SPS Agreement, notify the contact point of the other Party of any new or revised SPS measures that may affect trade between the Parties, including emergency measures imposed to protect human, animal or plant life or health.

2. When the information referred to in paragraph 1 has been made available via notification to the WTO's Central Registry of Notifications, or to the relevant international organisation, the requirements in paragraph 1 shall be deemed to have been fulfilled.

3. A Party shall respond within a reasonable period of time to any request for information or clarification from the other Party regarding its SPS measures, including with respect to model certificates or attestations.

4. In implementing this Chapter, both Parties shall take into account relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.
5. A Party may request information from the other Party on any matter arising under this Chapter, or any other SPS measure of the other Party affecting trade between the Parties, where such information has not already been included in a notification to the SPS Committee or has not otherwise been made publicly available. A Party that receives a reasonable request for information shall provide available information to the requesting Party within a reasonable period of time.
6. If the importing Party determines that there is a significant and sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure, the importing Party shall notify the exporting Party of the non-conformity.
7. Unless urgent problems of human, animal or plant life or health protection arise, threaten to arise, or the measure is of trade facilitating nature, the Party proposing an SPS measure shall normally allow at least 60 days for the other Party to provide written comments on the proposed measure after it makes a notification to the WTO. If feasible and appropriate, the Party proposing the measure may allow more than 60 days. The Party proposing the measure shall consider any reasonable request from the other Party to extend the comment period.

## **Article 6.9. Certification**

1. The Parties shall work cooperatively to promote the implementation of paperless trade through electronic SPS certification.
2. Where certification is required for trade in a product, the importing Party shall ensure that such certification is applied, in meeting its SPS objectives, only to the extent necessary to protect human, animal or plant life or health.
3. Each Party shall apply certification requirements in accordance with relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines, or recommendations.
4. The importing Party shall accept certificates issued by the competent authorities of the exporting Party that are in compliance with the regulatory requirements of the importing Party.

## **Article 6.10. Audits**

1. Each Party shall undertake audits in accordance with relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines, or recommendations.
2. An audit shall be systems-based and conducted to assess the effectiveness of the regulatory controls of the competent authorities of the exporting Party to provide the required assurances and meet the SPS measures of the importing Party.
3. Prior to the commencement of an audit, the importing Party and the exporting Party shall exchange information and endeavour to agree on the objectives and scope of the audit and other matters related specifically to the commencement of an audit.
4. The importing Party shall provide the exporting Party with an opportunity to comment on the findings of an audit and take any such comments into account before making its conclusions and taking any action. The importing Party shall provide a report or its summary, setting out its conclusions in writing, to the exporting Party within a reasonable period of time. The importing Party shall inform the exporting Party if a request is required to provide such report or summary.
5. Measures taken by the importing Party as a consequence of its audit shall be supported by objective evidence and data, take into account the importing Party's knowledge of, relevant experience with, and confidence in, the exporting Party, and shall not be more trade restrictive than necessary to achieve the importing Party's appropriate level of protection. Any such objective evidence and data shall be provided to the audited Party, on request.
6. Any costs incurred by the auditing Party shall be borne by the auditing Party, unless the Parties agree otherwise.
7. The auditing Party and the audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information acquired during the auditing process.

## **Article 6.11. Import Checks**

1. Each Party shall undertake import checks in accordance with relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines, or

recommendations.

2. Import checks, conducted in accordance with the importing Party's laws, regulations, and sanitary and phytosanitary requirements, shall be based on the sanitary and phytosanitary risk associated with importations. The import checks shall be carried out in a manner that is least trade-restrictive and without undue delay.

3. In the event that import checks reveal a non-compliance, the final decision or action taken by the importing Party shall be appropriate to the sanitary and phytosanitary risk associated with the importation of the non-compliant product. The importing Party shall ensure that plants and plant products, animal products and other goods, and their packaging are inspected by using appropriate risk-based sampling methodologies.

4. If an importing Party prohibits or restricts the importation of a good of an exporting Party on the basis of an import check finding sanitary or phytosanitary non-compliance, the importing Party shall notify the importer or its representatives and, if the importing Party considers necessary, the exporting Party, of such non-compliance.

5. When significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Party, the Parties shall, on request of either Party, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.

6. Unless there is a clearly identified high risk, the importing Party shall provide means other than destruction to manage the risk, such as treatment, where available, or re-export.

## **Article 6.12. Cooperation and Capacity Building**

1. The Parties shall explore opportunities for further cooperation, collaboration and information exchange, including through their competent authorities, on SPS matters of mutual interest, consistent with the objectives of this Chapter. This may include the provision of technical assistance and capacity building, subject to the availability of appropriate resources.

2. In undertaking cooperation activities, the Parties shall endeavour to coordinate with bilateral, regional or multilateral work programmes with the objective of avoiding unnecessary duplication and maximising the use of resources.

## **Article 6.13. Technical Consultations**

1. If a Party has specific trade concerns regarding SPS measures proposed or implemented by the other Party, it may request technical consultations. The other Party shall respond promptly to any reasonable request for such consultation.

2. The Parties shall hold such technical consultations within 30 days of the request, unless otherwise agreed by the Parties.

3. Where a Party considers that an SPS measure of the other Party is affecting its trade with the other Party, it may, through the contact points or other established communication channels, request a detailed explanation of the SPS measure including the scientific basis of the measure. The other Party shall respond promptly to any request for such an explanation.

4. The technical consultations may be conducted via teleconference, videoconference, or through any other means agreed by the Parties.

## **Article 6.14. Emergency SPS Measures**

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health and that may have an effect on trade between the Parties, that Party shall notify the other Party of that measure through the contact point referred to in Article 6.7 (Contact Points and Competent Authorities) as soon as possible. The importing Party shall take into consideration any information provided by the other Party in response to the notification.

2. On request of the other Party, a Party adopting an emergency SPS measure shall engage in technical consultations under Article 6.13 (Technical Consultations).

3. The importing Party shall consider any information provided in a timely manner by the exporting Party when making decisions with respect to one or more consignments that, at the time of adoption of an emergency SPS measure, are being transported between the Parties.

4. If a Party adopts an emergency measure, it shall review the scientific basis of that measure within 6 months with the aim of developing a revised measure that would permit trade to recommence, and provide the results of the review to the other Party on request. If the emergency measure is maintained after the review, the importing Party shall review the measure at least every 6 months thereafter periodically based on the most recent available information, and upon request, shall explain

the reasons for the continuation of the emergency measure. If the exporting Party considers, on the basis of scientific evidence, that an emergency measure is being maintained by the importing Party without reasons, it may provide that evidence to the other Party and request the other Party to review the measure or engage in technical consultations under Article 6.13 (Technical Consultations).

## **Article 6.15. Subcommittee on SPS Matters**

1. The Parties hereby establish a Subcommittee on SPS Measures ("SPS Subcommittee"), consisting of representatives from relevant government agencies of each Party.
2. The SPS Subcommittee shall review the progress made by the Parties in implementing their commitments under this Chapter and may establish subsidiary working groups to consider specific issues relating to the implementation of this Chapter.
3. The SPS Subcommittee shall provide a forum to enable either Party to raise any SPS matter related to trade between the Parties, and for further discussion and information exchange, including on request for recognition of equivalence or of regional conditions, or on specific requirements and innovations for certification, to facilitate trade between the Parties.
4. The SPS Subcommittee shall meet within 1 year after the date of entry into force of this Agreement and thereafter as mutually determined by the Parties. Meetings may occur in person, by teleconference, by video conference, or through any other means as mutually determined by both the Parties.
5. The SPS Subcommittee shall report to the Joint Committee.

## **Article 6.16. Non-application of Dispute Settlement**

Neither Party shall have recourse to Chapter 13 (Dispute Settlement) for any matter arising under this Chapter.

# **Chapter 7. TECHNICAL BARRIERS TO TRADE**

## **Article 7.1. Definitions**

For the purposes of this Chapter, the terms and their definitions set out in Annex 1 of the TBT Agreement shall apply.

## **Article 7.2. Objectives**

The objective of this Chapter is to facilitate trade in goods between the Parties by:

- (a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to international trade;
- (b) furthering cooperation on matters related to the TBT Agreement;
- (c) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures and enhancing transparency;
- (d) facilitating information exchange and cooperation among the Parties in the field of standards, technical regulations and conformity assessment procedures including in the work of relevant regional and international bodies; and
- (e) addressing the issues that may arise under this Chapter.

## **Article 7.3. Scope**

1. This Chapter shall apply to standards, technical regulations and conformity assessment procedures at the central level of government that may affect trade in goods between the Parties.
2. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by local government bodies and non-governmental bodies within its territory which are responsible for the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures.
3. Nothing in this Chapter shall prevent a Party from preparing, adopting, applying, or maintaining standards, technical regulations, and conformity assessment procedures in a manner consistent with the TBT Agreement and this Chapter.

4. The Chapter shall not apply to:

- (a) sanitary and phytosanitary measures which are covered in Chapter 6 (Sanitary and Phytosanitary Measures); and
- (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies.

## **Article 7.4. Affirmation of the TBT Agreement**

Each Party affirms its rights and obligations under the TBT Agreement.

## **Article 7.5. Standards**

1. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the TBT Agreement (G/TBT/9, 13 November 2000, Annex 4).

2. Whenever modifications of contents or structure of the relevant international standards are necessary in developing national standards, upon request of a Party, the other Party shall encourage its standardising bodies to provide the differences in the contents and structure and reasons for those differences in English if this information has not already been provided within the standard. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

3. Each Party shall ensure that its standardising bodies ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

4. Each Party shall encourage its standardising bodies in its territory to cooperate with the standardising bodies of the other Party, including through:

- (a) exchange of information on standards;
- (b) exchange of information relating to standard setting procedures; and
- (c) cooperation in the work of regional and international standardising bodies in areas of mutual interest.

5. The Parties shall, as appropriate, strengthen coordination and communication with each other in the context of discussions on international standards and related issues in other international fora, such as the WTO TBT Committee.

## **Article 7.6. Technical Regulations**

1. Where technical regulations are required and relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a basis for its technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems. Where a Party does not use such international standards, or their relevant parts, as a basis for its technical regulations and these may have a significant effect on its trade with the other Party, it shall, upon request of the other Party, explain the reasons therefore.

2. Upon request, each Party shall give positive consideration to accepting as equivalent, technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its own regulations.<sup>(1)</sup>

3. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, the Parties shall allow a reasonable interval (2) between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in the exporting Party to adapt their products or methods of production to the requirements of the importing Party.

4. At the request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, the other Party shall endeavour to provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.

(1) The Party's request should identify the specific technical regulations it considers to be equivalent and any data or evidence that supports its position.

(2) The term "reasonable interval" means normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or the conformity assessment procedure. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

## **Article 7.7. Conformity Assessment Procedures**

1. In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardising bodies exist or their completion is imminent, each Party shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such international standards, guides or recommendations or relevant parts are inappropriate for the Party concerned, for, inter alia, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

2. Each Party shall ensure, whenever possible, that results of conformity assessment procedures in the other Party (3) are accepted, even when those procedures differ from its own, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

3. A Party shall, upon request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Party.

4. Each Party recognises that, depending on the situation of the Party and the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party. Such mechanisms may include:

(a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the other Party;

(b) cooperative (voluntary) arrangements between accreditation bodies or those between conformity assessment bodies in the other Party;

(c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by the other Party;

(d) the designation of conformity assessment bodies in the other Party;

(e) unilateral recognition by a Party of results of conformity assessment procedures conducted in the other Party; and

(f) manufacturer's or supplier's declaration of conformity.

5. Upon reasonable request by a Party, the other Party shall exchange information or share experiences on the mechanisms referred to in paragraph 4, including their development and application, with a view to facilitating the acceptance of the results of conformity assessment procedures, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

6. The Parties recognise the important role that relevant international, including regional, organisations can play in cooperation in the area of conformity assessment. In this regard, each Party shall take into consideration the participation status or membership in such organisations of relevant bodies of the other Party in facilitating this cooperation.

7. The Parties agree to encourage cooperation between their relevant conformity assessment bodies in working closer with a view to facilitating the acceptance of conformity assessment results between the Parties.

8. Each Party shall, whenever possible, permit the participation of conformity assessment bodies of the other Party in its conformity assessment procedures under conditions no less favourable than those accorded to conformity assessment bodies in that Party.



9. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in the other Party in its conformity assessment procedures, it shall, on request of that other Party, explain the reason for its refusal decision.

(3) For greater certainty, this may include results of the conformity assessment procedures conducted by conformity assessment bodies accredited by the national accreditation body of the other Party where that national accreditation body is a member of relevant multilateral agreements or arrangements.

## **Article 7.8. Cooperation**

1. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment and accreditation, with a view to facilitating trade.

2. Each Party shall, upon request of the other Party, give positive consideration to proposals for cooperation on matters of mutual interest on standards, technical regulations and conformity assessment procedures.

3. Such cooperation, which shall be on mutually determined terms and conditions, may include:

(a) advice, technical assistance or capacity building relating to the development and application of standards, technical regulations and conformity assessment procedures;

(b) cooperation between conformity assessment bodies, both governmental and non-governmental, on matters of mutual interest;

(c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by relevant regional and international bodies;

(d) enhancing cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures; and

(e) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora.

4. Each Party shall, upon request of the other Party, give consideration to sector specific proposals, for cooperation under this Chapter on matters of mutual benefit.

## **Article 7.9. Information Exchange and Technical Discussions**

1. A Party may request the other Party provide information on any matter arising under this Chapter, and the other Party shall provide such information within a reasonable period of time.

2. A Party may make a written request for technical discussions with the other Party with the aim of resolving an issue relating to trade or any other matter that arises under this Chapter. The other Party shall respond as early as possible to such a request.

3. The Parties shall enter into technical discussions within 60 days, unless otherwise mutually determined, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted via any means mutually agreed by the Parties.

4. Requests for information or technical discussions shall be made through the Parties' respective contact points designated pursuant to Article 7.11 (Contact Points).

5. This Article is without prejudice to the rights and obligations of the Parties under Chapter 13 (Dispute Settlement).

## **Article 7.10. Transparency**

Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement as well as the Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995 (G/TBT/1/Rev.13), and any subsequent revisions.

## **Article 7.11. Contact Points**

1. Within 60 days of the date of entry into force of this Agreement, each Party shall designate a contact point or contact points responsible for coordinating the implementation of this Chapter.
2. Each Party shall provide the other Party with the name of the designated contact point or contact points and the contact details of the relevant official or officials in that organisation, including telephone, email and any other relevant details.
3. Each Party shall notify the other Party promptly of any change in their contact points.
4. Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party.

## **Article 7.12. Subcommittee on Standards, Technical Regulations and Conformity Assessment Procedures**

1. The Parties hereby establish a Subcommittee on Standards, Technical Regulations and Conformity Assessment Procedures ("Subcommittee"), consisting of representatives of the Parties.
2. The Subcommittee shall meet at such venues and times as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.
3. The functions of the Subcommittee may include:
  - (a) monitoring the implementation and operation of this Chapter;
  - (b) coordinating cooperation pursuant to Article 7.8 (Cooperation);
  - (c) facilitating technical discussions;
  - (d) reporting, where appropriate, its findings to the Subcommittee on Goods; and
  - (e) carrying out other functions as may be delegated by the Subcommittee on Goods.

# **Chapter 8. TRADE IN SERVICES**

## **Article 8.1. Definitions**

For the purposes of this Chapter:

- (a) 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) commercial presence means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition, or maintenance of a juridical person; or
  - (ii) the creation or maintenance of a branch or a representative office,within the territory of a Party for the purpose of supplying a service;
- (c) 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) juridical person means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;
- (e) a juridical person is:
  - (i) owned by persons of a Party if more than fifty per cent of the equity interest in it is beneficially owned by persons of that Party;
  - (ii) controlled by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally

direct its actions;

(iii) affiliated with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;

(f) juridical person of a Party means a juridical person which is either:

(i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or 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 that Party; or

(B) juridical persons of that Party identified under subparagraph (f)(i);

(g) measures by a Party affecting trade in services includes measures in respect of:

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

(ii) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

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

(i) natural person of a Party means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:

(i) is a national of that Party; or

(ii) has the right of permanent residence (1) in that Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;

(1) Where a Party has made a reservation with respect to permanent residents in its Schedules in Annex 8E (Schedules of Specific Commitments), Annex 8F (Schedules of Non-Conforming Measures), or Annex 9A (Schedules of Specific Commitments on Temporary Movement of Natural Persons), that reservation shall not prejudice that Party's rights and obligations in GATS.

(j) person means a natural person or a juridical person;

(k) sector of a service means:

(i) with reference to a commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule in Annex 8E (Schedules of Specific Commitments) or Annex 8F (Schedules of Non-Conforming Measures); and

(ii) otherwise, the whole of that service sector, including all of its sub-sectors;

(l) 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;

(m) services includes any service in any sector except services supplied in the exercise of governmental authority;

(n) service consumer means any person that receives or uses a service;

(o) service of the other Party means a service which is supplied:

(i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel or its use in whole or in part; or

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

(p) 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;

(q) service supplier means a person that supplies a service. (2) (3)

(2) Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

(3) The Parties confirm their shared understanding that "service supplier" in this Chapter has the same meaning that it has under subparagraph (g) of Article XXVIII of GATS.

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

(s) trade in services means the supply of a service:

(i) from the territory of one Party into the territory of the other Party;

(ii) in the territory of one Party to the service consumer of the other Party;

(iii) by a service supplier of one Party, through commercial presence in the territory of the other Party;

(iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of the other Party; and

(t) traffic rights means the rights for scheduled and non-scheduled services to operate or carry passengers, cargo, and mail for remuneration or hire from, to, within, or over the territory of 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 8.2. Scope**

1. This Chapter shall apply to measures by a Party affecting trade in services.

2. For the purposes of this Chapter, "measures by a Party" means measures taken by:

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

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities of that Party.

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

3. This Chapter shall not apply to measures affecting:

(a) government procurement;

(b) subsidies or grants, including government-supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers, or service suppliers;

(c) services supplied in the exercise of governmental authority;

(d) cabotage in maritime transport services; and

(e) in respect of 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.

4. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment. For greater certainty, this Chapter does not apply to measures regarding citizenship, nationality or residence on a permanent basis.

5. For greater certainty, Annex 8A (Financial Services), Annex 8B (Telecommunications Services), Annex 8C (Professional Services), and Annex 8D (Foreign Investment Framework) are an integral part of this Chapter.

### **Article 8.3. Scheduling of Commitments**

1. Each Party shall make commitments under Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) and Article 8.6 (Market Access) in accordance with either Article 8.8 (Schedules of Specific Commitments) or Article 8.9 (Schedules of Non-Conforming Measures).

2. A Party making commitments in accordance with Article 8.8 (Schedules of Specific Commitments) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Most-Favoured- Nation Treatment) and Article 8.6 (Market Access). A Party making commitments in accordance with Article 8.8 (Schedules of Specific Commitments) may also make commitments under Article 8.10 (Additional Commitments).

3. A Party making commitments in accordance with Article 8.9 (Schedules of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Most-Favoured- Nation Treatment), Article 8.6 (Market Access) and Article 8.7 (Local Presence). A Party making commitments in accordance with Article 8.9 (Schedules of Non-Conforming Measures) may also make commitments under Article 8.10 (Additional Commitments).

### **Article 8.4. National Treatment**

1. A Party making commitments in accordance with Article 8.8 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex 8E (Schedules of Specific Commitments) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. (4)

2. A Party making commitments in accordance with Article 8.9 (Schedules of Non-Conforming Measures) shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers, subject to its non-conforming measures as provided in Article 8.9 (Schedules of Non-Conforming Measures). (5)

3. A Party may meet the requirement under paragraph 1 or 2 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

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

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

### **Article 8.5. Most-Favoured-Nation Treatment**

1. A Party making commitments in accordance with Article 8.8 (Schedules of Specific Commitments) shall, in respect of the

sectors and subsectors set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex 8E (Schedules of Specific Commitments) and subject to any conditions and qualifications set out therein, 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 a non-Party.

2. A Party making commitments in accordance with Article 8.9 (Schedules of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex 8F (Schedules of Non-Conforming Measures), 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 a non-Party.

3. Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.

4. For a Party making commitments in accordance with Article 8.8 (Schedules of Specific Commitments), if, after the date of entry into force of this Agreement, that Party enters into any agreement with a non-party in which it provides treatment to services in a sector or subsector not set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex 8E (Schedules of Specific Commitments), or service suppliers of such services of that non-party, more favourable than that it accords to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-party to services and service suppliers of the other Party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.

5. For a Party making commitments in accordance with Article 8.9 (Schedules of Non-Conforming Measures), if, after the date of entry into force of this Agreement, that Party enters into any agreement with a non-party in which it provides treatment to services in any sector exempted from the operation of paragraph 2 by a Party's Schedule in Annex 8F (Schedules of Non-Conforming Measures) or service suppliers of such services of that non-party, more favourable than that it accords to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.

6. The provisions of this Chapter shall not be construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

## **Article 8.6. Market Access**

1. With respect to market access through the modes of supply identified in subparagraph (s) of Article 8.1 (Definitions), a Party making commitments in accordance with Article 8.8 (Schedules of Specific Commitments) shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex 8E (Schedules of Specific Commitments). (6)

2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 8.8 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 8.9 (Schedules of Non-Conforming Measures), are defined as:

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (7)

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

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

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

(6) If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (s)(i) of Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (s)(iii) of Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

(7) This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

## **Article 8.7. Local Presence**

A Party making commitments in accordance with Article 8.9 (Schedules of Non-Conforming Measures) shall not require a service supplier of the other Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident, in its territory as a condition for the supply of a service as described in subparagraph (s)(i), (ii), or (iv) of Article 8.1 (Definitions), subject to its non-conforming measures as provided in Article 8.9 (Schedules of Non-Conforming Measures).

## **Article 8.8. Schedules of Specific Commitments**

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex 8E (Schedules of Specific Commitments), the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.6 (Market Access), and Article 8.10 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule in Annex 8E (Schedule of Specific Commitments) shall specify:

- (a) terms, limitations, and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments; and
- (d) where appropriate, the time frame for implementation of such commitments.

2. Measures inconsistent with both Article 8.4 (National Treatment) and Article 8.6 (Market Access) shall be inscribed in the column relating to Article 8.6 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.

3. For greater certainty, Schedules of Specific Commitments are contained in Annex 8E, which shall form an integral part of this Chapter.

## **Article 8.9. Schedules of Non-Conforming Measures**

1. For a Party making commitments in accordance with this Article, Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), Article 8.6 (Market Access), and Article 8.7 (Local Presence) shall not apply to:

- (a) any existing non-conforming measure that is maintained by that Party at:
  - (i) the central level of government, as set out by that Party in Part A of its Schedule in Annex 8F (Schedules of Non-Conforming Measures);
  - (ii) a regional level of government, as set out by that Party in Part A of its Schedule in Annex 8F (Schedules of Non-Conforming Measures); or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and
- (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 8.4 (National

Treatment), Article 8.5 (Most-Favoured-Nation Treatment), Article 8.6 (Market Access) or Article 8.7 (Local Presence).

2. Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), Article 8.6 (Market Access), and Article 8.7 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities set out in Part B of its Schedule in Annex 8F (Schedules of Non-Conforming Measures).

3. For greater certainty, Schedules of Non-Conforming Measures are contained in Annex 8F, which shall form an integral part of this Chapter.

## **Article 8.10. Additional Commitments**

1. The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standards, or licensing matters, not subject to scheduling, under:

(a) Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), or Article 8.6 (Market Access), for a Party making commitments in accordance with Article 8.8 (Schedules of Specific Commitments); or

(b) Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), Article 8.6 (Market Access), or Article 8.7 (Local Presence) for a Party making commitments in accordance with Article 8.9 (Schedules of Non-Conforming Measures).

2. A Party making additional commitments under subparagraph 1(a) shall inscribe such commitments in its Schedule in Annex 8E (Schedules of Specific Commitments).

3. A Party making additional commitments under subparagraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex 8F (Schedules of Non-Conforming Measures).

## **Article 8.11. Transition**

1. A Party making commitments in accordance with Article 8.8 (Schedules of Specific Commitments) (the "transitioning Party") shall submit a Schedule of Non-Conforming Measures agreed between the Parties in accordance with paragraphs 2 through 6 of this Article (an "Agreed Schedule") that accords with Article 8.9 (Schedules of Non-Conforming Measures) to the Subcommittee on Trade in Services no later than 6 years after the date of entry into force of this Agreement.

2. The transitioning Party shall provide to the other Party (the "responding Party") its proposed Schedule of Non-Conforming Measures within 5 years of the date of entry into force of this Agreement.

3. The commitments contained in the transitioning Party's proposed Schedule of Non-Conforming Measures shall provide an equivalent level of liberalisation and shall not result in a decrease in the level of commitments as compared to the transitioning Party's Schedule in Annex 8E (Schedules of Specific Commitments).

4. The responding Party shall consider the transitioning Party's proposed Schedule of Non-Conforming Measures and shall have the opportunity to make comments to ensure that the transitioning Party's proposed Schedule of Non-Conforming Measures meets the requirements specified in paragraph 3. The transitioning Party shall have the opportunity to respond to any comments received and to modify or revise its proposed schedule, as may be necessary, with a view to resolving any ambiguities, omissions, or errors in its proposed Schedule of Non-Conforming Measures.

5. In the event that the verification and clarification process undertaken pursuant to paragraph 4 is not completed within 12 months from the date the transitioning Party's proposed Schedule of Non-Conforming Measures is provided to the other Party, the Parties may agree to extend the time as provided under paragraph 1, to any other date agreed to by the Parties.

6. Upon completion of the verification and clarification process as set out in paragraph 4, the Parties may agree in writing amend this Agreement by replacing the transitioning Party's Schedule in Annex 8E (Schedules of Specific Commitments) with the transitioning Party's Agreed Schedule in Annex 8F (Schedules of Non-Conforming Measures). The transitioning Party may then submit the Agreed Schedule to the Subcommittee on Trade in Services in accordance with paragraph 1.

7. Notwithstanding Article 14.3 (Amendments - Final Provisions), once:

(a) the transitioning Party has submitted its Agreed Schedule to the Subcommittee on Trade in Services in accordance with paragraph 1;

(b) that transitioning Party has notified the responding Party in writing of the completion of its applicable domestic legal procedures; and

(c) the responding Party notifies the transitioning Party in writing of the completion of its applicable domestic procedures,



the transitioning Party's Agreed Schedule shall enter into force between the Parties after 60 days of the responding Party's written notification in accordance with subparagraph (c), or on such other date as the Parties may agree.

## **Article 8.12. Modification of Schedules**

1. Except as provided in paragraph 2, a Party (the "modifying Party") may modify or withdraw any commitment in its Schedule in Annex 8E (Schedules of Specific Commitments) or Annex 8F (Schedules of Non-Conforming Measures) at any time after three years from the date on which that commitment entered into force, provided that:

(a) it notifies the other Party (the "affected Party") of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal;

(b) upon notification of a Party's intent to make such modification, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment; and

(c) such an agreement between the Parties has been reached.

2. For a modifying Party that is a transitioning Party under Article 8.11, the modifying Party shall not seek to modify or withdraw any commitment in its Schedule in Annex 8E (Schedules of Specific Commitments) or Annex 8F (Schedules of Non-Conforming Measures), from the time that it provides its proposed Schedule of Non-Conforming Measures to the other Party (in accordance with paragraph 2 of Article 8.11) until 12 months after the date of entry into force of the Party's Agreed Schedule (in accordance with paragraph 7 of Article 8.11).

3. In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is no less favourable to trade than provided for in the Schedules in Annex 8E (Schedules of Specific Commitments) or Annex 8F (Schedule of Non-Confirming Measures) prior to such negotiations.

4. If agreement under paragraph 1(c) is not reached between the modifying Party and the affected Party within three months, the modifying Party may refer the matter to a panel in accordance with the procedures set out in Chapter 13 (Dispute Settlement) or, where agreed between the Parties, to an alternative arbitration procedure. The modifying Party may modify or withdraw a commitment once it has made the compensatory adjustments in conformity with the findings of the panel.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the panel, the affected Party may modify or withdraw substantially equivalent benefits in conformity with the findings of the panel.

## **Article 8.13. Transparency**

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency in trade in services.

2. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:

(a) all relevant measures of general application affecting trade in services; and

(b) all international agreements pertaining to or affecting trade in services to which the Party is a signatory.

3. To the extent possible, each Party shall make the measures and international agreements referred to in paragraph 2 publicly available on the internet and, to the extent provided under its legal framework, in the English language.

4. Where publication referred to in paragraphs 2 and 3 is not practicable, such information (8) shall be made otherwise publicly available.

5. To the extent provided for under its domestic legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons of the other Party on measures referred to in subparagraph 2(a) before adoption.

6. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter. On request of the other Party, the contact point shall:

(a) identify the office or official responsible for the relevant matter; and

(b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.

7. Each Party shall respond promptly to any request by the other Party for specific information on:

(a) any measures referred to in subparagraph 2(a) or international agreements referred to in subparagraph 2(b); and

(b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services.

(8) For greater certainty, such information may be published in each Party's chosen language.

## **Article 8.14. 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. Nothing in paragraph 2 shall 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 measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the result of the WTO negotiation on disciplines on such measures, pursuant to Article VI.4 of GATS and shall amend this Article, as appropriate, after consultation between the Parties to bring the results of those negotiations into effect under this Chapter. Such disciplines shall aim to ensure that such requirements, inter alia:

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

(b) are not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, are not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Party has undertaken commitments, pending the entry into force of disciplines in these sectors pursuant to paragraph 4, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b), or (c); and

(ii) could not reasonably have been expected of that Party at the time the commitments in those sectors were made.

(b) In determining whether a Party is in conformity with its obligations under subparagraph 5(a), international standards of relevant international organisations (9) applied by that Party shall be taken into account.

(9) "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

6. Where a Party requires authorisation for the supply of a service on which it has made commitments, it shall ensure that its competent authorities:

(a) ensure that any authorisation fees charged for the completion of relevant application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service. For the purposes of this subparagraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision;

(b) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

(c) to the extent practicable, establish an indicative time frame for processing of an application;

- (d) on request of the applicant, provide, without undue delay, information concerning the status of the application;
- (e) if they consider an application incomplete for processing under the Party's laws and regulations, inform the applicant that the application is incomplete within a reasonable period of time, and on request of the applicant, identify, where practicable, all the additional information that is required to complete the application, and provide the opportunity to remedy deficiencies within a reasonable time frame;
- (f) if an application is terminated or denied, to the extent possible and without undue delay, inform the applicant in writing of the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application;
- (g) to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a licence or qualification;
- (h) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and
- (i) where they deem appropriate, accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents.
7. Each Party shall provide adequate procedures to verify the competence of professionals of the other Party. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, ensure that:
- (a) the examination is scheduled at reasonable intervals; and
- (b) a reasonable period of time is provided to enable interested persons to submit an application.
8. Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.
9. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities to the extent practicable permit submission of an application at any time throughout the year (10). If a specific time period for applying exists, the Party shall ensure that the competent authorities allow a reasonable period for the submission of an application.
10. If a Party adopts or maintains measures relating to the authorisation of the supply of a service, the Party shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of the service for which authorisation is required.<sup>(11)</sup>
11. Paragraphs 1 through 10 shall not apply to:
- (a) a sector which remains non-committed by reason of a Party's Schedule in Annex 8E (Schedules of Specific Commitments) or Annex 8F (Schedules of Non-Conforming Measures); and
- (b) a measure to the extent that such measure is not subject to Article 8.4 (National Treatment) or Article 8.6 (Market Access) by reason of a Party's commitments made in accordance with either Article 8.8 (Schedules of Specific Commitments) or Article 8.9 (Schedules of Non-Conforming Measures).

(10) Competent authorities are not required to start considering applications outside of their official working hours and working days.

(11) For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

## **Article 8.15. Recognition**

1. 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, and subject to the requirements of paragraph 4 a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a non-Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the non-Party concerned, or may be accorded autonomously.
2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-Party, nothing in Article 8.5 (Most-Favoured-

Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.

3. A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should 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 service suppliers, or a disguised restriction on trade in services.

5. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant inter-governmental 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.

6. As set out in Annex 8C (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory to enter into negotiations for agreements or arrangements on recognition.

## **Article 8.16. Monopolies and Exclusive Service Suppliers**

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 8.4 (National Treatment) and Article 8.6 (Market Access).

2. Where a Party's monopoly supplier of a service 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 commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If a Party has a 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 that Party establishing, maintaining, or authorising such a supplier to provide specific information concerning the relevant operations.

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 territory.

## **Article 8.17. Disclosure of Confidential Information**

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Party confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

## **Article 8.18. Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.16 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, on request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

## **Article 8.19. Payments and Transfers**

1. Except under the circumstances envisaged in Article 11.4 (Measures to Safeguard the Balance of Payments - General Exceptions and Provisions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.

2. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund ("IMF") under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its commitments under this Chapter regarding such transactions, except under Article 11.4 (Measures to Safeguard the Balance of Payments - General Exceptions and Provisions) or on request of the IMF.

## **Article 8.20. Denial of Benefits**

1. A Party may deny the benefits of this Chapter:

- (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;
- (b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party;
- (c) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
  - (i) by a vessel registered under the laws and regulations of a non-Party; and
  - (ii) by a person of a non-Party which operates or uses the vessel in whole or in part.

2. A Party may deny the benefit of this Chapter to a service supplier of the other Party, if the service supplier is a juridical person owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

## **Article 8.21. Safeguard Measures**

1. The Parties note the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures based on the principle of non-discrimination. The Parties shall review the incorporation of safeguard measures pending any further developments in the multilateral fora pursuant to Article X of GATS.

2. In the event that a Party encounters difficulties in the implementation of its commitments under this Chapter, that Party may request consultations with the other Party to address such difficulties.

## **Article 8.22. Subsidies**

1. Notwithstanding subparagraph 3(b) of Article 8.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.

2. A Party which considers that it is adversely affected by a subsidy of the other Party related to trade in services may request consultations with the other Party on such matters. The requested Party shall accord sympathetic consideration to such a request.

3. No Party shall have recourse to dispute settlement under Chapter 13 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

## **Article 8.23. Cooperation**

1. The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.

2. Recognising that trade in audiovisual services, including film and television co-productions, can significantly contribute to the development of the audiovisual industry and to the intensification of cultural and economic exchange between them, the Parties shall endeavour to enhance cooperation in the sector, including by pursuing an audiovisual co-production agreement.

## **Article 8.24. Subcommittee on Trade In Services**

1. The Parties hereby establish a Subcommittee on Trade in Services ("Trade in Services Subcommittee"), composed of government representatives of each Party.
2. The Trade in Services Subcommittee shall meet within one year from the date of entry into force of the Agreement, and thereafter as mutually determined by the Parties.
3. The Trade in Services Subcommittee's functions shall be to:
  - (a) review and monitor the implementation of this Chapter;
  - (b) consider any other matters related to this Chapter identified by either party; and
  - (c) facilitate the exchange of information between the Parties in relation to this Chapter.
4. The Subcommittee may:
  - (a) make recommendations, or refer matters, to the Joint Committee;
  - (b) establish ad hoc working groups, as appropriate;
  - (c) refer matters to any ad hoc or standing working group or any other subsidiary body related to this Chapter; and
  - (d) consider any other matter related to this Chapter, or any matter as directed by the Joint Committee.
5. The Subcommittee shall report to the Joint Committee as required.

## **Annex 8A. FINANCIAL SERVICES**

### **Article 8A.1. Definitions**

For the purposes of this Annex:

(a) financial institution means any financial intermediary or other juridical person that is authorised to do business and regulated or supervised as a financial institution, under the laws and regulations of the Party in whose territory it is located;

financial service means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities: Insurance and insurance-related services (i) direct insurance (including co-insurance):

(A) life; and

(B) non-life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency;

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

Banking and other financial services (excluding insurance)

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transaction;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques, and bankers drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- (A) money market instruments (including cheques, bills, certificates of deposits);
- (B) foreign exchange;
- (C) derivative products including futures and options;
- (D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
- (E) transferable securities; and
- (F) other negotiable instruments and financial assets, including bullion;
- (xi) 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;
- (xii) money broking;
- (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
- (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (c) financial service supplier means any natural person or juridical person of a Party seeking to supply or supplying financial services but the term "financial service supplier" does not include a public entity;
- (d) FinTech means the use of technology to improve and automate the delivery and use of financial services;
- (e) new financial service means any financial service which is not supplied in the territory of a Party but is supplied and regulated in the territory of the other Party. This may include a service related to current and new products, or the manner in which a product is delivered;
- (f) public entity means:
  - (i) a government, a central bank, or a 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
- (g) self-regulatory organisation means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by legislation or delegation from central, regional or local governments or authorities. (1)

(1) For greater clarity, a Party may require a self-regulatory organisation to be recognised.

## Article 8A.2. Scope

1. This Annex shall apply to measures taken by a Party affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in subparagraph (s) of Article 8.1 (Definitions - Trade in Services).
2. For the purposes of this Annex, "services supplied in the exercise of governmental authority" as referred to in subparagraph (p) of Article 8.1 (Definitions - Trade in Services) means the following:

(a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies; (2)

(b) activities forming part of a statutory system of social security or public retirement plans; or

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.

If a Party allows any of the activities referred to in subparagraph (b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

3. The definition of "service supplied in the exercise of government authority" in Article 8.1 (Definitions - Trade in Services) shall not apply to services covered by this Annex.

4. Article 8.7 (Local Presence – Trade in Services) shall not apply to services covered by this Annex.

(2) Activities referred to in this subparagraph include any regulatory and enforcement activities conducted in pursuit of monetary or exchange rate policies.

### **Article 8A.3. Financial Services Exceptions**

For greater certainty, nothing in this Annex shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Annex, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or between the Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or trade in financial services.

### **Article 8A.4. Prudential Measures**

Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons (3), including for the protection of investors, depositors, policyholders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the 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.

(3) The Parties understand that "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or financial service suppliers, as well as the safety and financial and operational integrity of payment and clearing systems.

### **Article 8A.5. New Financial Services**

1. The host Party shall endeavour to permit financial institutions of the other Party established in the territory of the host Party to supply a new financial service in the territory of the host Party that the host Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law.(4)

2. Where an application is approved, the supply of the new financial service is subject to relevant licensing, institutional or juridical form, or other requirements of the host Party.

(4) For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

### **Article 8A.6. Treatment of Financial Services Information**

Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers, or any confidential or proprietary information in the possession of public entities.

### **Article 8A.7. Recognition**



1. A Party may recognise prudential measures of any international standard setting body, the other Party, or a non-Party in determining how the Party's measures relating to financial services shall be applied. (5) Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international standard setting body, the other Party, or the non-Party concerned or may be accorded autonomously.

2. Where a Party is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, that Party shall provide adequate opportunity for the other Party to negotiate accession to such an agreement or arrangements, or to negotiate a comparable agreement or arrangement 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.

3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in paragraph 2 exist.

(5) For greater certainty, nothing in Article 8.5 (Most-Favoured-Nation Treatment à Trade in Services) shall be construed to require the Party to accord such recognition to prudential measures of the other

## **Article 8A.8. Regulatory Transparency**

1. The Parties recognise that transparent measures governing the activities of financial service suppliers are important in facilitating their ability to gain access to, and operate in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.

3. Each Party shall ensure that measures of general application that it adopts or maintains are promptly published, or otherwise made publicly available. (6)

4. To the extent practicable, each Party shall:

(a) publish or make available to interested persons (7) in advance any regulation of general application relating to this Annex that it proposes to adopt, and the purpose of such regulation; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment on such proposed regulation.

5. To the extent practicable, each Party shall allow a reasonable period of time between the date of publication of any final regulation of general application and the date when it enters into effect.

6. 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 a self-regulatory organisation of the Party are promptly published or otherwise made available. (8)

7. 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 Annex.

8. Each Party's regulatory authority shall make available to interested persons of the other Party its requirements, including any documentation required, for completing applications relating to the supply of financial services.

9. On request of an applicant in writing, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a complete application of a financial service supplier of the other Party relating to the supply of a financial service within 180 days, and shall notify the applicant of the decision without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and all necessary information is received. Where it is not practicable for such a decision to be made within 180 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

11. On request of an unsuccessful applicant in writing, a Party's regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for the denial of the application.

(6) For greater certainty, each Party may, to the extent practical, publish information in English.

(7) For the purposes of this Article, the Parties confirm their shared understanding that "interested persons" are persons whose direct financial interest could potentially be affected by the adoption of the regulations of general application.

(8) For greater certainty, each Party may, to the extent practical, publish information in English.

## **Article 8A.9. Transfers of Financial Information and Processing of Financial Information**

1. The Parties recognise that each Party may have its own regulatory requirements, including requirements set out in legislation, concerning the transfer of financial information and the processing of financial information. (9) (10)

2. A Party shall not, other than in pursuance of the requirements mentioned in paragraph 1, take measures that prevent:

(a) transfers of financial information, including transfers of data by electronic or other means, necessary for the conduct of the ordinary business of a financial service supplier in its territory; or

(b) processing of financial information necessary for the conduct of the ordinary business of a financial service supplier in its territory.

3. Nothing in paragraph 2 prevents a regulatory authority of a Party, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with its laws and regulations in relation to data management and storage and system maintenance, as well as to retain within its territory copies of records, (11) provided that such requirements shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

4. Nothing in paragraph 2 restricts the right of a Party to protect personal data, personal privacy, and the confidentiality of individual records and accounts including in accordance with its laws and regulations, (12) provided that such a right shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

5. Nothing in paragraph 2 shall be construed to require a Party to allow the cross-border supply or consumption abroad of services in relation to which it has not made commitments, including to allow non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in subparagraph (b)(xv) of Article 8A.1 (Definitions).

(9) For greater certainty, a Party may adopt a different regulatory approach, and this paragraph does not affect and is without prejudice to a Party's rights and obligations under this Article.

(10) For greater certainty, "financial information" includes any number or other personal data used to identify an account opened by, or card or payment instruments issued by a financial institution to a data principal, or any personal data regarding the relationship between a financial institution and a data principal including financial status and credit history.

(11) When a Party's regulatory authority requires financial service suppliers to retain within its territory copies of records, that regulatory authority may mandate that financial services suppliers in its territory store such copies only in the territory of that Party.

(12) Australia is considered to be a country that provides adequate data protection.

## **Article 8A.10. Self-Regulatory Organisations**

If a Party requires a financial institution of the other Party to be a member of, participate in, or have access to a self-regulatory organisation to provide a financial service in its territory, that Party shall ensure that the self-regulatory organisation observes that Party's obligations under Article 8.4 (National Treatment à Trade in Services).

## **Article 8A.11. Payment and Clearing Systems**

Under the terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory 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. (13)

(13) For greater certainty, a Party need not grant access under this Article to a financial institution of the other Party established in its territory if such access or treatment is not granted to its own like financial institutions.

## **Article 8A.12. Cross-Border Electronic Payments**

Both Parties shall support the development of efficient and secure cross-border electronic payments, including those provided by non-banks and FinTech entities, to foster the development and adoption of internationally accepted standards for electronic payments, and to promote innovation, competition and interoperability of electronic payment infrastructure. Each Party shall, to the extent practicable, make regulations on electronic payments, including in relation to regulatory approval, licensing requirements, procedures and technical standards, publicly available.

## **Article 8A.13. Performance of Back-Office Functions**

1. Each Party recognises that the performance of the back-office functions of a financial institution in its territory by the head office or an affiliate of the financial institution can be important to the effective management and efficient operation of that financial institution.
2. A Party may require financial institutions to ensure core compliance and critical functions satisfy any domestic requirements, but recognises the importance of avoiding the imposition of arbitrary requirements on the performance of back-office functions.
3. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain core functions.

## **Article 8A.14. Dispute Settlement**

Panels established pursuant to Chapter 13 (Dispute Settlement) to examine matters relating to disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

## **Article 8A.15. Credit Rating of Financial Services Suppliers**

In relation to the provision of a financial service in the territory of a Party ("the host Party"):

(a) by a financial service supplier of the other Party, which is already licensed or authorised by the host Party to supply financial services in its territory, and

(bo) where the provision of financial services is wholly or partially contingent on an assessment by the host Party of the credit rating of the financial service supplier or the sovereign credit rating of the other Party,

the host Party shall, to the extent practicable, undertake its assessment in a reasonable manner. (14)

(14) For greater certainty, this paragraph does not apply in relation to credit rating assessments undertaken by financial service suppliers.

## **Article 8A.16. Consultations Relating to Financial Services Issues**

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall consider such a request.
2. Consultations under this Article shall include the relevant representatives of the contact points specified in Article 8A.17 (Contact Points).

## **Article 8A.17. Contact Points**

1. for the Purposes of this Annex, the Contact Points for Financial Services Are:

(a) for Australia, the Department of the Treasury and the Department of Foreign Affairs and Trade and, as necessary, officials from the relevant regulatory authorities, including the Australian Prudential Regulation Authority, the Reserve Bank of Australia, and the Australian Securities and Investment Commission; and

(b) for India, the Department of Commerce.

2. A Party shall promptly notify the other Party of any change of its contact point.

## **Annex 8B. TELECOMMUNICATIONS SERVICES**

### **Article 8B.1. Definitions**

For the purposes of this Annex:

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

(b) end-user means a final consumer of, or subscriber to, a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

(c) essential facilities means facilities of a public telecommunications 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;

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

(e) international mobile roaming service means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables an end-user whose mobile handset or other device normally accesses public telecommunication services in the territory of one Party to use their mobile handset or other device for voice, data, or messaging services in the territory of the other Party;

(f) intra-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to the laws and regulations of a Party, affiliates. For these purposes, the terms "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Party. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;

(g) leased circuits means telecommunications facilities between two or more designated points which are set aside for the dedicated use of, or availability to, particular users;

(h) licence means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a public telecommunications network or service, including concessions, permits or registrations;

(i) major supplier means a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation (having regard to price and supply), in the relevant market for public telecommunications networks or services as a result of:

(i) control over essential facilities; or

(ii) use of its position in that market;

(j) network element means a facility or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

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

(l) mobile number portability means the ability of end-users of public telecommunications services to retain the same

mobile telephone numbers when switching between the same category of suppliers of public telecommunications services;

(m) personal information means any information, including data about an identified or identifiable individual;

(n) public telecommunications network means the telecommunications infrastructure used to provide public telecommunications services between defined network termination points, as provided for in the laws and regulations of each Party;

(o) public telecommunications service means any telecommunications service that is offered to the public generally;

(p) reference interconnection offer means a publicly available interconnection offer extended by a major supplier and filed with, approved by, or determined by, a telecommunications regulatory authority that sufficiently details the terms, rates, and conditions for interconnection so that a supplier of public telecommunications networks or services that is willing to accept it may obtain interconnection with the major supplier on that basis;

(q) telecommunications means the transmission and reception of signals by any electromagnetic means;

(r) telecommunications dispute resolution body means any body responsible for resolution of disputes concerning telecommunications;

(s) telecommunications regulatory body means any body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications; and

(t) suppliers of public telecommunications means a\_ licensed operator of a Party.

## **Article 8B.2. Scope and Coverage**

1. This Annex shall apply to:

(a) measures affecting access to and use of public telecommunications networks or services; and

(b) other measures relating to public telecommunications networks or services.

2. This Annex shall apply subject to the rules, regulations and licence conditions, as applicable within the territory of each Party.

3. This Annex shall not apply to measures affecting the cable or broadcast distribution of radio and television programming, except to ensure that cable or broadcast service suppliers have access to and use of public telecommunications networks and services.

4. Nothing in this Annex shall be construed to require a Party, or require a Party to compel any service supplier, to establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally. (1)

(1) Nothing in this Annex will require India, or require India to oblige any service supplier in its territory, to establish, construct, acquire, lease, operate or supply telecommunications networks or services other than as provided for in its Schedule in Annex 8E (Schedule of Specific Commitments).

## **Article 8B.3. Access to and Use of Public Telecommunications Networks and Services (2)**

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

2. Subject to paragraphs 5 and 6, each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease and attach terminal or other equipment which interfaces with a public telecommunications network and which is necessary to supply their services;

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

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

(d) provide services to users over any leased or owned circuit(s) to the extent that the scope and type of such services are consistent with the laws and regulations of the Party.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information within its territory or across its borders, including for intra- corporate communications of such service suppliers, and for access to information contained in databases or otherwise stored in machine- readable form in the territory of the Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages and protect the personal information of end-users of public telecommunications networks or services, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

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

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

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

(c) ensure that such access to and use of public telecommunications networks and services do not constitute a security and safety hazard and are not in contravention of any legislation, rule or regulation (including those related to public policy of the Party) which are publicly available and applied without discrimination on the suppliers and users of services of similar categories.

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

(a) restrictions on resale or shared use of public telephone services;

(b) a requirement to use specified technical interfaces, including interface protocols, for connection with those networks and services;

(c) requirements, where necessary, for the inter-operability of such networks and services;

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

(e) restrictions on connection of leased or owned circuits with such public telecommunications networks or services or with circuits leased or owned by other service suppliers; or

(f) a requirement for notification, registration, and licensing.

(2) For India, this Article shall only apply to services listed in its Schedule in Annex 8E (Schedule of Specific Commitments).

## **Article 8B.4. Interconnection to Be Ensured**

1. Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide interconnection with the suppliers of public telecommunications networks or services of the other Party to the extent provided for in its laws and regulations.

2. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory does not use or provide commercially sensitive or confidential information of, or relating to, suppliers and end- users of public telecommunications networks or services, acquired as a result of interconnection arrangements, other than for the purpose of providing these services.

## **Article 8B.5. Interconnection with Major Suppliers**

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities of suppliers of public

telecommunications networks or services of the other Party:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided by the major supplier for its own like services or for like services of non-affiliated suppliers of public telecommunications networks or services or of 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 supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of facilities based suppliers, subject to charges that reflect the cost of construction of necessary additional facilities and mutually agreed terms and conditions.

2. Each Party shall ensure that a major supplier in its territory offers access to network elements on an unbundled basis on terms and conditions that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services. A Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

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

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

(b) any existing interconnection agreement between the major supplier and any similarly situated supplier of public telecommunications networks or services; or

(c) a new interconnection agreement through commercial negotiation.

4. In addition to the options provided in paragraph 3, each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

5. Each Party shall ensure that the applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

6. Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

7. A supplier of public telecommunications networks or services of a Party requesting interconnection with a major supplier in the territory of the other Party shall have recourse, either:

(a) at any time; or

(b) after a reasonable period of time which has been made publicly known,

to an independent domestic body in that other Party, which may be a telecommunications regulatory body or telecommunications dispute resolution body, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

## **Article 8B.6. Mobile Number Portability**

Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide number portability for mobile services to the extent technically feasible, on a timely basis, and on reasonable and non-discriminatory terms and conditions.

## **Article 8B.7. Resale**

Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by a major supplier based on the need to promote competition or to benefit the long-term interests of end-users. Where a Party has determined that a service must be offered for resale by a major supplier, that Party shall ensure that suppliers of public telecommunications networks or services in its territory do not impose unreasonable or

discriminatory conditions or limitations on the resale of those services by suppliers of public telecommunications networks or services of the other Party.

## **Article 8B.8. Treatment by Major Suppliers**

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

- (a) the availability, provisioning, rates or quality of like public telecommunications networks or services; and
- (b) the availability of technical interfaces necessary for interconnection.

## **Article 8B.9. Competitive Safeguards**

1. Each Party shall through its relevant authorities adopt or maintain appropriate measures for the purpose of preventing suppliers who alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other suppliers of public telecommunications networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

## **Article 8B.10. Provisioning of Leased Circuit Services**

Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of the other Party with leased circuit services that are public telecommunications services on terms and conditions, and at rates, that are not unduly unfavourable or disadvantageous.

## **Article 8B.11. Co-location and Access to Facilities**

1. Each Party shall ensure that a major supplier in its territory allows suppliers of public telecommunications networks or services of another Party to locate their equipment necessary for interconnection or access to unbundled network elements, at the major supplier's premises. Each Party shall endeavour to ensure that co-location is provided on a timely basis and on terms and conditions, including technical feasibility and space availability where applicable, and at rates, that are reasonable, non-discriminatory, and transparent.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall endeavour to ensure that a major supplier in its territory provides an alternative solution, on a timely basis and on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.

3. A Party may determine in accordance with its laws and regulations which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2, having regard to factors such as the state of competition in the market where co-location is required, and whether such premises can feasibly be economically or technically substituted in order to provide a competing service.

## **Article 8B.12. 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 anti-competitive per se, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner.

## **Article 8B.13. Public Availability of Licensing Criteria**

1. Where a licence is required for the supply of a telecommunications service, a Party shall make publicly available:



- (a) all the licensing criteria and procedures that it applies;
- (b) the period of time normally required to reach a decision concerning an application for a licence; and
- (c) the terms and conditions of individual licences.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the:

- (a) denial of a licence; (b) revocation of a licence; or
- (c) refusal to renew a licence.

## **Article 8B.14. Independent Regulatory and Dispute Resolution Body**

1. Each Party shall ensure that its telecommunications regulatory body and telecommunications dispute resolution bodies are separate from, and not accountable to, any supplier of public telecommunications networks or services.
2. Each Party shall ensure that the regulatory decisions and procedures used by its telecommunications regulatory body and telecommunications dispute resolution bodies are impartial with respect to all market participants.
3. Telecommunications regulatory bodies and telecommunications dispute resolution bodies may not accord more favourable treatment to a supplier of public telecommunications networks or services in a Party's territory than that it accords to a like supplier of the other Party on the basis that the supplier receiving more favourable treatment is owned, wholly or in part, by the Party.

## **Article 8B.15. Allocation of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including assignment of frequencies, access to 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 assigned for specific government uses.
3. Each Party retains the right to establish and apply spectrum and frequency management policies which may affect the number of suppliers of public telecommunications networks or services, provided that it does so in a manner consistent with this agreement. Each Party also retains the right to allocate frequency bands taking into account current and future needs and spectrum availability.
4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition.

## **Article 8B.16. Transparency**

1. Each Party shall endeavour to ensure that telecommunications service suppliers are provided an opportunity to comment on a regulatory decision of general application that its telecommunications regulatory authority proposes.
2. Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications networks and services is publicly available, including:
  - (a) tariffs and other terms and conditions of service;
  - (b) specifications of technical interfaces with such networks and services;
  - (c) information on bodies responsible for the preparation and adoption of standards affecting such access and use;
  - (d) conditions for attaching terminal or other equipment;
  - (e) requirements for notification, permit, registration, or licensing requirements, if any; and
  - (f) information on bodies responsible for preparing, amending, and adopting standards-related measures.

## **Article 8B.17. International Mobile Roaming**

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the Parties and enhance consumer welfare.
2. A Party shall ensure that information regarding retail mobile roaming rates is easily accessible to consumers.
3. The Parties recognise that with a view to ensuring that rates or conditions for wholesale international roaming services are reasonable, the Parties may cooperate with each other to facilitate the implementation of measures affecting the rates or conditions applicable to wholesale international roaming services, including by entering into arrangements.
4. A Party that ensures access for suppliers of the other Party shall be deemed to be in compliance with its obligations under Article 8.5 (Most-Favoured-Nation Treatment -à Trade in Services) with respect to international mobile roaming services.
5. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

## **Article 8B.18. Submarine Cable Systems**

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

## **Article 8B.19. Relation to International Organisations**

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and endeavour to promote such standards through the work of relevant international organisations.

## **Article 8B.20. Relationship to other Chapters**

In the event of any inconsistency between this Annex and other Chapters of this Agreement, this Annex shall prevail to the extent of the inconsistency.

## **Article 8B.21. Cooperation**

1. The Parties recognise the transformational impact of communications networks, infrastructure, and technologies (including those that are new and emerging), and the importance of these technologies to the Parties' respective economies and societies.
2. Accordingly, each Party shall take measures to:
  - (a) encourage a diverse and competitive market for telecommunications services and networks in its territory; and
  - (b) protect the security and integrity of its telecommunications infrastructure.
3. The Parties shall endeavour to:
  - (a) exchange information on the opportunities and challenges associated with communication networks, infrastructure, and technologies;
  - (b) work together in regional and multilateral fora to promote a shared approach to these opportunities and challenges; and
  - (c) exchange information and experience in spectrum management.

## **Article 8B.22. Dispute Settlement and Appeal**

1. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have timely recourse to its telecommunications regulatory body or telecommunications dispute resolution bodies to resolve disputes in accordance with its laws and regulations.
2. Each Party shall ensure that any supplier of public telecommunications networks or services aggrieved by a determination or decision of its relevant telecommunications regulatory body may obtain review of, or have the opportunity to appeal, such determination or decision in accordance with its laws and regulations.
3. No Party shall permit the making of an application for review to constitute grounds for non-compliance with the

determination or decision of the telecommunications regulatory body, unless the relevant body otherwise determines.

## **Article 8B.23. Enforcement**

Each Party shall provide its competent authority, the authority to enforce the Party's measures relating to the obligations set out in Articles 8B.4 through 8B.7. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, or revocation of licences.

## **Annex 8C. PROFESSIONAL SERVICES**

### **Article 8C.1. Definitions**

For the purposes of this Annex:

(a) regulated or licensed occupations means occupations for which there are designated authorities, including regulators, that may determine eligibility to practise, and may cover occupations requiring specific vocational skill sets or expertise under various industry or business sectors or state and territory regulatory regimes.

### **Article 8C.2. Scope**

This Annex applies to measures of a Party affecting the supply of professional services and services in regulated or licensed occupations.

### **Article 8C.3. Objectives**

The objectives of this Annex are to:

- (a) encourage the development of systems for the recognition of professional qualifications and experience, registration and licensing of professionals, including through mutual recognition or similar arrangements, to better facilitate trade in professional services between the Parties;
- (b) facilitate the sharing of knowledge and expertise on professional services, accreditation, standards, and regulation between relevant bodies of the Parties in the development of best practices;
- (c) enhance cooperation on skills development and mutual recognition of professional qualifications as well as vocational education and training qualifications for regulated or licensed occupations; and
- (d) support the sharing of information on developments in labour markets.

### **Article 8C.4. General Principles**

1. The Parties recognise that professional services, and regulated or licensed occupations, play an essential role in facilitating trade and investment across both goods and services sectors and in promoting economic growth and business confidence.
2. Each Party shall consider, or encourage its relevant bodies to consider, subject to its laws and regulations, whether or in what manner to:
  - (a) apply ethical, conduct and disciplinary standards to professionals of the other Party in a manner that is no more burdensome than the application of those standards to professionals of the Party in the relevant professional services sub-sector;
  - (b) accommodate the provision of professional services:
    - (i) on a cross-border basis through the use of telecommunications technology;
    - (ii) by establishing a commercial presence; and
    - (iii) a combination of subparagraphs (i) and (ii); and
  - (c) permit service suppliers of each Party to work together.

### **Article 8C.5. Recognition of Professional Qualifications, Licensing and Registration**

1. Each Party shall engage with its relevant bodies and encourage them to establish dialogues with the relevant bodies of the other Party with a view to negotiating and concluding within 12 months of the date of entry into force of this Agreement mutual recognition or similar arrangements providing for the recognition of the qualifications, licensing, and registration procedures across professional services and services in regulated or licensed occupations of mutual interest. The Parties shall promptly exchange the relevant contact points to facilitate such dialogues.

2. The Parties shall encourage their relevant bodies to take into account, as appropriate, plurilateral or multilateral agreements or international framework that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing, and registration.

### **Article 8C.6. Temporary, Limited or Project-Specific Licensing or Registration**

1. The Parties may consider, if feasible, based on a foreign service supplier's home licence or recognised professional body membership, without the need for further written examination:

- (a) taking steps to implement a temporary, limited or project-specific licensing or registration regime; or
- (b) granting such licence or registration, if appropriate.

2. The temporary, limited or project-specific licence granted under paragraph 1 should not operate to prevent a foreign service supplier from gaining a local license once that service supplier satisfies the applicable local licensing requirements.

### **Article 8C.7. Professional Standards**

1. To facilitate the activities referred to in Article 8C.5 above, each Party shall encourage its relevant bodies to work towards the development of mutually acceptable professional standards and criteria in mutually agreed areas. In particular, such professional standards and criteria may include the following matters:

- (a) education;
- (b) examinations;
- (c) experience;
- (d) conduct and ethics;
- (e) professional development and re-certification;
- (f) scope of practice;
- (g) local knowledge; and
- (h) consumer protection.

2. On request of the other Party, the requested Party shall, where practicable, provide information concerning standards and criteria for the licensing and certification of professional service suppliers, or otherwise provide information relating to the appropriate regulatory or other body to consult regarding these standards and criteria.

3. The Parties shall encourage their relevant bodies to refer to international frameworks, where applicable, in developing common standards and criteria for the relevant professions.

### **Article 8C.8. Cooperation In Regulated or Licensed Occupations**

1. Each Party shall encourage the mutual recognition of the relevant qualifications, licensing or certification requirements, including in regulated or licensed occupations under various industry and business sectors.

2. Each Party shall encourage its relevant bodies to organise or facilitate bilateral discussions on occupational skill sets and standards in specific regulated or licensed occupations, based on the request of the other Party.

3. The Parties shall endeavour to work towards sharing of information on the skill shortage and skill sets desirable for those occupations.

### **Article 8C.9. Professional Services Working Group**

1. The Parties hereby establish a Professional Services Working Group ("Working Group") composed of representatives of each Party to facilitate:

(a) the achievement of the objectives of this Annex; and

(b) the effective implementation and administration of systems for the recognition of qualifications, licensing and registration procedures across professional services and services in regulated or licensed occupations.

2. The Working Group shall liaise, as appropriate, to support the relevant bodies of each Party in pursuing the objectives of this Annex. This support may include providing points of contact, facilitating meetings, and providing information.

3. The Working Group shall support relevant bodies of each Party in relation to the development of systems for recognition of professional qualifications, registration and occupational licensing including having regard to how those relevant bodies establish, and the manner in which they administer, those systems. This support may include providing information on:

(a) identifying possible improvements in the systems of the relevant bodies; and

(b) sharing best practices.

4. The Working Group may consider developing model mutual recognition arrangements and procedures for temporary or project-specific licensing of professional services suppliers with a view to facilitating the negotiation of those arrangements or the adoption of those procedures by relevant bodies.

5. The Working Group may support relevant bodies of each Party in developing mechanisms for cooperation and mutual recognition as covered under this Annex.

6. The Working Group shall meet within 12 months of the date of entry into force of this Agreement and subsequently as agreed by the Working Group. The relevant bodies of each Party may also be invited to participate in the Working Group.

7. The Working Group shall report to the Subcommittee on Trade in Services on its progress, including with respect to recommendations for initiatives to promote the recognition of professional qualifications, licensing and registration, and on the further direction of its work, no later than 2 years after the date of entry into force of this Agreement, or as otherwise agreed by the Parties.

## **Annex 8D. FOREIGN INVESTMENT FRAMEWORK**

1. A decision or requirement under Australia's Foreign Investment Framework (including any amendments made to that Framework from time to time), which comprises Australia's Foreign Investment Policy, Foreign Acquisitions and Takeovers Act 1975 (Commonwealth); Foreign Acquisitions and Takeovers Regulation 2015 (Commonwealth); Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Commonwealth); Foreign Acquisitions and Takeovers Fees Imposition Regulation 2020 (Commonwealth); Financial Sector (Shareholdings) Act 1998 (Commonwealth); and Ministerial Statements, shall not be subject to dispute settlement under Chapter 13 (Dispute Settlement).

2. A decision or requirement under India's Foreign Investment Framework (including any amendments made to that Framework from time to time) which comprises India's Foreign Direct Investment Policy, Press Notes, Press Releases, Clarifications, the Foreign Exchange Management Act, 1999, and any other Act or Policy mentioned therein and the Rules and Regulations thereunder shall not be subject to dispute settlement under Chapter 13 (Dispute Settlement).

## **Chapter 9. TEMPORARY MOVEMENT OF NATURAL PERSONS**

### **Article 9.1. Definitions**

For the purposes of this Chapter:

(a) immigration formality means a visa, permit, pass or other document or electronic authority granting temporary entry;

(b) natural person of a Party means a natural person of a Party as defined in subparagraph (j) of Article 8.1 (Definitions - Trade in Services); and

(c) temporary entry means entry by a natural person of a Party as covered by this Chapter without the intent to establish permanent residence.

## **Article 9.2. Scope**

1. This Chapter shall apply, as set out in each Party's Schedule in Annex 9A (Schedules of Specific Commitments on Temporary Movement of Natural Persons), to measures by that Party affecting the movement of natural persons of a Party into the territory of the other Party, where such persons are engaged in trade in goods, the supply of services, or the conduct of investment.
2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, nationality, residence, or employment on a permanent basis.
3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.
4. The sole fact that a Party requires natural persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter.

## **Article 9.3. Grant of Temporary Entry**

1. Each Party shall set out in its Schedule in Annex 9A (Schedules of Specific Commitments on Temporary Movement of Natural Persons) the commitments it makes with regard to the temporary entry of natural persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of natural persons.
2. Each Party shall grant temporary entry or extension of temporary stay to natural persons of the other Party to the extent provided for in its commitments made pursuant to paragraph 1, provided that those natural persons:
  - (a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and
  - (b) meet all relevant eligibility requirements for temporary entry into, or extension of temporary stay in, the granting Party.
3. The sole fact that a Party grants temporary entry to a natural person of the other Party pursuant to this Chapter shall not be construed to exempt that natural person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

## **Article 9.4. Processing of Applications**

1. Each Party shall expeditiously process complete applications for immigration formalities, or extensions or renewals thereof, received from natural persons of the other Party covered under this Chapter.
2. On request of an applicant, a Party that has received a complete application for immigration formality shall endeavour to promptly provide information concerning the status of the application. Each Party shall notify the applicant, either directly or through the applicant's authorised representative in accordance with its laws and regulations, of the decision on the application.
3. If an application regarding an immigration formality is refused or denied, each Party shall, on request and within a reasonable period after a complete application by a natural person of the other Party covered by this Chapter is lodged, inform the applicant of the reasons for refusal or denial.
4. To the extent permissible under its laws and regulations, each Party shall endeavour to accept applications relating to immigration formalities in an electronic format under the equivalent conditions of authenticity as paper submissions.
5. Where appropriate, a Party shall accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents to the extent permitted by its laws and regulations.
6. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality by a natural person covered under this Chapter are reasonable, in that they do not unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

## **Article 9.5. Transparency**

1. Further to Article 10.2 (Publication - Transparency) and Article 10.5 (Notification and Provision of Information -

Transparency), each Party shall make publicly available information relating to its current requirements for the temporary entry by natural persons of the other Party covered by this Chapter.

2. The information referred to in paragraph 1 shall include, where applicable, the following:

- (a) categories of immigration formality;
- (b) documentation required and conditions to be met;
- (c) method of filing an application and options on where to file, such as consular offices or online;
- (d) application fees and an indicative timeframe for the processing of an application;
- (e) the maximum length of stay under each category of immigration formality;
- (f) conditions for any available extension or renewal;
- (g) rules regarding accompanying dependants; and
- (h) available review or appeal procedures.

3. Each Party shall:

- (a) upon modifying or amending any immigration measure that affects temporary entry of natural persons of the other Party, ensure that the information published or otherwise made publicly available pursuant to paragraphs 1 and 2 is updated as soon as possible; and
- (b) maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry and stay of natural persons covered under this Chapter.

4. To the extent practicable and in a manner consistent with its laws and regulations each Party shall allow reasonable time between the publication of laws and regulations and their effective date affecting the temporary entry and stay of natural persons covered under this Chapter, and such publication can be made electronically available.

5. Each Party shall publish, to the extent practicable, the information in English.

## **Article 9.6. Spouses and Dependents**

Each Party shall make commitments on spouses and dependents in its Schedule in Annex 9A (Schedules of Specific Commitments on Temporary Movement of Natural Persons).

## **Article 9.7. Dispute Settlement**

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Chapter through consultations.

2. Neither Party shall have recourse to dispute settlement under Chapter 13 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

- (a) the matter involves a pattern of practice; and
- (b) the natural persons affected have exhausted all available administrative remedies regarding the particular matter.

3. For the purposes of subparagraph 2(b), the administrative remedies shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of institution of the proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the natural persons concerned.

## **Article 9.8. Working Group on the Temporary Movement of Natural Persons**

1. The Parties hereby establish a Working Group on the Temporary Movement of Natural Persons ("Working Group") composed of representatives of each Party.

2. The Working Group shall meet within one year of the date of entry into force of this Agreement, and thereafter on an annual basis, unless the Parties agree otherwise.

3. The Working Group's functions shall be to:

(a) review and monitor the implementation of this Chapter;

(b) consider opportunities to facilitate the temporary entry of each Party's respective natural persons into the other Party for business purposes in accordance with this Chapter; and

(c) provide a forum for the exchange of information on each Party's immigration measures relating to the categories of natural persons as defined in each Party's Schedule in Annex 9A (Schedules of Specific Commitments to Temporary Movement of Natural Persons).

4. The Working Group shall report to the Subcommittee on Trade in Services, established under Article 8.24 (Subcommittee on Trade in Services - Trade in Services) as required.

## **Annex 9A. INDIA'S SCHEDULE OF SPECIFIC COMMITMENTS ON TEMPORARY MOVEMENT OF NATURAL PERSONS**

The Schedule of Australia shall not be used to interpret India's commitments or obligations under Chapter 9 (Temporary Movement of Natural Persons) or other Chapters of this Agreement.

Category of Natural Persons	Duration of stay
A. Business visitors	
1. Business visitors being natural persons seeking to travel to India for business purposes whose remuneration and financial support for the duration of the visit must be derived from sources outside India and who must not engage in making direct sales to the general public or in supplying the goods or services themselves. Business visitors comprises: (a) business visitors being natural persons not based in India who are sales representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier; (b) business visitors being natural persons seeking to travel to India for the purpose of participating in business negotiations or meetings; (c) business visitors being natural persons who are seeking to travel to India for business purposes, including investment purposes; and (d) business visitors being natural persons who are seeking entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sale to the general public. 2. Access of business visitors to India is subject to the condition that the business visitors will not be engaged in making direct sales to the general public or in supplying services or making the investment (except establishing investments) themselves. 3. A visa shall be granted provided the business visitors: (a) presents proof of nationality; and (b) does not receive any remuneration from a source located within the Party granting the visa.	Entry and temporary stay of business visitors shall be granted for a period not more than 180 days, which may be extended at the discretion of India and subject to its laws.
B. Intra-Corporate Transferees	
1. Intra-Corporate Transferees comprises natural persons of Australia within the categories of employees listed below who are in the employment of a juridical person of	Entry and temporary stay of intra-corporate transferees, who otherwise meet the criteria for the granting of an immigration



<p>Australia and being transferred temporarily to a branch, a representative office or a juridical person owned or controlled by the aforesaid juridical person in the context of provision of a service in India: (a) Managers, being persons who direct a branch office or one or more departments as their head, or supervise or control the work of other supervisory, professional or managerial personnel, and who have the authority to appoint or remove the personnel and powers to exercise discretionary authority over day-to-day operations; (b) Executives, being persons who are in senior positions within a juridical person, including a branch, who primarily direct the management, have wide decision-making powers and either are members of the board of directors or receive directions from the board or the general body of shareholders; or (c) Specialists, being persons who possess high qualifications and knowledge at an advanced level relevant to the organisation's activities or of the organisation's research, equipment, techniques or management and may include persons who are members of accredited professional bodies.</p>	<p>visa, shall be granted for an initial period of up to 1 year or the period of the contract, whichever is less, subject to any other condition prescribed under India's immigration regulations. The period of stay may be extended on a year-to-year basis for a total term not exceeding 5 years</p>
<p>C. Contractual Service Suppliers</p>	
<p>1. Contractual Service Suppliers comprises employees of juridical persons who are: (a) employees of an Australia-based company or partnership who travel to India temporarily for short periods of stay of up to 1 year or the duration of their contract, whichever is less, in order to perform a service pursuant to a contract between their employer and a client(s) located in India; or (b) employees of an Australia-based company or partnership who travel to India temporarily for short periods of stay of up to 1 year in order to fulfil qualification and licensing requirements where presence in India is an essential condition for the fulfilment of these requirements. 2. The contract has to be obtained in one of the sectors listed below and is subject to the conditions inscribed in Chapter 9 (Temporary Movement of Natural Persons) and the additional conditions, if any, mentioned in the sector or the relevant sub sector in India's Schedule in Annex 8E (Schedules of Specific Commitments): (a) Engineering services; (b) Integrated engineering services; (c) Architectural services; (d) Urban planning and landscape architectural services; (e) Taxation advisory services (excluding legal advisory and legal representational services on tax matters); (f) Accounting and book keeping services (excluding auditing services); (g) Computer and related services; (h) R &amp; D services; (i) Management consulting services (excluding all services relating to legal consultancy); (j) Services related to management consulting (excluding all services relating to legal consultancy); (k) Insurance and insurance related services, only in respect of advisory and consulting services; (l) Other financial services, only in respect of advisory and consulting services; (m) Advertising services; (n) Site investigation work; (o) Mining (advisory or consulting services only); (p) Telecommunication services, only in respect of advisory and consulting services; (q) Environmental services; (r) Related scientific and technical consulting services; (s) Technical testing and analysis services; (t) Transport (advisory and consulting services only); (u) Maintenance and repair of vessels, rail, road, and aircraft equipment; (v) Translation and interpretation services (excluding official or certified activities); (w) Maintenance and repair of personal and household goods; (x) Manufacturing (advisory and consulting services only); (y) Hotel and restaurant services; (z) Travel agency and tour operator services; (aa) Tourist guides services. 3. Access of contractual service suppliers to India shall be available only in the specific service sector in which the relevant contract has been entered into and employees should have appropriate educational and</p>	<p>Entry and temporary stay of contractual service suppliers shall be granted for an initial period of up to 1 year or the period of the contract, whichever is less, provided all immigration measures applicable are complied with.</p>

<p>professional qualifications relevant to the services to be provided. 4. Further, entry and temporary stay is subject to the requirements of: (a) requisite visa; (b) the conditions attached to entry and temporary stay under such a visa; and (c) fulfilment of specific requirements regarding information in support of the application such as required documentation, including a proof of contract and possession of requisite educational and professional qualifications relevant to the service to be provided including work experience. 5. Entry and temporary stay is also subject to any other condition prescribed under India's immigration regulations.</p>	
<p>D. Independent Professionals</p>	
<p>1. Independent Professionals comprises: (a) natural persons who travel to India temporarily for short periods of stay of up to 12 months with permission to extend for a maximum of 3 months or the duration of the contract, whichever is less, in order to perform a service pursuant to a contract(s) between them and a client(s) located in India for which they possess the necessary academic credentials and qualifications and have obtained, wherever necessary, registration with the professional body, and remuneration is to be paid solely to the natural person; and (b) natural persons who travel to India temporarily for short periods of stay of up to 12 months in order to fulfil qualification and licensing requirements where presence in India is an essential condition for the fulfilment of these requirements. 2. Entry granted in accordance with subparagraphs 1 (a) and (b) has to be obtained in one of the sectors listed below and is subject to the additional conditions mentioned in relation to the sector or the relevant sub-sector in India's Schedule in Annex 8E (Schedules of Specific Commitments): (a) Accounting and book-keeping services; (b) Engineering services; (c) Integrated engineering services; (d) Architectural services; (e) Urban planning and landscape architectural services; (f) Computer and related services; (g) R &amp; D services; (h) Management consulting services (excluding all services relating to legal consultancy); (i) Services related to management consulting (excluding all services relating to legal consultancy); (j) Hotel and restaurant services; (k) Travel agency and tour operator services; or (l) Tourist guides services. 3. Access of independent professionals to India under a category in paragraph 2 shall be available only in the specific service sector in which the relevant contract has been entered into and employees should have appropriate educational and professional qualifications relevant to the services to be provided. 4. Further, entry and temporary stay is subject to the requirements of: (a) requisite visa; (b) the conditions attached to entry and temporary stay under such a visa; and (c) fulfilment of specific requirements regarding information in support of the application such as required documentation, including a proof of contract and possession of requisite educational and professional qualifications relevant to the service to be provided including work experience. 5. Entry and temporary stay is also subject to any other condition prescribed under India's immigration regulations.</p>	<p>Entry and temporary stay of independent professionals shall be granted for an initial period of up to 1 year or the period of the contract, whichever is less provided all immigration measures applicable are complied with.</p>
<p>E. Installer &amp; Servicer</p>	
<p>1. India shall grant temporary entry to an installer and servicer of Australia, who otherwise meets its criteria for the grant of an immigration visa, for a duration of 3 months or the period of contract, whichever is less. 2. Such installers' and servicers' temporary entry shall be granted provided that the natural person: (a) complies with immigration measures applicable to temporary entry; (b) provides proof of their nationality; (c) provides documentation demonstrating that he or she will be so engaged and describing the purpose of entry, including a bona fide letter of contract from the entity engaging the services of the natural person in the host Party; and (d) provides documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.</p>	<p>3 months or the period of the contract, whichever is less.</p>
<p>Accompanying Spouse and Dependents</p>	

1. For a natural person of Australia who has been granted temporary entry and temporary stay, or an extension in temporary stay, under the commitments set out in categories (B), (C) & (D) of this Schedule, the accompanying spouse and dependents of that natural person are accorded temporary entry and temporary stay for an equal period to that of the natural person, provided that the stay in India of that natural person is for a period of 12 months or longer. 2. The working rights of the above mentioned accompanying spouse and dependents in India are subject to relevant domestic laws, regulations and rules

## Annex 9A. AUSTRALIA'S SCHEDULE OF SPECIFIC COMMITMENTS ON TEMPORARY MOVEMENT OF NATURAL PERSONS

1. This Schedule sets out Australia's commitments in accordance with Chapter 9 (Temporary Movement of Natural Persons). This Schedule and Chapter 9 (Temporary Movement of Natural Persons) comprise the entirety of Australia's commitments in respect of the temporary movement or temporary entry and temporary stay of natural persons.

2. The Schedules of India shall not be used to interpret Australia's commitments or obligations under Chapter 9 (Temporary Movement of Natural Persons) or other Chapters of this Agreement.

Description of Category	Conditions and Limitations (including length of stay)
A. Business Visitors	
<u>Definition:</u> Business visitors being natural persons seeking to travel to Australia for business 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 the goods or services themselves. Business visitors comprise:	
(a) Service sellers, as business visitors being natural persons not based in Australia who are sales representatives of a service supplier, and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier.	(a) Temporary entry is for an initial stay of 6 months and up to a maximum of 12 months.
(b) Business visitors, being natural persons seeking to travel to Australia for the purpose of participating in business negotiations or meetings.	(b) Temporary entry is for periods of stay up to a maximum of 3 months.
(c) Business visitors, being natural persons who are seeking to travel to Australia for business purposes, including investment purposes.	(c) Temporary entry is for periods of stay up to a maximum of 3 months.
(d) Business visitors, being natural persons who are seeking entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sale to the general public.	(d) Temporary entry is for periods of stay up to a maximum of 3 months.
B. Installers and Servicers	
<u>Definition:</u> A natural person who is an installer or servicer	

of machinery or equipment, where such installation or servicing by the supplying enterprise is a condition of purchase under contract of the said machinery or equipment. An installer or servicer must abide by Australian workplace standards and conditions and must not perform services which are not related to the service activity which is the subject of the contract.	Temporary entry is for periods of stay up to a maximum of 3 months.
C. Intra-Corporate Transferees	
<p><u>Definition:</u> A natural person employed by an enterprise of India established and lawfully and actively operating in Australia, who is transferred to fill a position in the parent, branch, subsidiary or affiliate of that 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 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; or (b) a specialist, who is a natural person with advanced trade, technical or professional skills and experience who is assessed as having the necessary qualifications, or alternative credentials accepted as meeting Australia's domestic standards for the relevant occupation, and who must have been employed by the employer for not less than two years immediately preceding the date of the application for temporary entry.</p>	<p>Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Full details of employer sponsorship requirements, including eligible occupations for sponsorship, are available on the website of the Australian government department responsible for immigration matters (as at the date of entry into force of this Agreement, the address of that website was <a href="http://www.homeaffairs.gov.au">www.homeaffairs.gov.au</a>). Sponsorship requirements, including the eligible occupations for specialists, may change from time to time. (1) Temporary entry for executives and senior managers is for all services sectors and for a period of stay of up to 4 years, with the possibility of further stay. Temporary entry for specialists is for a period of stay up to 4 years, with the possibility of further stay. Labour market testing may be required, to the extent that this is not inconsistent with Australia's commitments under the WTO.</p>

(1) Changes to eligible occupations will not be inconsistent with Australia's commitments under the WTO on Temporary Entry.

Description of Category	Conditions and Limitations (including length of stay)
D. Independent Executives	
<p><u>Definition:</u> Natural persons whose work responsibilities match the description set out below and who intend, or are responsible, for the establishment in Australia of a new branch or subsidiary of an enterprise which has its head of operations in the territory of India and which has no other representative, branch or subsidiary in Australia. Independent [Executives 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</p>	<p>Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations, may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian government department responsible for immigration matters (as at the date of entry into force of this Agreement, the address of</p>

enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of othersupervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.	that website was <a href="http://www.homeaffairs.gov.au">www.homeaffairs.gov.au</a> ). Temporary entry is for periods of stay up to a maximum of 4 years.
E. Contractual Service Suppliers	
<p><u>Definition:</u> Natural persons with trade, technical or professional skills and experience who are assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in Australia for their nominated occupation, and who are: (a) employees of an enterprise of India that has concluded a contract for the supply of a service within Australia and that does not have a commercial presence within Australia; or (b) engaged by an enterprise lawfully andactively operating in Australia in order to supply a service under a contract within Australia.</p>	<p>Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian government department responsible for immigration matters (as at the date of entry into force of this Agreement, the address of that website was <a href="http://www.homeaffairs.gov.au">www.homeaffairs.gov.au</a>). Sponsorship requirements, including eligible occupations, may change from time to time. Temporary entry and temporary stay shall be granted for up to a combined total of 1,800 per year of qualified, professional Indian traditional chefs and yoga instructors entering as Contractual Service Suppliers of India. Labour market testing may be required, to the extent that this is not inconsistent with Australia's commitments under the WTO. Temporary entry is for periods of stay up to 4 years, with the possibility of further stay. Australia also makes separate commitments on the temporary entry and temporary stay of certain Contractual Service Suppliers in Appendix   to this Schedule, subject to the conditions and limitations set out therein.</p>
F. Spouses and Dependants	
<p>For a natural person of India who has been granted temporary entry and temporary stay or an extension of temporary stay under the commitments set out in sections (C), (D) and (E) (except for the commitments set out in Appendix  ) of this Annex for a period of 12 months or longer and who has a spouse or dependant, Australia shall, upon application, grant the accompanying spouse or dependant the right of entry and temporary stay, movement and work for an equal period to that of the natural person.</p>	

## Appendix I. AUSTRALIA'S COMMITMENTS WITH RESPECT TO CERTAIN CONTRACTUAL SERVICE SUPPLIERS

1. In this Appendix, Australia makes the following commitments with respect to temporary entry and temporary stay of natural persons of India entering Australia as Contractual Service Suppliers in the sectors or subsectors, or parts thereof, set out in Table A and Table B, and subject to the conditions and limitations set out in paragraphs 2 through 10 below.
2. Australia's commitments in this Appendix shall only apply to natural persons of India seeking to enter Australia with trade,

technical or professional skills and experience who are assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in Australia for their specified occupation, and who are:

(a) employees of an enterprise of India that has concluded a contract for the supply of a service within Australia and that does not have a commercial presence within Australia; or

(b) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.

3. Natural persons under subparagraph 2(a) must meet the following conditions:

(a) the natural person must be engaged in the supply of a service on a temporary basis as an employee of an enterprise in India which has obtained a contract for the supply of a service of up to 12 months' duration;

(b) the natural person must have been employed by the enterprise supplying the services for not less than 12 months immediately preceding the date of submission of an application for entry into Australia; and

(c) the natural person must possess at least two years professional experience in the sector of activity which is the subject of the service contract, at the date of submission of an application for entry into Australia.

4. Natural persons under subparagraph 2(b) must meet the following conditions:

(a) the natural person must be engaged in the supply of a service on a temporary basis by an enterprise in Australia under a contract for the supply of a service of up to 12 months duration; and

(b) the natural person must possess at least six years professional experience in the sector of activity which is the subject of the contract referred to in subparagraph 4(a), at the date of submission of an application for entry into Australia.

5. Natural persons under subparagraphs 2(a) and 2(b) must also meet the following conditions:

(a) the natural person must possess:

(i) a university degree or a qualification demonstrating knowledge of an equivalent level relevant to the sector of activity which is the subject of the service contract; and

(ii) where applicable, the professional qualifications, licensing or other requirements to supply the service, where this is required under the law of Australia where the service is supplied;

(b) the natural person must not receive remuneration for the provision of services in the territory of Australia other than the remuneration paid by the enterprise employing or engaging them;

(c) the natural person must only undertake service activity in Australia which is the subject of the service contract: (2) and

(d) the number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, and the enterprise may be requested to provide documentation to evidence this, subject to the laws and regulations of Australia.

6. The permissible length of stay for natural persons of India seeking entry pursuant to the commitments in this Appendix is for a cumulative period of not more than 6 months in any 12-month period or for the duration of the service contract, whichever is less.

7. Subject to the conditions and limitations above, Australia makes commitments in the sectors or subsectors, or parts thereof, set out in:

(a) Table A for Contractual Service Suppliers who meet the definition set out in subparagraph 2(a), and

(b) Table B for Contractual Service Suppliers who meet the definition set out in subparagraph 2(b). (3)

8. For greater certainty, Australia does not undertake any commitment in this Appendix for natural persons of India in sectors or subsectors which are not listed in Table A or Table B, nor for positions with skill or experience requirements below those set out in this Appendix.

9. For greater certainty and further to paragraph 2 of Article 9.3 (Grant of Temporary Entry - Temporary Movement of Natural Persons), the grant of temporary entry of a natural person of India in sectors or subsectors set out in Table A or Table B is subject to that natural person meeting any applicable licensing or other requirements relevant to the position.

10. Australia's commitments on spouses and dependants do not apply with respect to commitments made in this Appendix.

(2) Eligible service contracts must require the presence of the natural person on a temporary basis in Australia in order to fulfil the contract and exclude contracts through an agency for placement and supply of personnel.

(3) For greater certainty, the sectors or subsectors listed in Table A and Table B are only committed under the terms and conditions set out in this Appendix.

#### **Table A**

##### **Sector or Subsector**

Engineering Services

Integrated Engineering Services

Management Consulting Services (excluding all services relating to legal services)

Services related to Management Consulting (excluding all services relating to legal services)

Architectural Services

Urban Planning and Landscape Architectural Services

Insurance and Insurance Related Services, only in respect of advisory and consulting services

Computer and Related Services

Taxation Advisory Services (4)

Accounting and Bookkeeping Services (5)

Other Financial Services, only in respect of advisory and consulting services

Advertising Services

Site Investigation Work

Mining (advisory and consulting services only)

Research and Development Services

Telecommunication Services, only in respect of advisory and consulting services

Environmental Services

Related Scientific and Technical Consulting Services

Technical testing and analysis services

Travel agency and tour operator services

Transport (advisory and consulting services only)

Maintenance and repair of vessels, rail, road, and aircraft equipment

Translation and interpretation services, excluding official or certified activities

Maintenance and repair of personal and household goods

Services incidental to agriculture and animal husbandry

Manufacturing (advisory and consulting services only)

(4) For greater certainty, excludes legal advisory and legal representational services on tax matters.

(5) For greater certainty, excludes auditing services.

**Table B****Sector or Subsector**

Accounting and Book-keeping services (6)

Engineering Services

Integrated Engineering Services

Management Consulting Services (excluding all services relating to legal services)

Services related to Management Consulting (excluding all services relating to legal services)

Architectural Services

Urban Planning and Landscape Architectural Services

Computer and Related Services

Mining (advisory and consulting services only)

Research and Development Services

Environmental Services

Travel agency and tour operator services

Services incidental to agriculture and animal husbandry

Manufacturing (advisory and consulting services only)

(6) For greater certainty, excludes auditing services.

## **Chapter 10. TRANSPARENCY**

### **Article 10.1. Definitions**

For the purposes of this Chapter, administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and establish a norm of conduct and that is relevant to the implementation of this Agreement, but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

### **Article 10.2. Publication**

Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published, and made available in the public domain including on an official website in such a manner as to enable interested persons of the other Party to become acquainted with them.

### **Article 10.3. Administrative Proceedings**

With a view to administering its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement in a consistent, impartial, objective, and reasonable manner, each Party shall ensure in its administrative proceedings applying such measures to a particular person, good, or service of another Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided with reasonable notice, including a description of the proceeding, a statement of the legal authority under which the proceeding is initiated,



and a general description of any issues in question;

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

(c) it follows its procedures in accordance with its domestic law.

## **Article 10.4. Review and Appeal**

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

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

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

## **Article 10.5. Notification and Provision of Information**

1. To the extent possible, each Party shall notify the other Party of any actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. Any such notification, documentation or other communication between the Parties shall be done in the English language.

3. On request of the other Party, a Party shall within a reasonable period of time provide information and respond to questions pertaining to any actual measure, whether or not that other Party has been previously notified of that measure.

4. Any notification, request, or information under this Article shall be conveyed to the other Party through its relevant contact point pursuant to Article 12.6 (Communications - Administrative and Institutional Provisions).

5. Any notification or information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

# **Chapter 11. GENERAL PROVISIONS AND EXCEPTIONS**

## **Article 11.1. General Exceptions**

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade) of this Agreement, Article XX of GATT 1994, including its interpretive notes, is incorporated into and made part of this Agreement, mutatis mutandis.

2. For the purposes of Chapter 8 (Trade in Services) and Chapter 9 (Temporary Movement of Natural Persons), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 11.2. Security Exceptions**

1. Nothing In this Agreement shall be construed to:

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

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

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials;

(ii) relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;

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

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

(v) relating to the protection of critical public infrastructure, whether publicly or privately owned, including communications, power and water infrastructure; or

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

### **Article 11.3. Direct Taxation Measures**

1. Nothing in this Agreement shall apply to any direct taxation measure (1).

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any direct tax convention (2). In the event of any inconsistency between this Agreement and any direct tax convention, the direct tax convention shall prevail over this Agreement.

(1) For greater certainty, "direct taxation measure" does not include any indirect taxation measure including customs duties as defined in Article 2.1(b) of Chapter 2 (Trade in Goods) nor does it include the measures listed in subparagraphs (i), (ii), and (iii) of Article 2.1(b) of Chapter 2 (Trade in Goods).

(2) For greater certainty, "direct tax convention" means any direct tax convention, agreement, instrument or arrangement, by whatever name called, whether entered into bilaterally or multilaterally.

### **Article 11.4. Measures to Safeguard the Balance of Payments**

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt restrictive import measures;

(b) in the case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions on trade in services to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. Restrictions adopted or maintained under paragraph 1(b) shall:

(a) be consistent with the IMF Articles of Agreement;

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

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

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

(e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any country that is not a party to this Agreement.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

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

5. To the extent that it does not duplicate the process under the WTO or the International Monetary Fund, the Party

adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations with the other Party from the date of notification in order to review the measures adopted or maintained by it.

## **Article 11.5. Disclosure of Information**

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

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

## **Article 11.6. Confidentiality**

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. Nothing in this Article shall prevent a Party from using or disclosing the confidential information to the extent that it may be necessary in the context of judicial or quasi-judicial proceedings or where a Party is authorised or required to disclose or use the information under its laws and regulations, in which case the Party that has received the information shall notify the other Party of the release or disclosure where possible.

## **Article 11.7. Economic Cooperation**

The Parties acknowledge the importance of cooperation in implementing this Agreement and enhancing its benefits. The Parties recognise that cooperation activities undertaken pursuant to this Agreement shall seek to complement and build upon existing agreements or arrangements between the Parties.

## **Article 11.8. Financial Provisions**

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the laws, regulations and policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.

# **Chapter 12. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS**

## **Article 12.1. Establishment of the Joint Committee**

The Parties hereby establish a Joint Committee, which shall be composed of government representatives of the Parties at the level of senior officials or, when agreed by the Parties, at the level of Ministers.

## **Article 12.2. Meeting of the Joint Committee**

1. The Joint Committee shall meet within 1 year of entry into force of this Agreement. Thereafter, it shall meet every 2 years unless the Parties agree otherwise, to consider any matter relating to this Agreement.
2. Meetings conducted pursuant to paragraph 1 shall be held alternately in the territories of the Parties, unless the Parties agree otherwise. The Party hosting a session of the Joint Committee shall provide any necessary administrative support for such session.
3. Upon request by a Party, the Joint Committee and any subcommittee, subsidiary body or working group established under this Agreement may hold special sessions at a mutually convenient date without undue delay.
4. Each Party shall be responsible for the composition of its delegation.

## **Article 12.3. Decision-making**

1. All decisions of the Joint Committee shall be made by mutual agreement of the Parties.
2. All decisions of the subcommittees, subsidiary bodies or working groups established under this Agreement shall be made by mutual agreement of the Parties.

## **Article 12.4. Functions of the Joint Committee**

1. The Joint Committee shall:
  - (a) assess, review and monitor the implementation and operation of this Agreement;
  - (b) consider any matter relating to the implementation or operation of this Agreement;
  - (c) consider ways to further trade and investment between the Parties, including improving market access;
  - (d) consider and recommend to the Parties any proposal to amend this Agreement;
  - (e) supervise and coordinate the work of all subcommittees, subsidiary bodies and working groups established under this Agreement;
  - (f) during its first meeting, adopt the Rules of Procedure and Code of Conduct referred to in Article 13.11 (Rules of Procedure and Code of Conduct - Dispute Settlement); and
  - (g) consider any other matter that may affect the operation of this Agreement.
2. The Joint Committee may:
  - (a) adopt decisions or make recommendations as envisaged by this Agreement;
  - (b) seek to resolve differences or disputes that may arise regarding the implementation, interpretation or application of this Agreement without prejudice to the rights of the Parties under Chapter 13 (Dispute Settlement);
  - (c) as appropriate, issue interpretations of this Agreement; (1)
  - (d) establish, refer matters to, or assign tasks to, or delegate functions to, or consider matters raised by any subcommittee, subsidiary body, or working group;
  - (e) restructure, reorganise or dissolve any subcommittee, subsidiary body or working group established under this Agreement, in order to improve the functioning of this Agreement;
  - (f) unless otherwise provided in this Agreement, determine the functions of the subcommittees, subsidiary bodies, or working groups established under this Agreement;
  - (g) as it considers appropriate, amend the Rules of Procedure and Code of Conduct referred to in Article 13.11 (Rules of Procedure and Code of Conduct - Dispute Settlement); and
  - (h) carry out any other such functions as may be agreed by the Parties.

(1) For greater certainty, interpretations issued by the Joint Committee are binding for panels established under Chapter 13 (Dispute Settlement).

## **Article 12.5. Rules of Working Procedures**

1. The Joint Committee shall establish its own rules of working procedures at its first meeting. The Joint Committee, if necessary, may also establish its own financial arrangements.
2. Any subcommittee, subsidiary body or working group established under this Agreement may establish its own rules of working procedures for its work.
3. Unless otherwise provided in this Agreement, the Joint Committee and any subcommittee, subsidiary body or working group established under this Agreement shall carry out its work through whatever means as appropriate, which may include through electronic means.
4. The Joint Committee and any subcommittee, subsidiary body or working group established under this Agreement, shall

be co-chaired by representatives from both the Parties.

## **Article 12.6. Communications**

1. Each Party shall designate a contact point to receive and facilitate official communications between the Parties on any matter relating to this Agreement, except for matters for which this Agreement establishes a specific contact point.
2. All official communications in relation to this Agreement shall be in the English language.
3. Each Party shall promptly notify the other Party, in writing, of any changes to its overall contact point or any other contact point.

## **Chapter 13. DISPUTE SETTLEMENT**

### **Article 13.1. Definitions**

For the purposes of this Chapter:

- (a) Code of Conduct means the code of conduct referred to in Article 13.11 (Rules of Procedure and Code of Conduct) and annexed to the Rules of Procedure;
- (b) complaining Party means the Party requesting consultations under Article 13.5 (Consultations);
- (c) compliance review panel means a panel reconvened under Article 13.15 (Compliance Review);
- (d) confidential information means information which is treated and designated as confidential by a Party;
- (e) DSU means the Understanding on Rules and Procedures Governing the Settlement of Disputes set out in Annex 2 of the WTO Agreement;
- (f) panel means a panel established under Article 13.7 (Request for Establishment of a Panel), unless the context provides otherwise;
- (g) reconvened panel means a panel reconvened under Article 13.16 (Compensation and Suspension of Concessions or Other Obligations) or Article 13.17 (Review after the Suspension of Concessions or Other Obligations);
- (h) responding Party means the Party to which a request for consultations is made under Article 13.5 (Consultations); and
- (i) Rules of Procedure means the rules of procedure referred to in Article 13.11 (Rules of Procedure and Code of Conduct) and established in accordance with paragraph 1(f) of Article 12.4 (Functions of the Joint Committee â Administrative and Institutional Provisions).

### **Article 13.2. Cooperation**

The Parties shall endeavour to agree on the interpretation and application of this Agreement in accordance with customary rules of interpretation of public international law. The Parties shall make every attempt through cooperation and consultations to arrive at a mutually agreed solution to any matter that might affect its operation.

### **Article 13.3. Scope**

1. Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or whenever a Party considers that:
  - (a) a measure of the other Party is inconsistent with its obligations under this Agreement; or
  - (b) the other Party has otherwise failed to carry out its obligations under this Agreement.
2. Unless the Parties agree otherwise, the timeframes and procedural rules set out in this Chapter shall apply to all disputes governed by this Chapter.
3. No finding, determination or recommendation of a panel, a compliance review panel, or a reconvened panel can add to or diminish the rights, and obligations of the Parties under this Agreement.

4. The Parties agree that a panel appointed under this Chapter shall interpret and apply this Agreement in accordance with customary rules of interpretation of public international law. Where an obligation under this Agreement is identical or substantially identical to an obligation under the WTO Agreement, the panel shall take into account any relevant interpretation established in rulings of the WTO Dispute Settlement Body.

## **Article 13.4. Choice of Forum**

1. If a dispute arises regarding a right or obligation under this Agreement and a substantially equivalent right or obligation under another international agreement to which the Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute. The forum selected shall be used to the exclusion of other fora. (1)
2. For the purposes of this Article, the complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of a panel pursuant to paragraph 1 of Article 13.7 (Request for Establishment of a Panel) or requested the establishment of, or referred a matter to, a dispute settlement panel under another international agreement. Where panel procedures are not provided for under another international agreement, the complaining Party shall be deemed to have selected the forum when it commences a dispute under the dispute settlement procedures in the relevant international agreement.

(1) For greater certainty, the exclusion of other fora includes the exclusion of consultations in those fora.

## **Article 13.5. Consultations**

1. Either Party may request consultations with the other Party with respect to any matter described in Article 13.3 (Scope) by providing written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and any other issue of concern. Each Party shall accord adequate opportunity for consultations regarding the request for consultation made by the other Party.
2. If a request for consultations is made, the Party to which the request is made shall reply to the request within 10 days of receipt of the request and shall enter into consultations within a period no later than 30 days after the receipt of the request or, within 15 days of receipt of the request in the case of perishable goods, with a view to reaching a mutually agreed solution.
3. The Parties shall make every effort to reach a mutually agreed solution to any matter through consultations. To this end:
  - (a) the Parties shall provide sufficient information as may be available at the stage of consultations to enable a full examination of the matter subject to consultations, including how the measure at issue might affect the implementation, application or operation of this Agreement;
  - (b) the Parties shall treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information; and
  - (c) the consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

## **Article 13.6. Good Offices, Conciliation or Mediation**

1. The Parties may at any time agree to good offices, conciliation or mediation. Such procedures may begin at any time and be terminated by either Party at any time.
2. Proceedings involving good offices, conciliation or mediation and the particular positions taken by the Parties in these proceedings shall be confidential and without prejudice to the rights of either Party in any further proceedings under the provisions of this Chapter or any other proceedings before a forum selected by the Parties.
3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 13.7 (Request for Establishment of a Panel).

## **Article 13.7. Request for Establishment of a Panel**

1. The complaining Party may request the establishment of a panel to examine the matter, by way of written notification if:

(a) the responding Party does not enter into consultations within 30 days of receipt of the request for consultations under Article 13.5 (Consultations) or within 15 days of such a request in the case of perishable goods; or

(b) the Parties fail to resolve the matter within 60 days of receipt of the request for consultations or within 30 days of such a request in the case of perishable goods, or within such other period as the Parties mutually agree.

2. The request to establish a panel shall identify:

(a) the specific measures at issue;

(b) whether consultations have been held; and

(c) a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly including the relevant provisions of this Agreement at issue.

3. Once a request for the establishment of a panel is made in conformity with paragraph 2, a panel shall be established in accordance with Article 13.8 (Composition of Panels).

## **Article 13.8. Composition of Panels**

1. Where a Party makes a request for the establishment of a panel pursuant to paragraph 1 of Article 13.7 (Request for Establishment of a Panel), a panel shall be established in accordance with this Article.

2. Unless the Parties agree otherwise, a panel shall consist of three members. Within 30 days of the receipt of the written notification requesting the establishment of a panel, each Party shall appoint one panellist, who may be its national, and provide to the other Party a list of up to four nominees for appointment as the chair. The chair shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

3. Within 45 days of receipt of the request for the establishment of a panel, any panellist not yet appointed shall be appointed by the Parties, on request of either Party, by draw of lot from the list of the candidates proposed in accordance with paragraph 2. Where more than one panellist, including a chair is to be selected by draw of lot, the chair shall be selected first.

4. Where a Party fails to submit its list of up to four nominees within the period specified in paragraph 2, the chair shall be appointed by random draw of lot from the list of nominees already submitted by the other Party.

5. If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist and shall have all the powers and duties of the original panellist. In such a case, the work of the panel and any time period applicable to the panel proceedings shall be suspended for the period beginning the date the original member becomes unable to act and ending on the date the new member is appointed.

6. Where a panel is reconvened under paragraph 1 of Article 13.15 (Compliance Review), paragraph 6 of Article 13.16 (Compensation and Suspension of Concessions or Other Obligations), or paragraph 4 of Article 13.17 (Review after the Suspension of Concessions or Other Obligations) the reconvened panel shall, where possible, have the same panellists as in the original panel. If the panel cannot be reconvened with all of its original panellists, the procedures for selection of the panellists set out in paragraphs 2 through 5 shall apply for the appointment of any replacement panellist.

## **Article 13.9. Qualification of Panellists**

1. Any person appointed as a panellist pursuant to Article 13.8 (Composition of Panels) 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 impartiality, objectivity, reliability, sound judgement and independence;

(c) not be employed by, affiliated with or take instructions from either Party;

(d) not have dealt with the matter in any capacity;

(e) disclose to the Parties information which may give rise to justifiable doubts as to their independence or impartiality; and

(f) comply with the Code of Conduct.

2. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 13.6 (Good Offices, Conciliation or Mediation).

3. If a Party believes that a panellist is in violation of any of these requirements, the Parties shall consult and, if they agree, the panellist shall be replaced by a new panellist in accordance with the manner prescribed for the appointment of the original panellist. The new panellist shall have all the powers and duties of the original panellist.

## **Article 13.10. Functions and Proceedings of Panels**

1. Unless the Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Agreement, the Rules of Procedure, and the Code of Conduct.

### **Panel Assessment**

2. A panel shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the facts of the case;

(b) the applicability of the relevant provisions of this Agreement cited by the Parties;

(c) whether:

(i) the measure at issue is inconsistent with the obligations of this Agreement; or

(ii) a Party has otherwise failed to carry out its obligations under this Agreement; and

(d) any other issue of concern that the Parties have jointly requested that the panel address.

### **Terms of Reference**

3. Unless the Parties agree otherwise within 30 days of the request for the establishment of the panel, or within 15 days of such request in the case of perishable goods, the panel's terms of reference shall be:

"To examine, in light of the relevant provisions of this Agreement cited by the Parties, the matter referenced in the request for the establishment of the panel under paragraph 1 of Article 13.7 (Request for Establishment of a Panel), and to make and present in a written report, its findings of law and fact and determinations and, if jointly requested by the Parties, its recommendations."

## **Article 13.11. Rules of Procedure and Code of Conduct**

1. The panel, after consulting with the Parties, or on the joint request of the Parties, shall adopt additional Rules of Procedure not inconsistent with this Chapter or the Rules of Procedure.

2. The Rules of Procedure, established in accordance with paragraph 1(f) of Article 12.4 (Functions of the Joint Committee - Administrative and Institutional Provisions), shall ensure that:

(a) there is at least one hearing before the panel at which each Party may present views orally;

(b) the first hearing shall be held in the capital of the responding Party, and any additional hearings shall alternate between the capitals of the Parties, unless the Parties agree otherwise;

(c) hearings shall be closed to the public, unless the Parties agree otherwise;

(d) each Party has an opportunity to provide an initial written submission;

(e) the panel may at any time during the proceeding address questions in writing to a Party or the Parties;

(f) subject to subparagraph (h), the Parties may release to the public, the request for consultations, the request for establishment of a panel, the final report, and the timetable for hearings. A Party may release to the public its own

(i) written submissions;

(ii) written versions of oral statements; or



(iii) any responses to requests or questions from the panel;

(g) subject to consultations with the Parties, the panel may seek information or technical advice from an expert that it deems appropriate; and

(h) confidential information is protected.

## **Article 13.12. Reports of the Panel**

1. The reports of the panel shall be drafted without the presence of the Parties. The panellists shall assume full responsibility for the drafting of the reports. Opinions expressed in the reports of the panel by individual panellists shall be anonymous. The reports shall include any separate or dissenting opinions on matters not unanimously agreed by the panel.

### **Initial Report**

2. Unless the Parties agree otherwise, the panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information or technical advice it has obtained in accordance with the Rules of Procedure.

3. Unless the Parties agree otherwise, the panel shall, within 180 days of the date the panel is established, or in the case of perishable goods, endeavour to, within 120 days of the date the panel is established, present to the Parties an initial report containing:

(a) a descriptive section summarising the submissions and arguments of the Parties;

(b) its findings of fact;

(c) its determination as to:

(i) whether the measure at issue conforms to the Party's obligations under this Agreement; or

(ii) whether a Party has otherwise failed to carry out its obligations under this Agreement;

(d) any other issue of concern that the Parties have jointly requested that the panel address;

(e) the reasons for the panel's findings and determinations; and

(f) if jointly requested by the Parties, its recommendations, if any, on the means to resolve the dispute.

4. Each Party may submit written comments to the panel on its initial report within 20 days of presentation of the report unless otherwise specified by the panel or agreed between the Parties.

5. If the panel receives written comments from the Parties pursuant to paragraph 4, the panel may reconsider and modify its report, including on the basis of any further examination it considers appropriate after taking into account those comments. The panel shall specify the reasons for any modifications to its report in its final report including a discussion of written comments.

6. If the panel considers that it cannot present its report within the time period pursuant to paragraph 3, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Any delay shall not exceed a further period of 30 days unless the Parties agree otherwise and in the case of perishable goods, the panel shall make every effort to not exceed 15 days.

7. Paragraphs 3, 4 and 5 shall not apply to a panel reconvened under paragraph 1 of Article 13.15 (Compliance Review), paragraph 6 of Article 13.16 (Compensation and Suspension of Concessions or Other Obligations), or paragraph 4 of Article 13.17 (Review after the Suspension of Concessions or Other Obligations).

### **Final Report**

8. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties agree otherwise.

9. Either Party may make the final report available to the public once it has been presented to the Parties, subject to the protection of confidential information.

## **Article 13.13. Implementation of Final Report**

1. The final report of a panel shall be binding on the Parties and shall not be subject to appeal.
2. Where the final report of a panel contains a determination that the measure at issue is inconsistent with the obligations of this Agreement, or that the responding Party has otherwise failed to carry out its obligations under this Agreement, the responding Party has an obligation to bring the measure into conformity with this Agreement.
3. Within 30 days of the presentation of the final report of the panel to the Parties, the responding Party shall notify the complaining Party:
  - (a) of its intentions with respect to implementation, including an indication of actions it proposes to take to comply with paragraph 2;
  - (b) whether such implementation can take place immediately; and
  - (c) if such implementation is not practicable immediately, the reasonable period of time the responding Party would need to implement its proposed actions.

## **Article 13.14. Reasonable Period of Time**

1. If the responding Party makes a notification that a reasonable period of time is required pursuant to subparagraph 3(c) of Article 13.13 (Implementation of Final Report), it shall, whenever possible, be mutually agreed by the Parties. Where the Parties are unable to agree on the reasonable period of time within 45 days of the presentation of the final report, either Party may request the chair of the panel to determine the reasonable period of time. Such request shall be made no later than 90 days after the presentation of the final report.
2. Where a request is made pursuant to paragraph 1, the chair of the panel shall present the Parties with a report containing a determination of the reasonable period of time and the reasons for such determination no later than 45 days after the request to the panel.
3. As a guideline, the reasonable period of time determined by the panel should not exceed 15 months from the date of the presentation of the report made pursuant to paragraph 2. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances. Further, the panel, in the determination of the reasonable period of time, may seek guidance from relevant jurisprudence and interpretation established under Article 21.3(c) of the DSU.

## **Article 13.15. Compliance Review**

1. Where there is disagreement as to whether the responding Party has complied with paragraph 2 of Article 13.13 (Implementation of Final Report), a Party may request that the panel reconvene to decide the matter.
2. A request pursuant to paragraph 1 may only be made after the earlier of either:
  - (a) the expiry of the reasonable period of time determined in accordance with Article 13.14 (Reasonable Period of Time); or
  - (b) a notification by the responding Party that it has complied with paragraph 2 of Article 13.13 (Implementation of Final Report).
3. Any request for the compliance review panel shall provide a brief summary of the factual basis for the complaint, including the reason why the complaining Party considers that the responding Party has not complied with paragraph 2 of Article 13.13 (Implementation of Final Report).
4. When a request is made by the complaining Party in accordance with paragraphs 1 through 3, the compliance review panel shall be reconvened within 30 days of receipt of the request. The period for the compliance review panel proceedings, from the date of its reconvening until the date on which it presents its report to the Parties, shall not exceed 135 days, unless the Parties agree otherwise.
5. The compliance review panel shall make an objective assessment of the matter before it, including an objective assessment of:
  - (a) the factual aspects of any implementation action taken by the responding Party to comply with paragraph 2 of Article 13.13 (Implementation of Final Report); and
  - (b) whether the responding Party has complied with paragraph 2 of Article 13.13 (Implementation of Final Report).
6. The compliance report of the compliance review panel shall include:

(a) a descriptive part summarising the submissions and arguments of the Parties;

(b) its findings on the facts of the dispute arising under this Article, particularly on whether the responding Party has complied with paragraph 2 of Article 13.13 (Implementation of Final Report); and

(c) the reasons for such findings.

7. The compliance review panel shall, where possible, present an interim compliance report to the Parties within 90 days of the panel reconvening pursuant to paragraph 4, and thereafter its final report within 45 days of issuing the interim compliance report. In exceptional cases, if the compliance review panel considers that it cannot release its interim compliance report within this time period, it shall promptly inform the Parties in writing of the reasons for the delay together with an estimate of when it will present its report. The panel shall not exceed an additional period of 30 days and, in the case of perishable goods, shall make every effort to not exceed 15 days.

8. The compliance review panel shall accord adequate opportunity to the Parties to submit written comments on the interim compliance report. Such comments shall be submitted to the compliance review panel within 20 days of the presentation of the interim compliance report, unless the Parties agree otherwise. After considering any written comments by the Parties on the interim compliance report, the panel may modify its report and make any further examination it considers appropriate. The panel shall include a discussion in its final compliance report of any comments made by the Parties on the interim compliance report.

## **Article 13.16. Compensation and Suspension of Concessions or other Obligations**

1. The responding Party shall, if requested by the complaining Party, enter into negotiations with a view to agreeing on mutually acceptable compensation, where:

(a) the responding Party has notified the complaining Party that it will not comply with paragraph 2 of Article 13.13 (Implementation of Final Report) within the reasonable period of time determined in accordance with Article 13.14 (Reasonable Period of Time);

(b) the responding Party has failed to notify pursuant to paragraph 3 of Article 13.13 (Implementation of Final Report); and

(c) the compliance panel finds, pursuant to Article 13.15 (Compliance Review), that the responding Party has failed to comply with the final report.

2. If:

(a) no mutually satisfactory agreement on compensation is reached within 30 days of the Parties entering into negotiations in accordance with paragraph 1; or

(b) the Parties have agreed on compensation but the complaining Party considers that the responding Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the responding Party specifying the level of concessions or other obligations that it intends to suspend equivalent to the level of nullification or impairment. The complaining Party shall have the right to begin suspending concessions or other obligations 30 days after receipt of the written notice.

3. In considering what benefits to suspend in accordance with paragraph 2:

(a) a complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with this Agreement; and

(b) a complaining Party may suspend concessions or other obligations in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector or sectors.

4. Any suspension of concessions or other obligations shall be restricted to concessions or other obligations accruing under this Agreement and shall not exceed the level of nullification or impairment.

5. Notwithstanding paragraph 2, the complaining Party shall not exercise the right to suspend concessions or other obligations under paragraph 2 where:

(a) a review is undertaken in accordance with paragraph 6 or 7; or

(b) a mutually agreed solution has been reached.

6. If the responding Party:

(a) objects to the level of suspension proposed in the notification made in accordance with paragraph 2 on the basis that it exceeds the level of nullification or impairment;

(b) considers that it has complied with the terms and conditions of any compensation agreed pursuant to paragraph 1; or

(c) claims the complaining Party has failed to follow the principles set out in paragraph 3,

then, the responding Party may request, in writing, no later than 30 days after receipt of the notification referred to in paragraph 2, the panel to reconvene to make findings on the matter.

7. If a panel is requested to reconvene pursuant to paragraph 6, it shall reconvene within 30 days of receipt of the request. The reconvened panel shall present its decision to the Parties no later than 60 days after the receipt of the request. In exceptional cases, if the reconvened panel considers that it cannot present its decision within this time period it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will present its decision. The panel shall not exceed an additional period of 30 days and, in the case of perishable goods, shall make every effort to not exceed 15 days.

8. Concessions or other obligations shall not be suspended until the reconvened panel has presented its decision. Any suspension of concessions or other obligations shall be consistent with the reconvened panel's decision.

### **Article 13.17. Review after the Suspension of Concessions or other Obligations**

1. Compensation and the suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the responding Party has complied with paragraph 2 of Article 13.13 (Implementation of Final Report) or the Parties have reached a mutually agreed solution, whichever is earlier.

2. If the right to suspend benefits has been exercised pursuant to paragraph 2 of Article 13.16 (Compensation and Suspension of Concessions or Other Obligations), or mutually acceptable compensation has been agreed pursuant to paragraph 1 of Article 13.16 (Compensation and Suspension of Concessions or Other Obligations), and the responding Party considers that it has complied with paragraph 2 of Article 13.13 (Implementation of Final Report), the responding Party shall notify the complaining Party of the steps it has taken to comply.

3. Subject to paragraph 4, the complaining Party shall terminate the suspension of concessions or other obligations within 30 days of receipt of the notification in paragraph 2. In cases where compensation has been applied, and subject to paragraph 4, the responding Party may terminate the application of such compensation within 30 days of the complaining Party's receipt of the notification in paragraph 2.

4. If the Parties disagree on the existence or consistency with this Agreement of any steps notified in accordance with paragraph 2, no later than 30 days after the date of the complaining Party's receipt of the notification, a Party may request the panel in writing to reconvene to examine the matter. (2)

5. Paragraphs 5 through 8 of Article 13.15 (Compliance Review) shall apply if the panel reconvenes pursuant to paragraph 4.

6. If the reconvened panel decides that the steps notified in accordance with paragraph 2 achieve compliance with paragraph 2 of Article 13.13 (Implementation of Final Report), the suspension of benefits or the application of the compensation, shall be terminated no later than 30 days after the date of the decision.

7. If the reconvened panel decides that the steps notified in accordance with paragraph 2 do not achieve compliance with paragraph 2 of Article 13.13 (Implementation of Final Report), the suspension of benefits, or the application of the compensation, may continue. Where relevant, the level of suspension of benefits or of the compensation, shall be adapted in light of the decision of the panel.

(2) Where a panel is reconvened pursuant to this paragraph, it may also, on request of a Party, assess whether the level of any existing suspension of concessions or other obligations by the complaining Party is still appropriate and, if not, assess an appropriate level.

### **Article 13.18. Suspension or Termination of Proceedings**

1. The Parties may agree that the panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel shall be resumed upon the request of either Party. If the work of the panel has been suspended for more than 12 consecutive months, the authority for the establishment of the panel shall

lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings before a panel at any time by jointly notifying the chair to this effect. Before the Panel presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The proceedings may be terminated at any time before the presentation of the panel's initial report under Article 13.12 (Reports of the Panel) if the complaining Party withdraws its complaint.

### **Article 13.19. Official Language**

All proceedings and all documents submitted to the panel shall be in the English language.

### **Article 13.20. Expenses**

1. Unless agreed otherwise, each Party shall bear the costs of its appointed panellist and its own expenses and legal costs.
2. Unless the Parties agree otherwise, the costs of the chair of the panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

### **Article 13.21. Private Rights**

Neither Party shall provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement or that the other Party has otherwise failed to carry out its obligation under this Agreement.

### **Article 13.22. Time Periods**

Any time periods provided for in this Chapter may be modified by mutual agreement of the Parties.

### **Article 13.23. Mutually Agreed Solution**

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 13.3 (Scope).
2. If a mutually agreed solution is reached during panel proceedings, the Parties shall jointly notify the agreed solution to the panel. Upon such notification, the proceedings of the panel shall terminate.
3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.

### **Article 13.24. Contact Point**

1. Each Party shall designate a contact point for this Chapter and shall notify the other Party of the contact details of that contact point within 30 days of entry into force of this Agreement. Each Party shall promptly notify the other Party of any change to those contact details.
2. Any request, notification, written submission, or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

## **Chapter 14. FINAL PROVISIONS**

### **Article 14.1. Annexes, Appendices and Footnotes**

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement. Where a side letter to this Agreement explicitly provides that it is an integral part of this Agreement, it shall constitute an integral part of this Agreement.

### **Article 14.2. Amendments to International Agreements**

If any international agreement, or a provision therein, that has been referred to in this Agreement or incorporated into this Agreement is amended, the Parties shall, at the request of either Party, consult on whether to amend this Agreement.

### **Article 14.3. Amendments**

The Parties may agree, in writing, to amend this Agreement. Such amendments shall enter into force 60 days after the date on which the Parties exchange written notifications confirming that they have completed their respective domestic requirements, including internal legal procedures, necessary for entry into force of the amendments, or on such other date as the Parties agree.

### **Article 14.4. General Reviews**

1. The Parties, through the Joint Committee, shall undertake a general review of this Agreement at ministerial level within one year of the date of entry into force of this Agreement and thereafter every two years, or at such times as may be agreed by the Parties.

2. Any review pursuant to paragraph 1 shall take into account:

- (a) facilitating trade and investment through further liberalisation of market access for goods and services;
- (b) that balanced outcomes flow from the implementation and overall operation of this Agreement;
- (c) that the disciplines contained in this Agreement remain relevant to the trade issues and challenges confronting the Parties;
- (d) the work of relevant subcommittees, subsidiary bodies or working groups established under this Agreement, including reviews under relevant Chapters;
- (e) relevant developments in international fora; and (f) any other matters as may be agreed by the Parties.

3. After 15 years from the date of entry into force of the Agreement, upon request of a Party, the Parties shall undertake a review of Chapter 4 (Rules of Origin), Annex 4A (Minimum Information Requirements), Annex 4B (Product Specific Rules of Origin), Chapter 2 (Trade in Goods) and Annex 2A (Tariff Commitments). The review shall:

- (a) be jointly undertaken by the Subcommittee on Trade in Goods and the Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation established under Article 4.32 (Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation - Rules of Origin);
- (b) make recommendations to the Joint Committee; and
- (c) conclude within 6 months of the date of request.

4. Should a Party not agree to meet to undertake the review pursuant to paragraph 3 within 60 days of the receipt of the request, or no mutually satisfactory conclusion of the review is reached within 6 months of initiation of the review undertaken pursuant to paragraph 3, the other Party may seek to implement the proposal concerning the specific review through a written notice to the other Party with the details of the proposed changes. The notice shall take effect as soon as the Parties have agreed a mutually satisfactory solution within 6 months after the date of receipt of the notice and have effected the changes through the procedure for amendments set out in Article 14.3 (Amendments).

### **Article 14.5. Negotiation of a Comprehensive Economic Cooperation Agreement**

The Parties hereby establish a Negotiation Subcommittee which shall be composed of government representatives of the Parties. Within 75 days after the date of signature of this Agreement, the Negotiation Subcommittee shall commence negotiations on amendments to this Agreement, on a without prejudice basis, on areas including inter alia market access for goods and services, a complete Product Specific Rules Schedule, a Digital Trade Chapter, and a Government Procurement Chapter, to transform this Agreement into a Comprehensive Economic Cooperation Agreement.

Following such negotiations, the Parties may make amendments to this Agreement in accordance with Article 14.3 (Amendments), to transform this Agreement into a Comprehensive Economic Cooperation Agreement.

### **Article 14.6. Termination**

A Party may terminate this Agreement by giving the other Party notice in writing. Such termination shall take effect 6 months after the date of the notification, or on such other date as the Parties may agree.

## **Article 14.7. Entry Into Force**

This Agreement shall enter into force 30 days after an exchange of written notifications, certifying completion of the necessary domestic requirements, including internal legal procedures, of each Party or on such other date as the Parties may agree.

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

DONE in two originals at New Delhi, India and Melbourne, Australia on this 2nd day of April in 2022.

For the Government of the Republic of India

Piyush Goyal

Minister of Commerce and Industry

For Government of Australia

Dan Tehan

Minister for Trade, Tourism and Investment