FREE TRADE AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND AUSTRALIA

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PREAMBLE

The United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") and Australia, hereinafter each individually referred to as a "Party" or collectively as the "Parties",

REINFORCING the longstanding bonds of friendship, cooperation, and people to people linkages between them;

RESOLVING to strengthen their economic relations, and further liberalise and expand bilateral trade and investment;

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

SEEKING to establish clear and mutually advantageous rules governing their trade and investment, to promote a predictable business environment, and eliminate barriers between them;

RECOGNISING the importance of ensuring certainty for service suppliers, including by agreeing to commitments enabling the temporary entry of business persons to supply services in each of the Parties' territories;

RECOGNISING the Parties' respective autonomy and rights to regulate within their territories in order to achieve legitimate public policy objectives such as the protection and promotion of public health, education, labour standards, social services, safety, the environment including climate change, and animal welfare;

RECOGNISING the strong and mutually supportive relationship between trade and innovation, and the contribution of both to economic growth and addressing shared challenges, and affirming the Parties' commitment to expanding their cooperation in this area;

SEEKING to encourage women's full access to and ability to benefit from this Agreement and support equitable participation in international trade and investment;

SUPPORTING the growth and development of small and medium-sized enterprises by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

NOTING the importance of facilitating new opportunities for businesses and consumers through digital trade, and addressing unjustified barriers to data flows and trade enabled by electronic means; and

RESOLVING to promote transparency, good governance, the rule of law, and prevent and combat bribery and corruption in international trade and investment,

HAVE AGREED as follows:

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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 Agreement.

Article 1.2
Relation to Other Agreements

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

2. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which it and the other Party are party, the Parties shall, on request, consult with a view to reaching a mutually satisfactory solution. This paragraph is without prejudice to a Party's rights and obligations under Chapter 30 (Dispute Settlement).[1]

3. For as long as the *Protocol on Ireland/Northern Ireland to the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, signed in London and Brussels on 24 January 2020 (the "Protocol") is in force,[2] nothing in this Agreement shall preclude the United Kingdom from adopting or maintaining measures, or refraining from doing so, further to the Protocol, and amendments thereto and subsequent agreements replacing parts thereof, provided that such measures, or the absence of such measures, are not used as a means of arbitrary or unjustified discrimination against the other Party or as a disguised restriction on trade.

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[1] For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of paragraph 2.

[2] The Parties note in particular that arrangements for democratic consent specified at Article 18 of the Protocol may result in Articles 5 through 10, and other provisions of the Protocol dependent on the same Articles for their application, ceasing to apply to the United Kingdom in accordance with the arrangements specified at Article 18.

4. On request of either Party, the Parties shall hold consultations, in relation to the effects of a measure described in paragraph 3 the United Kingdom has adopted, or absence thereof,[3] on this Agreement and seek a mutually acceptable solution.[4]

Article 1.3
Laws and regulations and their amendments

Where reference is made in this Agreement to laws or regulations of a Party, those laws or regulations shall be understood to include amendments thereto and successor laws or regulations, unless otherwise specified.

Article 1.4
General Definitions

For the purposes of this Agreement, unless otherwise provided in this Agreement:

"AD Agreement" means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, in Annex 1A to the WTO Agreement;

"Agreement" means the *Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*;

"Agreement on Safeguards" means the *Agreement on Safeguards*, in Annex 1A to the WTO Agreement;

"central level of government" means:

(a) for Australia, the Commonwealth Government; and

(b) for the United Kingdom, her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland;

"Joint Committee" means the Australia-United Kingdom Joint Committee established under Article 29.1 (Establishment of the Joint Committee – Administrative and Institutional Provisions);

[3] For greater certainty, this refers to a measure described in paragraph 3 which is adopted after entry into force of this Agreement or the absence of such measure.
[4] This paragraph is without prejudice to Article 28.5 (Provision of Information - Transparency and Anti-Corruption).

"covered investment" means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement, or established, acquired, or expanded thereafter;

"customs authority" means:

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

(b) for the United Kingdom, Her Majesty's Revenue and Customs or its successor or where relevant, any other authority responsible for customs matters within its territory. For greater certainty, with respect to the provisions of this Agreement which apply to the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man, 'customs authority' shall also mean:

(i) with respect to the Bailiwick of Jersey, the Jersey Customs & Immigration Service or its successor;

(ii) with respect to the Bailiwick of Guernsey, Guernsey Customs & Excise or its successor; and

(iii) with respect to the Isle of Man, the Customs and Excise Division, Isle of Man Treasury or its successor;

"customs duty" includes any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation, but does not include any:

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

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

(c) antidumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the Anti-dumping Agreement, and the SCM Agreement;

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

"days" means calendar days;

"enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

"existing" means in effect on the date of entry into force of this Agreement;

"GATS" means the *General Agreement on Trade in Services* in Annex 1B to the WTO Agreement;

"GATT 1994" means the *General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement. For greater certainty, references in this Agreement to articles in the GATT 1994 include the interpretative notes;

"good" means any merchandise, product, article, or material;

"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;

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

"Harmonized System (HS)" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes, and Subheading Notes as adopted and implemented by the Parties in their respective laws;

"heading" means the first four digits in the tariff classification number under the Harmonized System;

"measure" includes any law, regulation, procedure, requirement or practice;

"national" means:

(a) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* (Cth) or a permanent resident; and

(b) for the United Kingdom, a British citizen in accordance with its applicable laws and regulations, or a permanent resident;

"originating" means qualifying as originating under the rules of origin in Chapter 4 (Rules of Origin and Origin Procedures);

"person" means a natural person or an enterprise;

"person of a Party" means a national or an enterprise of a Party;

"regional level of government" means**:**

(a) for Australia, a state of Australia, the Australian Capital Territory or the Northern Territory;

(b) for the United Kingdom:

(i) England, Northern Ireland, Scotland or Wales; or

(ii) Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland in respect of England, Northern Ireland, Scotland or Wales but not the United Kingdom as a whole;

"recovered material" means a material comprising one or more individual parts that results from:

(a) the disassembly of a used good into individual parts; and

(b) the cleaning, testing or other processing of those individual parts as necessary for improvement to sound working condition;

"remanufactured good" means a good classified in HS Chapters 84 through 90, or under heading 94.02, except a good classified under HS headings 87.02, 87.03, 87.04, 87.05, 87.11 and 87.16, or subheading 8701.20[5] that:

[5] For greater certainty, the references to the tariff classification number of the Harmonized System in this definition are based on the Harmonized System, as amended on 1 January 2017.

(a) is entirely or partially comprised of parts that are recovered materials;

(b) has similar life expectancy, working conditions and performance to the equivalent good in new condition; and

(c) is given a warranty in substance the same as the equivalent good in new condition;

"sanitary or phytosanitary measure" means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;

"SCM Agreement" means the *Agreement on Subsidies and Countervailing Measures*, in Annex 1A to the WTO Agreement;

"SME" means a small and medium-sized enterprise, including a micro-sized enterprise;

"SPS Agreement" means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, in Annex 1A to the WTO Agreement;

"state enterprise" means an enterprise that is owned, or controlled through ownership interests, by a Party;

"subheading" means the first six digits in the tariff classification number under the Harmonized System;

"TBT Agreement" means the *Agreement on Technical Barriers to Trade*, in Annex 1A to the WTO Agreement;

"Trade Facilitation Agreement" means the *Agreement on Trade Facilitation*, in Annex 1A to the WTO Agreement;

"territory" means:

(a) for Australia, the territory of Australia:

(i) 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

(ii) including Australia's territorial sea, contiguous zone, exclusive economic zone and continental

shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law, particularly the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982;

(b) for the United Kingdom:

(i) the territory of the United Kingdom of Great Britain and Northern Ireland including its territorial sea and airspace;

(ii) all the areas beyond the territorial sea of the United Kingdom, including the sea-bed and subsoil of those areas, over which the United Kingdom may exercise sovereign rights or jurisdiction in accordance with international law;

(iii) the Bailiwicks of Guernsey and Jersey and the Isle of Man (including their airspace and the territorial sea adjacent to them), territories for whose international relations the United Kingdom is responsible, as regards:

(A) Chapter 2 (Trade in Goods);

(B) Chapter 4 (Rules of Origin and Origin Procedures);

(C) Chapter 5 (Customs Procedures and Trade Facilitation);

(D) Chapter 6 (Sanitary and Phytosanitary Measures); and

(E) Chapter 25 (Animal Welfare and Antimicrobial Resistance);

(iv) any territory for whose international relations the United Kingdom is responsible and to which this Agreement is extended in accordance with Article 32.4 (Territorial Extension – Final Provisions);

"TRIPS Agreement" means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, in Annex 1C to the WTO Agreement, as revised or amended from time to time by a revision or amendment

that applies to the Parties and including any waiver of any provision thereof granted by Members of the WTO;

"WTO" means the World Trade Organization; and

"WTO Agreement" means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

CHAPTER 2

TRADE IN GOODS

Article 2.1
Definitions

For the purposes of this Chapter:

"consular transactions" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a non-party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good;

"export licensing procedure" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body of the exporting Party as a prior condition for exportation from the territory of the exporting Party;

"Import Licensing Agreement" means the *Agreement on Import Licensing Procedures*, set out in Annex 1A to the WTO Agreement; and

"import licensing procedure" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body of the importing Party as a prior condition for importation into the territory of the importing Party.

Article 2.2
Scope

Unless otherwise provided, this Chapter applies to trade in goods of a Party.

Article 2.3
National Treatment

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

Article 2.4
Classification of Goods

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

Article 2.5
Treatment of Customs Duties

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

2. Unless otherwise provided in this Agreement, each Party shall progressively reduce or eliminate its customs duties on originating goods in accordance with its Schedule to Annex 2A (Tariff Commitments).

3. Where and for so long as a Party's applied most-favoured-nation customs duty rate for a particular good is lower than the rate applicable pursuant to paragraph 2 above, the Party shall apply the lower rate to originating goods of the other Party classified under the same tariff line as the particular good.

4. On the request of a Party, the Parties shall consult to consider accelerating or broadening the scope of the elimination or reduction of customs duties set out in their Schedules to Annex 2A (Tariff Commitments).

5. A Party may at any time unilaterally accelerate the elimination or reduction of customs duties set out in its Schedule to 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.

6. For greater certainty, a Party may raise a customs duty to the level established by its Schedule to Annex 2A (Tariff Commitments) following any unilateral reduction.

Article 2.6
Goods Re-entered after Repair or Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.

2. Paragraph 1 shall not apply to a good where, prior to the good's export to the other Party for repair or alteration, the good:

(a) was not in free circulation in the exporting Party; and

(b) did not have a customs duty applied to it by the exporting Party.

3. Neither Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

4. For the purposes of this Article, "repair or alteration" does not include an operation or process that:

(a) destroys the essential characteristics of a good or creates a new or commercially different good;

(b) transforms an unfinished good into a finished good; or

(c) substantially changes the technical performance or the function of a good.

Article 2.7
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 its WTO rights and obligations or in accordance with this Agreement.

2. Each Party shall ensure details of its non-tariff measures permitted in paragraph 1 of this Article are made available in a manner as to enable interested parties to become acquainted with them.

Article 2.8
Technical Consultations on Non-Tariff Measures

1. Subject to paragraph 2, a Party may request technical consultations with the other Party on a non-tariff measure covered by Article 2.7 (Application of Non-Tariff Measures) where it considers the non-tariff measure to be adversely affecting its trade. The request shall be in writing and shall clearly identify the non-tariff measure, explain how the non-tariff measure adversely affects trade between the Parties, and, if possible, provide suggested solutions.

2. Where a non-tariff measure is covered by another Chapter which provides for a consultation mechanism with the other Party, that consultation mechanism shall be used, unless otherwise agreed between the Parties.

3. Within 30 days of receipt of a request under paragraph 1, the responding Party shall provide a written reply to the requesting Party.

4. Within 30 days of the requesting Party's receipt of the reply, the Parties shall enter into technical consultations with a view to reaching a mutually satisfactory solution.

5. If the requesting Party considers that the subject of the request under paragraph 1 is urgent or involves perishable goods, it may request that technical consultations take place within a shorter time frame than that provided for under paragraph 2. The responding Party shall give prompt and reasonable consideration to that request.

6. The technical consultations under this Article shall be without prejudice to each Party's rights and obligations pertaining to dispute settlement proceedings under Chapter 30 (Dispute Settlement) and the WTO Agreement.

Article 2.9
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 2.10
Import Licensing

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. A Party shall publish on an official government website any new or modified import licensing procedure, including any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement. To the extent possible, the Party shall do so at least 21 days before the new procedure or modification takes effect.

3. In respect of any import licensing procedures, each Party's notifications to the WTO Committee on Import Licensing under the Import Licensing

Agreement shall describe any limitations on permissible end users of the product and any conditions the Party imposes on eligibility for obtaining a licence to import the product.

4. At the request of a Party, the other Party shall, with regard to any import licensing procedures that it has adopted or maintains, or changes to existing import licensing procedures:

   (a) promptly provide the information specified in Article 5(2) of the Import Licensing Agreement, where that information has not been notified to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement; and

   (b) promptly and to the extent possible provide any other relevant information.

Article 2.11
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 export taxes, custom duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and antidumping 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 of a taxation of imports or exports for fiscal purposes.

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

3. Each Party shall make publicly available online a current list of the fees and charges it imposes in connection with importation or exportation, including any updates or changes to such fees and charges. An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them including the reason for such fees and charges, the responsible authority, and when and how payment is to be made, has been published.

Article 2.12
Export Duties, Taxes or Other Charges

Neither Party shall adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless the duty, tax, or other charge is also applied to a like good destined for domestic

consumption. For the purposes of this Article, charges shall not include fees or other charges imposed in accordance with Article 2.11 (Administrative Fees and Formalities).

Article 2.13
Export Subsidies

The Parties affirm their WTO commitments not to adopt or maintain an export subsidy on any good.

Article 2.14
Export Licensing

1. Within 60 days of the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. A Party shall be deemed to have complied with this paragraph if it has notified its export licensing procedures consistent with a Decision on Notification Procedures for Quantitative Restrictions adopted by the WTO Council for Trade in Goods.

2. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure. Such publication shall take place no later than 30 days after the procedure or modification takes effect.

3. For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from implementing its obligations under any international agreement, including but not limited to those under United Nations Security Council Resolutions, as well as its commitments under multilateral non-proliferation regimes and export control arrangements including, but not limited to the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies* done at The Hague on 19 December 1995, the Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime.

Article 2.15
Remanufactured Goods

1. Unless otherwise provided for in this Agreement, neither Party shall accord to a remanufactured good of the other Party treatment that is less favourable than that it accords to equivalent goods in new condition.

2. Paragraph 1 shall not apply to consumer guarantees provided for in a Party's laws and regulations.

3. If a Party adopts or maintains import and export prohibitions or restrictions on used goods on the basis that they are used goods, it shall not apply those measures to remanufactured goods. For greater certainty, Article 2.9 (Import and Export Restrictions) shall apply to prohibitions and restrictions on the importation of remanufactured goods.

4. Subject to its obligations under this Agreement and the WTO Agreement, a Party may require that remanufactured goods be identified as such for distribution or sale in its territory and that they meet all applicable technical requirements that apply to equivalent goods in new condition.

Article 2.16
Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods ("the Goods Committee"), composed of government representatives of each Party.

2. The Goods Committee's functions shall include:

   (a) reviewing and monitoring the implementation and operation of this Chapter, Chapter 3 (Trade Remedies), Chapter 4 (Rules of Origin), and Chapter 5 (Customs Procedures and Trade Facilitation);

   (b) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination or reduction under this Agreement, and addressing non-tariff barriers 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;

   (c) addressing issues relating to the administration and operation of tariff rate quotas and the application of product specific safeguard measures;

   (d) receiving reports from, and reviewing the work of, the Working Group on Rules of Origin and Customs and Trade Facilitation established under Article 4.29 (Working Group on Rules of Origin and Customs and Trade Facilitation – Rules of Origin and Origin Procedures);

   (e) reporting, as needed, on its activities and work programme to the Joint Committee;

   (f) facilitating trade in remanufactured goods, including considering amendments or modifications to the provisions of this Agreement relating to the treatment of remanufactured goods, with a view to broadening the types of goods that may be considered remanufactured

goods, having regard to factors including technological developments and the Parties' shared environmental objectives;

(g) reviewing the future amendments to the Harmonized System and endeavouring to resolve any differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System and Annex 2A (Tariff Commitments);

(h) determining the procedures and specific data requirements, as appropriate, for any exchange of trade data; and

(i) undertaking any other work that the Joint Committee assigns to it.

3. The Goods Committee shall meet at the request of either Party and in any event within one year of the date of entry into force of this Agreement. Meetings may occur in person, or by any other means as mutually determined by the Parties.

4. The Goods Committee 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 Goods Committee on progress of its work.

CHAPTER 3

TRADE REMEDIES

Section A
General Provisions

Article 3.1
Definitions

For the purposes of this Chapter:

"bilateral safeguard measure" means a measure referred to in paragraph 2 of Article 3.6 (Application of a Bilateral Safeguard Measure);

"customs duty reduction or elimination" means any customs duty reduction or elimination in accordance with paragraph 2 of Article 2.5 (Treatment of Customs Duties – Trade in Goods);

"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;

"serious injury" means a significant overall impairment in the position of a domestic industry;

"threat of serious injury" means serious injury that is clearly imminent, in accordance with the provisions of Article 3.8 (Investigation Procedure). 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

"transition period" means, in relation to a good, the entry into force of this Agreement until five years after the completion of the customs duty reduction or elimination in relation to the good.

Section B
Anti-dumping and Countervailing Measures

Article 3.2
General Provision

Except as provided in this Section, each Party affirms its rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement.

Article 3.3
Investigations

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping investigation or a countervailing duty investigation with respect to imports from the other Party and before initiating an investigation, the importing Party shall provide written notification to the other Party of its receipt of the application.

2. Without prejudice to its other rights and obligations under the SCM Agreement, prior to initiating a countervailing duty investigation against imports from the other Party, the importing Party shall afford to the other Party a reasonable opportunity to consult with the aim of clarifying the situation on matters raised in the application and arriving at a mutually agreed solution. Any such consultations shall not unnecessarily delay or prevent a Party from proceeding expeditiously to initiate and conduct an investigation.

3. The Parties reaffirm their rights and obligations under Articles 6.2 and 6.3 of the AD Agreement and Article 12.2 of the SCM Agreement, including with respect to the rights of interested parties to present information orally and to defend their interests in the conduct of an anti-dumping investigation or a countervailing duty investigation.

4. Each Party shall ensure, before a final determination is made, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision whether to apply definitive measures in an anti-dumping investigation or a countervailing duty investigation. This is without prejudice to Article 6.5 of the AD Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing, and allow interested parties sufficient time to defend their interests.

Article 3.4
Lesser-duty Rule

Each Party's investigating authority may consider whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or total amount of the subsidy or a lesser amount, in accordance with the Party's laws and regulations.

Section C
Global Safeguard Measures

Article 3.5
General Provisions and Transparency

1. Except as provided in this Section, nothing in this Agreement affects either Party's rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards.

2. A Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of any notification given to the WTO Committee on Safeguards under Article 12.1 of the Agreement on Safeguards.

3. To the extent permitted by the Agreement on Safeguards, when imposing safeguard measures, each Party shall endeavour to impose them in a way that least affects bilateral trade.

Section D
Bilateral Safeguard Measures

Article 3.6
Application of a Bilateral Safeguard Measure

1. If, as a result of customs duty reduction or elimination, 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 cause serious injury or threat of serious injury, the importing Party may apply a safeguard provided for in paragraph 2 to the extent necessary to prevent or remedy the serious injury and to facilitate the adjustment of the domestic industry.

2. In accordance with paragraph 1, the importing Party may apply one of the following bilateral safeguard measures:

(a) a suspension of the further customs duty reduction or elimination in relation to the good; or

(b) an increase in the rate of customs duty on the good to a level that does not exceed the lesser of:

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

(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.

Article 3.7
Duration and Scope

1. A Party shall apply a bilateral safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry.

2. The period referred to in paragraph 1 shall not exceed two years, except that the period may be extended by no more than two years if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Article 3.8 (Investigation Procedure), that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.

3. 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.

4. Neither Party shall apply a bilateral safeguard measure on a good that has already been subject to a bilateral safeguard measure for a period of time equal to the duration of the previous safeguard or one year after its termination, whichever is longer.

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

6. Neither Party shall apply or maintain a bilateral safeguard measure after the transition period.

Article 3.8
Investigation Procedure

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

2. An investigation shall not exceed one year, but a Party may, in exceptional circumstances, and as mutually agreed with the other Party, extend the investigation for no more than the time necessary to complete the investigation. The other Party should not unreasonably withhold its agreement to the extension.

Article 3.9
Notification and Consultation

1. A Party shall provide written notice to the other Party immediately after:

   (a) initiating an investigation referred to in Article 3.8 (Investigation Procedure);

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

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

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

2. A Party shall provide promptly to the other Party a copy of the public version of the report of its competent authority following the conclusion of its investigation as set out under Article 3.8 (Investigation Procedure).

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

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

(b) in the written notice referred to in subparagraphs 1(b) through (d), the evidence of the serious injury or the threat of serious injury caused by the increased imports of the good as a result of the customs duty reduction or elimination, a precise description of the good subject to the proposed bilateral safeguard measure (including its subheading in the Harmonized System), a precise description of the bilateral safeguard measure, and, as applicable, the proposed date of the introduction, extension, or modification of the bilateral safeguard measure, its expected duration, and the timetable for the progressive liberalisation of the measure. In the case of an extension of a bilateral safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided.

4. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information provided under subparagraph 3(b), exchanging views on the bilateral safeguard measure, and reaching an agreement on compensation set out in Article 3.11 (Compensation).

Article 3.10
Provisional Application of a Bilateral Safeguard Measure

1. In critical circumstances, a Party may apply a bilateral safeguard measure on a provisional basis if:

(a) delay would cause damage to a domestic industry that would be difficult to repair; and

(b) the Party's competent authority makes a preliminary determination that there is clear evidence that imports of an originating good of the other Party have increased as the result of the customs duty reduction or elimination in relation to the good, and that those increased imports have caused or are threatening to cause serious injury.

2. Before applying a bilateral safeguard measure on a provisional basis the applying Party shall provide written notice to the other Party. Consultation between the Parties on the application of the measure on a provisional basis shall be initiated immediately after the measure is applied.

3. A bilateral safeguard measure applied on a provisional basis shall not be maintained for more than 200 days. The duration of a bilateral safeguard applied on a provisional basis shall be counted as part of the period described in paragraph 2 of Article 3.7 (Duration and Scope).

4. The increase in customs duty paid as a result of the application of the bilateral safeguard measure on a provisional basis shall be promptly refunded if the Party's competent authority, in the investigation referred to in paragraph 1 of Article 3.8 (Investigation Procedure), does not determine that the increase in imports of the good subject to the measure has caused or threatened to cause serious injury.

Article 3.11
Compensation

1. 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 having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application or the extension of the bilateral safeguard measure.

2. If the consultations under paragraph 1 do not result in the Parties agreeing on trade liberalising compensation within 30 days, the Party against whose good the bilateral safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.

3. The Party against whose good the bilateral safeguard measure is applied shall notify the other Party in writing at least 30 days before it suspends concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminates on the termination of the bilateral safeguard measure.

Article 3.12
Non-cumulation

1. Neither Party shall apply or maintain two or more of the following measures, with respect to the same good at the same time:

(a) a bilateral safeguard measure;

(b) a safeguard measure under Article XIX of GATT 1994 and the Agreement on Safeguards;

(c) a safeguard measure under the *Agreement on Agriculture*, in Annex 1A to the WTO Agreement;

(d) a product-specific safeguard under the Party's Schedule to Annex 2A (Tariff Commitments).

Article 3.13
Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under Section B or C.

CHAPTER 4

RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A
Rules of Origin

Article 4.1
Definitions

For the purposes of this Chapter:

“aquaculture” 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, parr, smolts, or other immature fish at a post-larval stage, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

“fungible goods or materials” means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical, irrespective of minor differences in appearance that are not relevant to a determination of origin;

“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;

“indirect material” 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:

(a) fuel, energy, catalysts, and solvents;

(b) equipment, devices, and supplies used to test or inspect the good;

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

(d) tools, dies, and moulds;

(e) spare parts and materials used in the maintenance of equipment and buildings;

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

(g) 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;

"material" means a good that is used in the production of another good;

"non-originating good" or "non-originating material" means a good or material that does not qualify as originating in accordance with this Chapter;

"originating good" or "originating material" means a good or material that qualifies as originating in accordance with this Chapter;

"packing materials and containers for 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;

"preferential tariff treatment" means the customs duty rate applicable to an originating good, pursuant to each Party's Schedule to Annex 2A (Tariff Commitments);

"producer" means a person who engages in the production of a good;

"production" means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing, or assembling a good;

"production value" means the price paid or payable to the producer of the good at the place where the last production was carried out, and must include the value of all materials. If there is no price paid or payable or if it does not include the value of all materials, the value of the good:

(a) must include the value of all materials and the cost of production employed in producing the good, calculated in accordance with accounting principles which are generally accepted in the Party of the producer; and

(b) may include amounts for general expenses and profit to the producer that can be reasonably allocated to the good.

Any internal taxes which are, or may be, repaid when the good obtained is exported are excluded. If value of the good includes costs incurred subsequent to the good leaving the place of production, such as freight, insurance, packing, and all other costs incurred to transport the good, those costs are to be excluded; and

"value of the good" means, in relation to a good, either:

(a) the production value of the good; or

(b) the price actually paid or payable for the good when sold for export or other value determined in accordance with the Customs Valuation Agreement, excluding any costs incurred in the international shipment of the good.

Article 4.2
Origin Criteria

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 established in Article 4.3 (Wholly Obtained or Produced Goods);

(b) produced entirely in the territory of one or both of the Parties, exclusively from originating materials; or

(c) produced entirely in the territory of one or both of the Parties using non-originating materials, provided the good satisfies all applicable requirements of Annex 4B (Product-Specific Rules),

in each case, provided the good satisfies all other applicable requirements of this Chapter.

Article 4.3
Wholly Obtained or Produced Goods

For the purposes of Article 4.2 (Origin Criteria) the following goods shall be considered as wholly obtained or produced in the territory of one or both of the Parties if they are:

(a) a plant, plant good, or fungus, grown, cultivated, harvested, picked, or gathered there;

(b) a live animal born and raised there;

(c) a good obtained from a live animal there;

(d) an animal obtained by hunting, trapping, fishing, gathering, or capturing there but not beyond the outer limits of a Party's territorial sea;

(e) a good obtained from aquaculture there but not beyond the outer limits of a Party's territorial sea;

(f) a mineral or other naturally occurring substance, not included in subparagraphs (a) through (e), extracted or taken from there;

(g) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil beyond the outer limits of:

(i) Australia's territorial sea but within the territory of Australia by vessels that are registered, listed, or recorded in Australia; or

(ii) the United Kingdom's territorial sea but within the territory of the United Kingdom by vessels that are registered in the United Kingdom and entitled to fly the flag of the United Kingdom;

(h) fish, shellfish, and other marine life 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;

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

(j) a good other than fish, shellfish, and other marine life taken or extracted by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-parties exercise jurisdiction provided that Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;

(k) a good that is:

(i) waste or scrap derived from production there; or

(ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and

(l) a good produced there, exclusively from goods referred to in subparagraphs (a) through (k), or from their derivatives.

Article 4.4
Regional Value Content

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

Build-Down Method: based on the value of non-originating materials

$$RVC = \frac{value\ of\ the\ good\ -\ value\ of\ non-originating\ materials}{value\ of\ the\ good} \times 100$$

Build-Up Method: based on the value of originating materials

$$RVC = \frac{value\ of\ originating\ materials}{value\ of\ the\ good} \times 100$$

in each case where:

RVC is the regional value content of a good, expressed as a percentage;

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

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. All costs considered for the calculation of regional value content 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.

Article 4.5
Materials Used in Production

1. If a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material shall be treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

2. If a non-originating material is used in the production of a good, the following may be counted as originating content in determining whether the resulting good meets a regional value content requirement:

   (a) the value of production of the non-originating material undertaken in the territory of one or both Parties by one or more producers; and

   (b) the value of any originating material used in the production of the non-

originating material undertaken in the territory of one or both Parties by one or more producers.

Article 4.6
Value of Materials Used in Production

For the purposes of this Chapter, the value of a material is:

(a) for a material imported by the producer of the good, the price actually paid or payable for the material at the time of importation or other value determined in accordance with the Customs Valuation Agreement, including the costs incurred in the international shipment of the material;

(b) for a material acquired in the territory where the good is produced:

(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; or

(c) for a material that is self-produced:

(i) all the costs incurred in the production of the material, which includes general expenses; and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

Article 4.7
Further Adjustments to the Value of Materials

1. For an originating material, the following expenses may be added to the value of the material, if not included under Article 4.6 (Value of Materials Used in Production):

(a) the costs of freight, insurance, packing, and all other costs incurred to transport the material 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 and taxes that are waived, refunded,

refundable, or otherwise recoverable, which include 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.

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

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

(b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, which include 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.

3. For greater certainty, when a non-originating material is used in the production of a good, the values referred to in subparagraph 2(a) and subparagraph 2(b) of Article 4.5 (Materials Used in Production) may be:

(a) deducted from the value of the non-originating material if calculating the regional value content requirement using the Build-Down Method; or

(b) included in the value of originating materials if calculating the regional value content requirement using the Build-Up Method.

4. For the purposes of this Article, if a cost, expense, or value is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that cost, expense, or value.

Article 4.8
Recovered Materials and Remanufactured Goods

1. A recovered material derived in the territory of one or both of the Parties shall be treated as originating when it is used in the production of, and incorporated into, a remanufactured good.

2. For greater certainty:

(a) a remanufactured good shall be treated as originating only if it satisfies the applicable requirements of Article 4.2 (Origin Criteria); and

(b) a recovered material that is not used or incorporated in the production of a remanufactured good shall be treated as originating only if it satisfies the applicable requirements of Article 4.2 (Origin Criteria).

Article 4.9
Accumulation

1. A good shall be regarded as originating if the good is produced in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements of Article 4.2 (Origin Criteria) and all other applicable requirements in this Chapter.

2. An originating good or material of one Party shall be considered originating in the territory of the other Party when used in the production of a good in the territory of the other Party.

3. Production undertaken on a non-originating material in the territory of one or both Parties by one or more producers may contribute toward the originating content of a good for the purpose of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

Article 4.10
Tolerance

1. A good that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 4B (Product-Specific Rules) for the good shall nonetheless be regarded as originating if:

   (a) in the case of goods in Chapters 1 through 24 and 50 through 63 of the Harmonized System:

      (i) the total weight of those materials does not exceed 10 per cent of the weight of the good not including the weight of any packaging; or

      (ii) the value of those materials does not exceed 10 per cent of the value of the good; or

   (b) in the case of goods in Chapters 25 through 49 and 64 through 97 of the Harmonized System, the value of those materials does not exceed 10 per cent of the value of the good,

   and the good meets all other applicable requirements of this Chapter.

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

value of non-originating materials for any applicable regional value content requirement.

Article 4.11
Fungible Goods or Materials

1. A fungible good or material shall be treated as originating based on the:

   (a) physical segregation of each fungible 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. The inventory management system must ensure that no more goods or material receive originating status than would have been the case if the fungible goods or materials had been physically segregated.

Article 4.12
Accessories, Spare Parts, Tools, and Instructional or Other Information Materials

1. For the purpose of determining origin of a good, accessories, spare parts, tools, and instructional or other information materials classified and delivered with, but not invoiced separately from a good shall be:

   (a) disregarded in determining whether a good is wholly obtained or satisfies a process or change in tariff classification requirement set out in Annex 4B (Product-Specific Rules) for the good; and

   (b) taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good,

   provided the quantities, value, and type of accessories, spare parts, tools, and instructional or other information material are customary for the good.

2. Accessories, spare parts, tools, and instructional or other information materials, described in paragraph 1 shall be deemed to have the same originating status as the good with which they are delivered.

Article 4.13
Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be:

(a) 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), or whether the good is wholly obtained or produced; and

(b) taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.14
Packing Materials and Containers for Shipment

Packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

Article 4.15
Indirect Materials

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

Article 4.16
Sets of Goods

1. For a set classified as a result of the application of rule 3(a) or rule 3(b) of the General Rules for the Interpretation of the Harmonized System, the originating status of the set shall be determined in accordance with the product-specific rule of origin that applies to the set.

2. For a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set shall be originating only if each good in the set is originating and both the set and the goods meet the other applicable requirements of this Chapter.

3. Notwithstanding paragraph 2, for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating if the value of all the non-originating goods in the set does not exceed 20 per cent of the value of the set.

4. For the purposes of paragraph 3, the value of the non-originating goods in the set and the value of the set shall be calculated in the same manner as the value of non-originating materials and the value of the good.

Article 4.17
Non-Alteration

1. An originating good shall retain its originating status if the good has been transported to the importing Party without passing through the territory of a non-party.

2. An originating good transported through the territory of one or more non-parties shall retain its originating status provided that the good:

   (a) does not undergo further production or any other operation outside the territories of the Parties, other than unloading, reloading, separation from a bulk shipment or splitting of a consignment, storing, repacking, labelling or marking required by the importing Party or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party.

   (b) is not released to free circulation in the territory of any non-party.[1]

Section B
Origin Procedures

Article 4.18
Claims for Preferential Tariff Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a declaration of origin completed by the exporter, producer, or, in the case of an exporter or producer in Australia, an authorised representative of the exporter or producer, or the importer's knowledge that a good is originating.

2. Each Party shall provide that a declaration of origin:

   (a) need not follow a prescribed format;

   (b) be in writing, including electronic format;

[1]The Working Group on Rules of Origin and Customs and Trade Facilitation shall report to the Joint Committee on the operation of subparagraph (b) within one year of the date of entry into force of this Agreement.

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

(d) be attached to, or provided on, an invoice or any other commercial document that describes the goods concerned in sufficient detail to enable them to be identified; and

(e) fulfils the data requirements as set out in Annex 4A (Data Requirements).

3. Each Party shall provide that a declaration of origin may apply to:

(a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the declaration of origin, but not exceeding 12 months.

4. Each Party shall provide that a declaration of origin is valid for one year after the date that it was completed or for such longer period specified by the laws and regulations of the importing Party.

5. If unassembled or disassembled products within the meaning of rule 2(a) of the General Rules for the Interpretation of the Harmonized System falling within Sections XV to XXI of the Harmonized System are imported by more than one shipment, a single declaration of origin for such products may be used on request of the importer and in accordance with the requirements laid down by the customs authority of the importing Party.

Article 4.19
Basis of a Declaration of Origin or Importer's Knowledge

1. Each Party shall provide that if a producer declares the origin of a good, the declaration of origin is completed on the basis of the producer having information that the good is originating.

2. Each Party shall provide that if the exporter is not the producer of the good, a declaration of origin may be completed by the exporter of the good on the basis of:

(a) the exporter having information that the good is originating; or

(b) reasonable reliance on the producer's information that the good is originating.

3. Each Party shall provide that if an importer of the good makes a claim for preferential tariff treatment on the basis of the importer's knowledge the good is originating, the claim is made on the basis of:

(a) the importer having documentation that the good is originating; or

(b) reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

4. Australia shall also provide that a declaration of origin may be completed by an authorised representative of an exporter or producer of the good, on the basis of reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

5. For greater certainty, nothing in paragraph 1 or paragraph 2 shall be construed to allow a Party to require an exporter or producer to complete a declaration of origin or provide a declaration of origin to another person.

Article 4.20
Discrepancies

A Party shall not reject a declaration of origin due to minor errors or discrepancies, such as slight discrepancies between documents, omissions of information or typing errors, provided these minor discrepancies or errors do not create doubt as to the originating status of the good.

Article 4.21
Waiver of Declaration of Origin

A Party shall not require a declaration of origin if:

(a) the customs value of the importation does not exceed, in the case of Australia, 1,000 Australian Dollars or, in the case of the United Kingdom, 1,000 Pound Sterling, or any higher amount as the importing Party may establish; or

(b) it is a good for which the importing Party has waived the requirement or does not require the importer to present a declaration of origin,

provided that the importation does not form part of a series of importations, which the customs authority of the importing Party reasonably considers to have been carried out or planned for the purpose of evading compliance with the importing Party's laws and regulations governing claims for preferential tariff treatment under this Agreement.

Article 4.22
Obligations Relating to Importation

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purpose of claiming preferential tariff treatment, the importer shall:

(a) declare that the good qualifies as an originating good;

(b) possess either:

(i) a valid declaration of origin; or

(ii) documentation that formed the basis for the importer's knowledge that the good is originating;

(c) provide to the importing Party a copy of any declaration of origin and other evidence that the good qualifies as an originating good, if required by the importing Party; and

(d) if required by an importing Party to demonstrate that the requirements in Article 4.17 (Non-Alteration) have been satisfied, provide relevant documents, such as transport documents, and in the case of storage, storage documents.

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

3. Each Party may provide that if the exporter or producer has reason to believe that the declaration of origin is based on incorrect information that could affect the accuracy or validity of the declaration of origin, they shall be obliged to immediately notify the importer in writing of any change affecting the originating status of each good to which the declaration of origin applies.

4. Each Party shall encourage its customs authority, when considering imposing a penalty in relation to a claim for preferential tariff treatment, to consider as a significant mitigating factor a voluntary notification given prior to the discovery of that error by the Party and in accordance with paragraph 2 or paragraph 3, provided that in the case of a notification given by an importer, the importer corrects the error and repays any duties owing.

Article 4.23
Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain, for a period of four years from the date of importation of the good, or such longer period as the importing Party specifies:

(a) documentation related to the good's importation, including any declaration of origin that served as the basis for the claim; and

(b) all records necessary to demonstrate that the good is originating and qualified for preferential tariff treatment, if the claim was based on the importer's knowledge that the good was originating.

2. Each Party shall provide that a producer or exporter in its territory that provides a declaration of origin shall maintain, for a period of four years from the date the declaration of origin was issued, or such longer period as the importing Party specifies, all records necessary to demonstrate that a good for which the exporter or producer provided a declaration of origin is originating.

3. Each Party shall provide that an importer, exporter, or producer in its territory may choose to maintain the records specified in paragraphs 1 and 2 in any medium that allows for prompt retrieval, including electronic, optical, magnetic, or written form in accordance with that Party's laws and regulations.

Article 4.24
Verification of Origin

Initiating a verification of origin

1. For the purpose of determining whether a good imported into its territory is originating, the customs authority of the importing Party may conduct a verification of any claim for preferential tariff treatment by one or more of the following:

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

(b) a written request for information from the exporter or producer of the good, where the customs authority of the importing Party considers the information obtained under subparagraph (a) is not sufficient to make a determination and the customs authority of the importing Party would like additional information; or

(c) a written request for information from the customs authority of the exporting Party where the customs authority of the importing Party considers the information obtained under subparagraph (a) and subparagraph (b) is not sufficient to make a determination and the customs authority of the importing Party would like additional information.

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

2. If the customs authority of the importing Party decides to conduct a verification pursuant to paragraph 1, it shall accept information directly from the importer, exporter, or producer.

3. Where a written request is made under subparagraph 1(b) the customs authority 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) if the claim was based on a declaration of origin, that declaration of origin; and

(ii) where the claim was based on the good having been wholly obtained or produced pursuant to subparagraph (a) of Article 4.2 (Origin Criteria), the applicable subparagraph in Article 4.3 (Wholly Obtained or Produced Goods), and the place of production; or

(iii) where the claim was based on the good having been produced entirely pursuant to subparagraph (b) of Article 4.2 (Origin Criteria), information on the origin of the materials, and the place of production; or

(iv) where the claim was based on a change in tariff classification, a list of all the non-originating materials used in the production of the good in a Party, including their tariff classification (in two, four, or six-digit format, depending on the relevant product-specific rule of origin); or

(v) where the claim was based on the regional value content, the value of the final good, the value of all non-originating materials used in the production (where the build-down method is used) or the value of all originating materials used in the production (where the build-up method is used), as well as information on how such values were determined; or

(vi) where the claim was based on a production process, a specific description of that process; and

(vii) information on any tolerances relied on under Article 3.9 (Tolerance); and

(viii) information relating to compliance with the non-alteration provisions under Article 4.17 (Non-Alteration).

(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 authority of the exporting Party of the request.

4. Where a written request is made under subparagraph 1(c) the customs authority of the importing Party may request specific documentation and information from the

customs authority of the exporting Party as part of a verification of origin not later than two years after the date on which a claim for preferential tariff treatment was made. The customs authority of the exporting Party shall provide the customs authority of the importing Party with a written acknowledgement of receipt of this request within 45 days of the date of the request, or any other time period as may be decided between the Parties.

Actions of the customs authority of the exporting Party

5. Following a request under subparagraph 1(c), the customs authority of the exporting Party may, in accordance with the laws and regulations of the exporting Party:

   (a) request the records referred to in paragraphs 1 and 2 of Article 4.23 (Record Keeping Requirements);

   (b) ask questions of the exporter, a producer, or a supplier of the good to verify the origin of the goods; and

   (c) visit the premises of the exporter, a producer, or a supplier to review the records referred to in paragraphs 1 and 2 of Article 4.23 (Record Keeping Requirements) or to observe the facilities used in the production of the good.

6. As soon as possible, and in any event within 10 months after receiving the written request under paragraph 4, the customs authority of the exporting Party shall wherever possible provide the customs authority of the importing Party with the following:

   (a) the documentation requested by the customs authority of the importing Party under paragraph 4 where available;

   (b) the description of the good that is subject to examination, including its tariff classification in two, four, or six-digit format, depending on the origin criterion;

   (c) a description of the production process;

   (d) information on the manner in which the examination of the good pursuant to paragraph 5 was conducted; and

   (e) supporting documentation, where appropriate.

Release of goods subject to verification

7. 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.

Completing a verification of origin

8. The customs authority of the importing Party shall:

   (a) make a determination following a verification as expeditiously as possible and no later than 90 days after it receives the information necessary to make the determination, and no later than 365 days after the first request for information or other action under paragraph 1. If permitted by its laws and regulations, a Party may extend the 365-day period in exceptional cases, such as where the technical information concerned is very complex;

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

   (c) provide the importer, exporter, or producer that provided information during the verification or certified that the good was originating with the results of the verification and the reasons for that result.

Cooperation

9. The customs authorities of the Parties shall discuss the overall operation and administration of the verification process, including forecasting of workload and discussing priorities. If there is an unmanageable number of requests, the customs authorities of the Parties shall consult to establish priorities and consider steps to manage the workload, taking into consideration operational requirements.

Article 4.25
Determinations on Claims for Preferential Tariff Treatment

1. Except as otherwise provided in paragraph 2, each Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good that arrives in its territory on or after the date of entry into force of this Agreement. In addition, if permitted by the importing Party, the importing Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good which is imported into its territory or released from customs control on or after the date of entry into force of this Agreement.

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

   (a) it determines that the good does not satisfy any of the requirements of this Chapter;

(b) pursuant to a verification under Article 4.24 (Verification of Origin), it has not received sufficient information to determine that the good qualifies as originating, or that the importer, exporter, producer, or supplier has failed to comply with any requirements of this Chapter;

(c) the exporter, producer, or importer fails to respond to a written request for information in accordance with Article 4.24 (Verification of Origin); or

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

3. If an importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination.

4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice or other commercial document was issued in a non-party. If an invoice is issued in a non-party, a Party shall require that the declaration of origin be separate from the invoice.

Article 4.26
Refunds and Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that an importer may 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 the territory of the Party.

2. As a condition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer:

(a) make a claim for preferential tariff treatment;

(b) where applicable, provide a copy of any declaration of origin; and

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

no later than two years after the date of importation or a longer period if specified in the importing Party's laws and regulations.

Article 4.27
Penalties

A Party shall establish or maintain measures imposing criminal, civil, or administrative penalties for violations of its laws and regulations related to this Chapter.

Article 4.28
Confidentiality

For greater certainty, Article 5.21 (Confidentiality - Customs Procedures and Trade Facilitation) applies to this Chapter.

Section C
Other Matters

Article 4.29
Working Group on Rules of Origin and Customs and Trade Facilitation

1. The Parties hereby establish a Working Group on Rules of Origin and Customs and Trade Facilitation 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 functions of the Working Group on Rules of Origin and Customs and Trade Facilitation shall include:

   (a) cooperating in the administration and uniform interpretation of this Chapter and Chapter 5 (Customs Procedures and Trade Facilitation);

   (b) monitoring the effective operation and implementation of this Chapter and Chapter 5 (Customs Procedures and Trade Facilitation);

   (c) providing a regular forum for information exchange on matters related to this Chapter and Chapter 5 (Customs Procedures and Trade Facilitation);

   (d) ensuring customs authority contact details have been exchanged;

   (e) discussing the potential for applying cumulation with:

      (i) non-parties where each Party has a free trade agreement with the same non-party; and

      (ii) least-developed countries;

(f) considering amendments or modifications to this Chapter, Annex 4B (Product-Specific Rules) or Annex 4A (Data Requirements), that are necessary to reflect changes to the Harmonized System and taking into account developments in technology, production processes or other related matters;

(g) considering amendments or modifications to Article 4.17 (Non-Alteration); and

(h) considering any matters referred to it by the Committee on Trade in Goods or the Joint Committee.

3. The Working Group on Rules of Origin and Customs and Trade Facilitation shall meet within one year of the date of entry into force of this Agreement and thereafter as the Parties may decide.

4. The Working Group on Rules of Origin and Customs and Trade Facilitation shall report to the Committee on Trade in Goods.

ANNEX 4A

DATA REQUIREMENTS

A declaration of origin that is the basis for a claim for preferential tariff treatment under this Agreement must include the following elements:

1. Exporter, Producer, or Authorised Representative of the Exporter or Producer

Indicate whether the signatory is the exporter, or producer in accordance with Article 4.18 (Claims for Preferential Tariff Treatment). In the case of an authorised representative, indicate whether the declaration of origin has been completed on behalf of the exporter, producer, or both.

2. Signatory

Provide the signatory's name, company name (if applicable), address (including country), telephone number, and e-mail address.

3. Exporter

Provide the exporter's name, address (including country), e-mail address, and telephone number if different from the signatory. For UK exporters, provide the UK exporter reference number where one has been assigned. The address of the exporter must be in the exporting Party. This information is not required if the producer is completing the declaration of origin and does not know the identity of the exporter.

4. Producer

Provide the producer's name, address (including country), e-mail address, and telephone number, if different from the certifier or exporter or, if there are multiple producers, state "Various" or provide a list of producers. A person that wishes for this information to remain confidential may state "Available upon request by the importing authorities". The address of a producer must be the place of production of the good in a Party.

5. Importer

Provide, if known, the importer's name, address, e-mail address, and telephone number. The address of the importer must be in a Party.

6. Description and HS Tariff Classification of the Good

(a) Provide a description of the good and the Harmonized System tariff classification of the good to the six-digit level. The

description should be sufficient to relate it to the good covered by the declaration of origin; and

(b) If the declaration of origin covers a single shipment of a good, indicate, if known, the invoice number related to the exportation.

7. Origin Criterion

Specify the rule of origin under which the good qualifies.

8. Period for multiple shipments

If the declaration of origin covers multiple shipments of identical goods for a specified period of up to 12 months as set out in paragraph 3 of Article 4.18 (Claims for Preferential Tariff Treatment), state the period during which such shipments will be made.

9. Authorised Signature and Date

If the exporter or producer is the signatory, the declaration of origin must be signed and dated by the signatory, and accompanied by the following statement:

> I (the exporter/the producer) declare that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I (the exporter/the producer) assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this declaration of origin.

If an authorised representative of the exporter or producer is the signatory, the declaration of origin must be signed, dated and accompanied by the following statement:

> I (the authorised representative of the exporter/producer) declare that the goods described in this document qualify as originating and the information contained in this document is true and accurate. The exporter or the producer, as the case may be, assumes responsibility for providing such representations and agrees to maintain and present upon request or to make available during a verification visit, documentation necessary to support this declaration of origin.

CHAPTER 5

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 5.1
Definitions

For the purposes of this Chapter:

"customs laws" means any laws and regulations applicable in the territory of each Party governing the import, export, and transit of goods, as well as other customs procedures, and including measures of prohibition, restriction, and control, administered, applied or enforced by the customs authorities of the Parties; and

"customs procedures" means the measures applied by the customs authority of each Party.

Article 5.2
Scope

1. This Chapter applies to customs procedures applied to goods traded between the Parties.

2. This Chapter shall be implemented by each Party in accordance with its laws and regulations.

Article 5.3
Customs Procedures and Facilitation of Trade

1. Each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent, transparent, and non-discriminatory.

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

3. Customs procedures of each Party shall conform, where possible, and to the extent permitted by its respective laws, regulations, and policies, to international standards and recommended practices established by the World Customs Organization ("WCO") and under other relevant international agreements to which the Parties are party.

4. Each Party shall periodically review its customs procedures with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangements to facilitate trade between the Parties.

5. The Parties shall seek to reinforce their cooperation to promote trade facilitation while ensuring effective customs control.

Article 5.4
Data, Documentation and Automation

1. With a view to simplifying and minimising the complexity of import, export, and transit formalities and documentation requirements, each Party shall ensure as appropriate, that such formalities, data, and documentation requirements:

   (a) are adopted or applied with a view to a rapid release of goods, to facilitate trade between the Parties; and

   (b) are adopted or applied in a manner that aims to reduce the time and cost of compliance for traders and operators.

2. Each Party shall:

   (a) make electronic systems accessible to customs users;

   (b) allow a customs declaration to be submitted in electronic format;

   (c) employ electronic or automated systems for risk analysis and targeting; and

   (d) endeavour to implement common standards and elements for import and export data by giving consideration to the WCO Data Model;

3. The Parties shall endeavour to cooperate on the development of interoperable electronic systems, to facilitate trade between the Parties.

Article 5.5
Transparency and Publication

1. Further to Article 28.2 (Publication – Transparency and Anti-Corruption), each Party shall promptly publish, including online:

   (a) importation, exportation, and transit procedures (including port, airport, and other entry point procedures) and required forms and documents;

   (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(d) rules for the classification or valuation of products for customs purposes;

(e) laws, regulations, and administrative rulings of general application relating to rules of origin;

(f) import, export or transit restrictions or prohibitions;

(g) penalty provisions against breaches of import, export or transit formalities;

(h) procedures for appeal or review;

(i) agreements or parts thereof with any country or countries relating to importation, exportation or transit;

(j) procedures relating to the administration of tariff quotas;

(k) hours of operation services provided by customs offices at ports and border crossing points; and

(l) points of contact for information enquiries.

2. Each Party shall establish or maintain one or more enquiry points to address enquiries of interested parties or persons concerning customs and other trade facilitation issues and shall make information concerning the procedures for making those enquiries publicly available online. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request.

Article 5.6
Simplified Customs Procedures

Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Those measures may be offered through a Party's Authorised Economic Operator program, or otherwise made available to traders or operators in accordance with its laws and regulations and may include:

(a) customs declarations containing a reduced set of data or supporting documents, including for the movement of low-value consignments;

(b) deferred payment of customs duties and taxes until after the release of those imported goods; and

(c) other matters as the Party may decide.

Article 5.7
Expedited Shipments

1. Each Party shall adopt or maintain expedited customs procedures for expedited shipments,[1] while maintaining appropriate customs control and selection. These procedures shall:

(a) provide for the submission and processing of information in advance of the arrival[2] of a shipment to expedite its release;

(b) to the extent possible, allow for a single submission of information covering all goods contained in a shipment through, if possible, electronic means;

(c) to the extent possible, provide for the release of expedited shipments with a minimum of documentation or a reduced set of data;

(d) provide, in normal circumstances, for an expedited shipment to be released within six hours of arrival, provided:

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

(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;

(e) apply to shipments of any weight or value recognising that a Party may require additional entry procedures as a condition for release, including declarations and supporting documentation and payment of customs duties, and may limit such treatment based on the type of good; and

[1] Expedited shipments may include goods imported through air cargo, or goods imported by traders fulfilling other criteria specified in the importing Party's laws and regulations.
[2] For the purposes of this Article and in relation to shipments into the UK, "arrival" for the UK means arrival at the point where the goods are presented to customs.

(f) provide that under normal circumstances no customs duties will be assessed on expedited shipments valued at or below a fixed amount set under a Party's law.

2. If a Party does not provide the treatment in subparagraphs 1(a) through 1(f) to all shipments, that Party shall provide a separate[3] and expedited customs procedure that provides that treatment for expedited shipments.

Article 5.8
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 in a manner that aims to reduce the cost for traders. This paragraph shall not require a Party to release a good if its requirements for release have not been met.

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

(a) provide, in normal circumstances, for goods to be released within 48 hours of arrival,[4] provided:

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

(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 the electronic submission and processing of customs information relating to import in advance of the arrival of the goods to expedite the release of goods from customs control upon arrival;

(c) allow goods to be released without temporary transfer to warehouses or other facilities;

(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 good is 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

[3] For greater certainty, "separate" does not mean a specific facility or lane.
[4] For the purposes of this Article and in relation to shipments into the UK "arrival" for the UK means arrival at the point where the goods are presented to customs.

importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument; and

(e) to the extent possible and if applicable, 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 a security, it 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 as soon as possible after its 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.

Article 5.9
Risk Management

1. Each Party shall 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 as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

3. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

4. Each Party may also select, on a random basis, consignments for inspection activities referred to in paragraph 1 as part of its risk management.

5. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

Article 5.10
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 producer in the territory of the other Party[5], each an "applicant", with regard to:

   (a) tariff classification;

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

   (c) other matters as the Party may decide.

2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 90 days 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 three years, provided that the law, facts and circumstances on which the ruling is based remain unchanged.

4. After issuing an advance ruling, the Party may modify or revoke the advance ruling if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on inaccurate or false information, if the ruling was in error, if conflicting advance rulings have been issued for goods of the same class or kind, if the advance ruling has been reviewed internally, or if the importing customs authority changes its interpretation of the law.

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 or modification retroactively to the detriment of the applicant unless the ruling was based on incomplete,

[5] For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

incorrect, inaccurate, false, or misleading information provided by the applicant.

7. Subject to any confidentiality requirements in its laws and regulations, a Party may publish its advance rulings including online.

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, a review of the advance ruling or of the decision to revoke or modify it.

Article 5.11
Customs valuation

For the purpose of determining the customs value of goods traded between the Parties, the provisions of Part I of the Customs Valuation Agreement shall apply, *mutatis mutandis*.

Article 5.12
Review and Appeal

1. Each Party shall ensure that any person to whom it issues a decision on a customs matter has access 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; and

   (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 the 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.

Article 5.13
Penalties

1. Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs authority for a breach of its customs laws.

2. Each Party shall ensure that any penalties imposed for breaches of customs laws are proportionate and non-discriminatory. Any penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3. Each Party shall ensure that a penalty imposed by its customs authority for a breach of its customs laws is imposed only on the person legally responsible for the breach.

4. Each Party is encouraged to require its customs authority, when imposing a penalty for a breach of its customs laws, to consider as a potential mitigating factor the voluntary disclosure of the breach prior to its discovery by the customs authority.

5. Each Party shall ensure that if a penalty is imposed for a breach of customs laws, an explanation in writing is provided to the person upon whom the penalty is imposed, specifying the nature of the breach and the applicable laws under which the amount or range of penalty for the breach has been prescribed.

6. Each Party shall provide in its laws, regulations or procedures, or otherwise give effect to, a fixed and finite period within which its customs authority may initiate proceedings to impose a penalty relating to a breach of its customs laws.

Article 5.14
Customs Cooperation

1. The Parties shall, within the competence and available resources of their respective customs authorities, enhance cooperation, including the exchange of information on the matters referred to in this Chapter, with a view to further developing trade facilitation, while ensuring compliance with their respective customs laws, regulations, and procedural requirements, and improving supply chain security, in the following areas:

(a) cooperation on harmonisation of data requirements for customs purposes, in line with applicable international standards such as the WCO standards;

(b) cooperation on further development of the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the *SAFE Framework of Standards to Secure and Facilitate Global Trade*, adopted by the WCO Council in June 2005;

(c) cooperation on improvement of their risk management techniques, including sharing best practices and, if appropriate, risk information and control results; and

(d) cooperation in international organisations on matters of common interest, including tariff classification, customs valuation and origin.

Article 5.15
Single Window

Each Party shall endeavour to develop or maintain single window systems to facilitate a single, electronic submission of all information required by customs and other legislation for the exportation, importation and transit of goods.

Article 5.16
Transit and Transhipment

Each Party shall:

(a) ensure the facilitation and effective control of transhipment operations and transit movements through their respective territories;

(b) ensure that its authorities and agencies responsible for border controls and procedures dealing with the transit and transhipment of goods cooperate and coordinate their activities in order to facilitate trade; and

(c) allow goods intended for import to be moved under customs control within its territory from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Article 5.17
Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall:

   (a) adopt or maintain post-clearance audit processes to ensure compliance with customs and other related laws and regulations;

   (b) conduct post-clearance audits in a risk-based manner, which may include appropriate selectivity criteria;

   (c) conduct post-clearance audits in a transparent manner. Where an audit is conducted and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the reasons for the results and the audited person's rights and obligations; and

   (d) wherever practicable, use the result of post-clearance audit in applying risk management.

Article 5.18
Customs Brokers

The Parties shall:

(a) not require the mandatory use of customs brokers;

(b) publish measures on the use of customs brokers; and

(c) apply transparent and objective rules if and when licensing customs brokers.

Article 5.19
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 are brought into its customs territory for a specific purpose, have not undergone any change except normal depreciation and wastage due to the use made of them, and 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, with regard to:

(a) goods intended for display or demonstration at exhibitions, fairs, meetings, demonstrations or similar events, and goods intended for use in connection with the display of foreign products at those events;

(b) professional equipment;

(c) commercial samples, advertising, films and recordings;

(d) containers, packing materials and pallets that are in use or to be used in the shipment of goods in international traffic;

(e) goods imported for sports purposes; and

(f) any other goods as the Party may decide.

Article 5.20
Perishable Goods

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

2. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall:

   (a) provide in normal circumstances, for perishable goods to be released within 6 hours of arrival[6] provided:

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

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

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

   (b) in exceptional circumstances where it would be appropriate to do so, provide for the release of perishable goods outside the business hours of customs and other relevant authorities.

3. Each Party shall give appropriate priority to perishable goods when scheduling any physical examinations or inspections that may be required.

[6] For the purposes of this Article and in relation to shipments into the UK, "arrival" means at the point where the goods are presented to customs.

4. 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 the goods to those 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 domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 5.21
Confidentiality

1. Further to Article 31.6 (Confidentiality of Information – General Provisions and Exceptions), each Party shall maintain the confidentiality of the information collected pursuant to this Chapter or Chapter 4 (Rules of Origin and Origin Procedures) and shall protect that information from disclosure that could prejudice the competitive position of the person to whom the confidential information relates.

2. Confidential information collected pursuant to this Chapter or Chapter 4 (Rules of Origin and Origin Procedures) shall only be used or disclosed for the purpose of administration and enforcement of customs matters, including determination of origin, or as otherwise provided under the Party's laws and regulations, except with the permission of the Party who provided the confidential information. Where permission has been granted by a Party, that use shall then be subject to any restrictions laid down by that Party.

3. If the Party receiving or obtaining the information is authorised or required by its laws and regulations to disclose the information, that Party shall, where possible, notify the Party who provided that information, wherever possible in advance of that disclosure.

4. Paragraph 2 shall not preclude the use of information collected as part of its customs processes as evidence in proceedings or charges subsequently instituted before the courts or tribunals for failure to comply with customs law. Where the information is received from the other Party, the Party shall, where possible, notify the Party who provided the information in advance of such use.

Article 5.22
Working Group on Rules of Origin and Customs and Trade Facilitation

The Working Group on Rules of Origin and Customs and Trade Facilitation established pursuant to Article 4.29 (Working Group on Rules of

Origin and Customs and Trade Facilitation – 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:

   "relevant international organisations" means organisations referred to in Annex A, paragraph 3 of the SPS Agreement;

   "SPS measure" means a "sanitary or phytosanitary measure" as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions); and

   "the SPS Committee" means the Committee on Sanitary and Phytosanitary Measures.

2. The definitions set out in Annex A to the SPS Agreement shall apply.

3. The Parties shall take into consideration the glossaries and definitions of the 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 glossaries 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) protect human, animal and plant life and health in the territory of the Parties while facilitating trade between them;

(b) ensure that the Parties' SPS measures do not create unjustified barriers to trade;

(c) reinforce and build upon the implementation of the SPS Agreement;

(d) promote greater transparency and understanding on the application of each Party's SPS measures;

(e) strengthen communication and cooperation on relevant SPS issues; and

(f) promote resolution of SPS issues that may affect trade 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
Science and Risk Assessment

1. The Parties recognise the importance of ensuring that their respective SPS measures are based on scientific principles.

2. The Parties shall ensure that their SPS measures are based on risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement, and taking into account risk assessment techniques developed by the relevant international organisations.

Article 6.6
Adaption to Regional Conditions

1. The Parties acknowledge that adaptation of SPS measures to recognise regional conditions, including through application of concepts such as pest or disease free areas, areas of low pest or disease prevalence, zoning, compartmentalisation, pest free places of production, and pest free production sites, is an important means of facilitating trade.

2. Each Party shall apply the concepts set out in paragraph 1 in accordance with the SPS Agreement and take into account relevant international standards,

guidelines and recommendations, and relevant guidance of the WTO SPS Committee.

3. The Parties shall endeavour to cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each Party for the recognition of regional conditions.

4. When undertaking a risk assessment that will establish or maintain an SPS measure applicable to the exporting Party, the importing Party shall take into consideration a regionalisation determination of the exporting Party where this information is provided to them, including:

   (a) for sanitary measures applicable to the exporting Party, considering where zones proposed by the exporting Party have the status of disease-free officially recognised by the OIE or when the status has been recovered after an outbreak;

   (b) for phytosanitary measures applicable to the exporting Party, taking into account, *inter alia*, the pest status of an area, pest free areas, pest free places of production, pest free production sites, or areas of low pest prevalence that the exporting Party has established.

5. When making an assessment, the importing Party shall base its own determination of the animal and plant health status of the exporting Party or parts thereof, on the information provided by the exporting Party in accordance with the SPS Agreement and international standards, guidelines and recommendations, and any other information it considers appropriate.

6. Where the importing Party determines that the information provided by the exporting Party with its request is sufficient it shall initiate an assessment and make a decision within a reasonable period of time as to whether it can accept the exporting Party's determination of regional conditions.

7. Where the importing Party has accepted the exporting Party's determination of regional conditions the exporting Party shall notify the importing Party of any modification to those regional conditions. Following any such notification the importing Party may continue to accept the exporting country's determination of regional conditions and allow trade to continue, provided that the importing Party is satisfied that its appropriate level of protection will be maintained. The importing Party may apply any other measure or measures, in accordance with the SPS Agreement, to meet its appropriate level of protection.

8. If the importing Party adopts a measure that recognises specific regional conditions of an exporting Party, the importing Party shall implement the measure within a reasonable period of time and inform the exporting party when trade can commence without undue delay.

9. If the evaluation of the evidence provided by the exporting Party does not result in a decision to recognise the regional conditions of the exporting Party, the importing Party shall provide the exporting Party with the rationale for its determination within a reasonable period of time.

10. If there is an incident that results in the importing Party modifying or revoking a decision recognising the regional conditions of the exporting Party, the Parties shall cooperate to assess whether the determination can be reinstated.

Article 6.7
Equivalence

1. The Parties acknowledge that recognition of the equivalence of SPS measures is an important means of facilitating trade. In determining equivalence of an individual measure, group of measures, or measures on a systems-wide basis, each Party shall consider the relevant international standards, guidelines and recommendations.

2. The importing Party shall recognise the equivalence of SPS measures, even if the measures differ from its own, if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measures achieve the importing Party's appropriate level of protection. The final determination of equivalence rests with the importing Party.

3. In order to strengthen cooperation on equivalence the Parties may, pursuant to paragraph 3(a) of Article 6.16 (Committee on SPS Measures), consider establishing a procedure for recognition of equivalence based on relevant international standards, guidelines and recommendations, and guidance of the WTO SPS Committee. Such a procedure may include, *inter alia,* the consultation process, information requirements, appropriate timeframes, and the respective responsibilities of the importing and exporting parties. The Parties shall determine the most appropriate form of any such procedure.

Article 6.8
Trade Conditions

1. The importing Party shall make publicly available its general SPS import requirements and, upon request, make available to the exporting Party all SPS import requirements relating to the import of specific goods unless such information is publicly available.

2. For the purpose of establishing specific SPS import conditions, the exporting Party shall, at the request of the importing Party, provide all relevant information required by the importing Party

3. Each Party shall ensure that all SPS control, inspection, assessment, and approval procedures are undertaken and completed without undue delay including, if needed, audits, and the necessary legislative or administrative measures to complete the approval procedure. Each Party shall, in particular, avoid unnecessary or unduly burdensome information requests, and take into account information already available in the importing Party, such as on the legislative framework and audit reports of the exporting Party

4. Subject to its laws and regulations, when a risk assessment is required in the process of determining import conditions, a Party shall, upon request, provide the other Party with the outcomes of that risk assessment within a reasonable period of time of the risk assessment being finalised.

5. The importing Party shall approve an establishment or facility situated in the territory of the exporting Party without prior inspection where it has determined that the establishment or facility meets its relevant SPS requirements.

Article 6.9
Audit and Verification

1. For the purpose of attaining and maintaining confidence in an exporting Party's ability to provide required assurances and to comply with the SPS import requirements and related control measures of the importing Party, the importing Party shall have the right to carry out an audit or verification[1] of all or part of the control system of the competent authority of the exporting Party.

2. If possible, an audit or verification shall be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.

3. In undertaking an audit or verification a Party shall take into account relevant guidance of the WTO SPS Committee and relevant international standards, guidelines and recommendations.

4. The Parties shall endeavour to agree the conditions under which an audit or verification is to be carried out in advance. Prior to the commencement of an audit or verification, the importing Party shall notify the exporting Party of its intention, and state the basis for undertaking the audit or verification, which may include:

   (a) the reason it is required;

[1] For greater certainty, an audit or verification may include desk assessments and virtual, remote, or physical audits.

(b) the objectives and scope of the assessment;

(c) the criteria or requirements against which the exporting Party will be assessed; and

(d) the procedures for conducting the assessment, including the method or methods of verification.

5. The Parties shall endeavour to limit the frequency and number of audit visits. In case of a subsequent audit related to the same good, the importing Party shall carry out an audit only in duly justified circumstances and provide the exporting Party with an explanation as to the reason for the audit.

6. The importing Party may appoint a governmental body, non-governmental body, or a person with the necessary relevant expertise to carry out all or part of an audit or verification on its behalf.

7. The importing Party shall provide the exporting Party with a draft audit or verification report, including its findings, conclusions and recommendations, and shall provide the exporting Party with the opportunity to comment on the draft report. The importing Party shall consider any comments that have been provided within a reasonable period of time, before finalising its assessment.

8. The importing Party shall provide the exporting Party with a final report setting out its conclusions in writing within a reasonable period of time. If necessary to meet its appropriate level of protection, the importing Party may implement SPS measures prior to the completion of the audit or verification provided that such measures are not inconsistent with the SPS Agreement or this Agreement.

9. The costs incurred by the importing Party to conduct an audit or verification shall be borne by the importing Party, unless the Parties agree otherwise.

10. Measures taken by the importing Party as a consequence of its audit or verification shall be supported by objective evidence, 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. Nothing in this paragraph prevents a Party taking an emergency measure consistent with Article 6.12 (Emergency SPS Measures).

Article 6.10
Certification

1. If a Party requires import certification, it shall ensure that the SPS requirement for certification is applied only to the extent necessary to meet its SPS objectives and shall take into account guidance of the WTO SPS

Committee and relevant international standards, guidelines and recommendations.

2. The Parties may enter into consultations through the SPS Committee, with the aim of agreeing principles, guidelines, or specific requirements for certification.

3. The Parties shall progress the implementation of paperless trade through electronic SPS certification and provide updates on implementation through the SPS Committee.

Article 6.11
Import Checks and Fees

1. The importing Party shall have the right to carry out import checks based on the sanitary and phytosanitary risks associated with imports. These checks shall be carried out without undue delay and with minimum trade disrupting effects.

2. If import checks reveal non-compliance with the relevant import requirements, the action taken by the importing Party must be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the Party's appropriate level of protection.

3. The importing Party shall notify the importer of a non-compliant consignment, or its representative, of the reason for non-compliance, and, subject to its law, provide them with an opportunity for a review of the decision. The importing Party shall consider any relevant information submitted to assist in the review.

Article 6.12
Emergency SPS Measures

1. If a Party adopts an emergency SPS measure necessary for the protection of human, animal or plant life or health, the Party shall notify the other Party of that measure through its contact point as soon as possible, and in any case no later than 48 hours after the decision to adopt the measure.

2. On the request of the other Party, a Party adopting an emergency SPS measure shall engage in technical consultations under Article 6.15 (Technical Consultations). The Parties shall endeavour to hold technical consultations within 10 days of the receipt of the request, and in any case consultations must be held as soon as possible following receipt of the request. The Party that adopts the emergency SPS measure shall take into consideration any information provided by the other Party in response to the notification and during technical consultations.

3. The importing Party shall consider, in a timely manner, information that was provided by the exporting Party when it makes its decision with respect to consignments that, at the time of adoption of the emergency SPS measure, are being transported between the Parties, in order to avoid unnecessary disruptions to trade.

4. If a Party adopts an emergency SPS measure, it shall commence a science-based review of the measure within a reasonable period of time. The Party shall then review the need for the emergency SPS measure as required, and if it remains in place provide, on request, the justification for maintaining the emergency SPS measure.

Article 6.13
Cooperation

The Parties shall cooperate to strengthen collaboration between the Parties in their involvement in the work of relevant international organisations that develop international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

Article 6.14
Transparency, Notification and Information Exchange

1. The Parties acknowledge the value of exchanging information in a timely manner relating to their respective SPS measures and ensuring transparency in the implementation of such measures. To this end, each Party shall facilitate the exchange of information on their respective sanitary and phytosanitary regimes.

2. Each Party shall promptly notify the other Party of a:

   (a) significant change to pest or disease status; and

   (b) significant food safety issue related to a good traded between the Parties.

3. In particular, each Party shall, through the contact points designated under Article 6.17 (Competent Authorities and Contact Points), on request, provide information to the other Party of any new or revised SPS measures, including measures imposed in response to an urgent threat to human, animal or plant life or health.

4. Where the information referred to in paragraphs 2 and 3 has been made available via notification to the WTO's Central Registry of Notifications, or

to the relevant international organisations, the requirements in those paragraphs shall be deemed to be fulfilled.

Article 6.15
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 through the contact point.

2. The responding Party shall provide a written reply to the requesting Party within 30 days of the receipt of a request. The Parties shall enter into technical consultations within 30 days of the requesting Party's receipt of the reply, unless the Parties agree otherwise. Such consultations may be conducted via teleconference, videoconference or any other means agreed by the Parties.

3. The Parties shall endeavour to provide all relevant information necessary to avoid disruption to trade and to reach a mutually acceptable solution within a reasonable period of time.

4. Where the Parties have already established other mechanisms than those referred to in this Article to address the concerns, they shall make use of them to the extent possible in order to avoid unnecessary duplication.

Article 6.16
Committee on SPS Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (the "SPS Committee"), composed of government representatives of each Party responsible for SPS matters.

2. The functions of the SPS Committee shall include:

   (a) monitoring implementation and considering any matter related to this Chapter;

   (b) providing an opportunity for the identification, prioritisation, discussion, and resolution of SPS issues;

   (c) recommending any mutually agreed proposals for amendments to this Chapter to the Joint Committee; and

   (d) providing a forum to exchange information on each Party's SPS regulatory system.

3. The SPS Committee may, among other things:

(a) identify opportunities for greater cooperation activities relevant to this Chapter, including trade facilitation initiatives and further work on eliminating unnecessary SPS barriers to trade between the Parties;

(b) discuss, at an early stage, a change to, or a proposed change to, a SPS measure being considered;

(c) facilitate improved understanding between the Parties on the implementation of the SPS Agreement, and promote cooperation between the Parties on SPS issues in multilateral fora, including the WTO Committee on Sanitary and Phytosanitary Measures, and relevant international organisations, as appropriate; and

(d) provide opportunities to identify initiatives to strengthen bilateral technical cooperation relevant to this Chapter.

4. The SPS Committee may establish technical working groups to address specific SPS issues with the aim of reaching a mutually acceptable resolution with the least disruption to trade. Any technical working group established shall report to the SPS Committee on progress of its work.

5. A Party may refer any SPS issue to the SPS Committee. The SPS Committee shall consider the issue as expeditiously as possible. If the SPS Committee is unable to resolve an issue it shall, at the request of a Party, report to the Joint Committee.

6. The SPS Committee shall meet within one year of the date of entry into force of this Agreement, and on annual basis, unless the Parties agree otherwise.

7. The SPS Committee may decide to meet by videoconference or teleconference or by any such means as may be agreed by the Parties, and it may also address issues by correspondence.

8. The SPS Committee shall take decisions and make recommendations by consensus.

9. The SPS Committee shall report, as needed, on its activities and work programme to the Joint Committee.

Article 6.17
Competent Authorities and Contact Points

1. Each Party shall notify to the other Party a list of its competent authorities on entry into force of this Agreement. The notification shall include contact information of these authorities.

2. Each Party shall also designate and notify a contact point to facilitate the exchange of information and any communication between the Parties relating to this Chapter on entry into force of this Agreement.

3. Each Party shall promptly notify the other Party of any change of its competent authorities, the contact information of its competent authorities, or its contact point.

Article 6.18
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (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 definitions set out in Annex 1 to the TBT Agreement apply.

Article 7.2
Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

Article 7.3
Scope

1. Unless otherwise provided in paragraph 4, this Chapter applies to the preparation, adoption, and application of all technical regulations, standards, and conformity assessment procedures of 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 with the provisions of this Chapter by regional or local government bodies and non-governmental bodies within its territory which are responsible for the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures.

3. All references in this Chapter to technical regulations, standards, and conformity assessment procedures shall be construed to include any amendments to them and any addition to the rules or the product coverage of those technical regulations, standards, and procedures.

4. This Chapter does not apply to:

   (a) technical specifications prepared by governmental bodies for the production or consumption requirements of such bodies; or

   (b) sanitary or phytosanitary measures, which are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

5. Nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards, or conformity assessment procedures in accordance with its rights and obligations under this Agreement, the TBT Agreement, and any other relevant international agreement.

Article 7.4
Affirmation of the TBT Agreement

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

Article 7.5
Technical Regulations

1. Each Party shall give positive consideration to accepting technical regulations of the other Party as equivalent to its own, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

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

Article 7.6
International Standards, Guides, and Recommendations

1. The Parties recognise the important role that international standards, guides, and recommendations can play in supporting greater regulatory alignment, good regulatory practice, and reducing unnecessary barriers to trade.

2. Each Party shall, in accordance with Articles 2.4 and 5.4 of the TBT Agreement, use international standards, guides, and recommendations, or the relevant parts thereof, as a basis for its technical regulations and conformity assessment procedures.

3. Where a Party does not use an international standard, guide, or recommendation, or the relevant parts thereof, as a basis for a technical regulation or conformity assessment procedure, it shall, on request of the other Party, in accordance with Articles 2.5 and 5.4 of the TBT Agreement, explain the reasons for its decision.

4. Each Party shall encourage the standards bodies established within its territory to cooperate and exchange views with each other on matters under discussion in relevant international or regional bodies that develop international standards, guides, or recommendations relevant to this Chapter.

5. 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 *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995* (G/TBT/1/Rev.12), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.[1]

Article 7.7
Conformity Assessment Procedures

1. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. For example:

   (a) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;

   (b) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the other Party's territory;

   (c) a Party may recognise the results of conformity assessment procedures conducted in the other Party's territory;

   (d) conformity assessment bodies located in the territory of either Party may enter into voluntary arrangements to accept the results of each other's assessment procedures; and

   (e) the importing Party may rely on a supplier's declaration of conformity.

2. The Parties shall exchange information on the range of mechanisms relevant to conformity assessment procedures in their respective territories with a view to facilitating the acceptance of conformity assessment results.

3. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

4. The Parties acknowledge the trade facilitation role played by the *Agreement on Mutual Recognition in Relation to Conformity Assessment, Certificates and Markings between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia* done at London on 18 January 2019, and the importance of cooperating in the field

[1] For greater certainty, the Parties shall also consider relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body.

of mutual recognition in relation to conformity assessment in accordance with that Agreement. The Parties recognise that they may, in accordance with that Agreement, review and amend its provisions, including by extending its coverage, as appropriate.

Article 7.8
Marking and Labelling

1. Each Party shall, in accordance with Article 2 of the TBT Agreement, in respect of technical regulations that include or deal exclusively with mandatory marking or labelling requirements:

   (a) accord treatment no less favourable to products imported from the territory of the other Party than that accorded to its own like products or those originating in any other country; and

   (b) ensure that such technical regulations are not prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, such technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. 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. In assessing such risks, relevant elements of consideration are, *inter alia*, available scientific and technical information, related processing technology, or intended end-uses of products.

2. Where a Party requires mandatory marking or labelling of products, the Party may accept, where it considers that legitimate objectives in accordance with the TBT Agreement are not compromised thereby:

   (a) non-permanent or detachable labels; or

   (b) marking or labelling in the accompanying documentation in place of marking or labelling attached to the product.

3. Where an international system of nomenclature, pictograms, symbols, or graphics has been accepted by both Parties, such elements may be used. The simultaneous use of additional languages shall not be prohibited, provided that the information provided in the additional languages does not constitute a contradictory, confusing, misleading, or deceptive statement regarding the product.

Article 7.9
Transparency

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

2. As appropriate, each Party shall encourage non-governmental bodies in its territory to observe paragraph 1 in relation to consultation procedures on standards and voluntary conformity assessment procedures which are available to the general public.

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

Article 7.10
Cooperation and Trade Facilitation

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

   (a) exchanging information regarding technical regulations, standards, conformity assessment procedures, and good regulatory practices;

   (b) increasing the harmonisation of their respective technical regulations, standards, and conformity assessment procedures with relevant international standards, guides, or recommendations;

   (c) enhancing cooperation in the development of standards in areas of shared interest in particular as regards new or emerging products or technologies;

   (d) enhancing cooperation and dialogue on mutually agreed regulatory issues;

   (e) increasing coordination, as appropriate, in relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures; and

   (f) other areas as agreed by the Parties.

2. On request of the other Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Chapter.

Article 7.11
Information Exchange

Any information or explanation that a Party provides in response to a request of the other Party in accordance with this Chapter shall be provided in print or electronically within a reasonable period, and where possible within 60 days of the first Party's receipt of the request.

Article 7.12
Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (the "TBT Committee"), composed of government representatives of each Party responsible for technical barriers to trade matters. The TBT Committee may also invite relevant persons, with the necessary expertise regarding the issues for discussion, to attend as observers.

2. The functions of the TBT Committee include:

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

   (b) providing a regular forum for information exchange on matters related to this Chapter;

   (c) providing a forum for seeking to resolve differences that may arise regarding the interpretation or application of this Chapter; and

   (d) considering any other matters referred to it by the Joint Committee.

3. The TBT Committee may establish working groups to undertake specific tasks related to its functions under this Chapter.

4. Where a Party declines to discuss an issue through the TBT Committee under paragraph 2, it shall, on the request of the other Party, explain the reasons for its decision.

5. The TBT Committee shall meet within one year of the date of entry into force of this Agreement, and on an annual basis, unless the Parties agree otherwise.

Article 7.13
Contact Points

Each Party shall designate and notify a contact point to facilitate communications between the Parties on any matter covered by this Chapter.

Article 7.14
Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

Article 7.15
Annex

1. The rights and obligations set out in Annex 7A (Cosmetics) apply only with respect to the sector specified in that Annex.

2. The scope of Annex 7A (Cosmetics) is set out in that Annex.

ANNEX 7A

COSMETICS

1. For the purposes of this Annex:

   "marketing authorisation" means the process or processes by which a Party approves or registers a product in order to authorise its marketing, distribution, or sale in the Party's territory. The process or processes may be described in a Party's laws or regulations in various ways, including "marketing authorisation", "authorisation", "approval", "registration", "sanitary authorisation", "sanitary registration", and "sanitary approval" for a product. Marketing authorisation does not include notification procedures; and

   "post-market surveillance" means procedures taken by a Party after a product has been placed on its market to enable the Party to monitor or address compliance with the Party's domestic requirements for products.

2. This Annex applies to the preparation, adoption, and application of technical regulations, standards, conformity assessment procedures, marketing authorisation,[1] and notification procedures of central government bodies that may affect trade in cosmetic products between the Parties. This Annex does not apply to a technical specification prepared by a governmental entity for its production or consumption requirements or a sanitary or phytosanitary measure.

3. Each Party's obligations under this Annex apply to any product that the Party defines as a cosmetic product pursuant to paragraph 4. For the purposes of this Annex, preparation of a technical regulation, standard, conformity assessment procedure, or marketing authorisation includes, as appropriate, the evaluation of the risks involved, the need to adopt a measure to address those risks, the review of relevant scientific or technical information, and the consideration of the characteristics or design of alternative approaches.

4. Each Party shall define the scope of the products subject to its laws and regulations for cosmetic products in its territory and make that information publicly available.

5. Recognising that each Party is required to define the scope of products covered by this Annex pursuant to paragraph 4, for the purposes of this

[1] The application of this Annex to marketing authorisations is without prejudice to whether a marketing authorisation meets the definition of a technical regulation, standard, or conformity assessment procedure.

Annex, a cosmetic product may include a product that is intended to be rubbed, poured, sprinkled, sprayed on, or otherwise applied to the human body including the mucous membrane of the oral cavity and teeth, to cleanse, beautify, protect, promote attractiveness, or alter the appearance.

6. Each Party shall identify the agency or agencies that are authorised to regulate cosmetic products in its territory and make that information publicly available.

7. If more than one agency is authorised to regulate cosmetic products within the territory of a Party, that Party shall examine whether there is overlap or duplication in the scope of those authorities and eliminate unnecessary duplication of any regulatory requirements resulting for cosmetic products.

8. The Parties shall seek to collaborate through relevant international initiatives, such as those aimed at harmonisation, as well as regional initiatives that support those international initiatives, as appropriate, to improve the alignment of their respective regulations and regulatory activities for cosmetic products.

9. When developing or implementing regulations for cosmetic products, each Party shall consider relevant scientific or technical guidance documents developed through international collaborative efforts. Each Party is encouraged to consider regionally-developed scientific or technical guidance documents that are aligned with international efforts.

10. Each Party shall observe the obligations set out in Articles 2.1 and 5.1.1 of the TBT Agreement with respect to a marketing authorisation, notification procedure, or elements of either that the Party prepares, adopts, or applies for cosmetic products and that do not fall within the definition of a technical regulation or conformity assessment procedure.

11. Each Party shall ensure that it applies a risk-based approach to the regulation of cosmetic products.

12. In applying a risk-based approach in regulating cosmetic products, each Party shall take into account that cosmetic products are generally expected to pose less potential risk to human health or safety than medical devices or medicines.

13. Neither Party shall conduct separate marketing authorisation processes or sub-processes for cosmetic products that differ only with respect to shade extensions or fragrance variants, unless a Party identifies a significant human health or safety concern.

14. Each Party shall administer any marketing authorisation process that it maintains for cosmetics products in a timely, reasonable, objective, transparent, and impartial manner, and identify and manage any conflicts of interest in order to mitigate any associated risks.

(a) If a Party requires marketing authorisation for a cosmetic product, that Party shall provide an applicant with its determination within a reasonable period of time.

(b) If a Party requires marketing authorisation for a cosmetic product and it determines that a marketing authorisation application for a cosmetic product under review in its jurisdiction has deficiencies that have led or will lead to a decision not to authorise its marketing, that Party shall inform the applicant that requests marketing authorisation and provide reasons why the application is deficient.

(c) If a Party requires a marketing authorisation for a cosmetic product, the Party shall ensure that any marketing authorisation determination is subject to an appeal or review process that may be invoked at the request of the applicant. For greater certainty, the Party may maintain an appeal or review process that is either internal to the regulatory body responsible for the marketing authorisation determination, such as a dispute resolution or review process, or external to the regulatory body.

(d) If a Party has granted marketing authorisation for a cosmetic product in its territory, the Party shall not subject the product to periodic re-assessment procedures as a condition of retaining its marketing authorisation.

15. If a Party maintains a marketing authorisation process for cosmetic products, that Party shall consider replacing this process with other mechanisms such as voluntary or mandatory notification and post-market surveillance.

16. When developing regulatory requirements for cosmetic products, each Party shall consider its available resources and technical capacity in order to minimise the implementation of requirements that could:

(a) inhibit the effectiveness of procedures for ensuring the safety or manufacturing quality of cosmetic products; or

(b) lead to substantial delays in marketing authorisation regarding cosmetic products for sale on that Party's market.

17. Neither Party shall require the submission of marketing information, including with respect to prices or cost, as a condition for the product receiving marketing authorisation.

18. Neither Party shall require a cosmetic product to be labelled with a marketing authorisation or notification number.

19. Neither Party shall require that a cosmetic product receive marketing authorisation from a regulatory authority in the country of manufacture as a condition for the product receiving marketing authorisation from the Party. For greater certainty, this provision does not prohibit a Party from accepting a prior marketing authorisation issued by another regulatory authority as evidence that a product may meet its own requirements.

20. Neither Party shall require that a cosmetic product be accompanied by a certificate of free sale as a condition of marketing, distribution, or sale in the Party's territory.

21. If a Party requires a manufacturer or supplier of a cosmetic product to indicate information on the product's label, the Party shall permit the manufacturer or supplier to indicate the required information by relabelling the product or by using supplementary labelling of the product in accordance with the Party's domestic requirements after importation but prior to offering the product for sale or supply in the Party's territory.

22. Neither Party shall require that a cosmetic product be tested on animals to determine the safety of that cosmetic product, unless there is no validated alternative method available to assess safety. A Party may, however, consider the results of animal testing to determine the safety of a cosmetic product.

23. If a Party prepares or adopts good manufacturing practice guidelines for cosmetic products, it shall use relevant international standards for cosmetic products, or the relevant parts of them, as a basis for its guidelines unless those international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

24. Each Party shall endeavour to share, subject to its laws and regulations, information from post-market surveillance of cosmetic products.

25. Each Party shall endeavour to share information on its findings or the findings of its relevant institutions regarding cosmetic ingredients.

26. Each Party shall endeavour to avoid re-testing or re-evaluating cosmetic products that differ only with respect to shade extensions or

fragrance variants, unless conducted for human health or safety purposes.

27. In accordance with Article 7.10 (Cooperation and Trade Facilitation), each Party may share information on products which fall within its definition of a cosmetic product but which do not fall within that of the other Party.

CHAPTER 8

CROSS-BORDER TRADE IN SERVICES

Article 8.1
Definitions

For the purposes of this Chapter:

"airport operation services" means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. Airport operation services do not include air navigation services;

"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;

"cross-border trade in services" or "cross-border supply of services" means the supply of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by a covered investment;

"enterprise" means an enterprise as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions), and a branch of an enterprise;

"enterprise of a Party" means:

(a) an enterprise as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions), constituted or organised under the law of that Party, or a branch located in the territory of that Party, and carrying out substantial business activities in the territory of that Party; or

(b) an enterprise of a non-Party owned or controlled by a person of a Party,[1] if any of its vessels are registered in accordance with the law of that Party and flying the flag of that Party, when supplying services within the scope of Annex 8B (International Maritime Transport Services) using those vessels;

"ground handling services" means the supply of a service on a fee or contract basis for: airline representation, administration and supervision, ground administration and supervision, including load control and communications; passenger handling; baggage handling; ramp services; air cargo and mail handling; aviation fuel and oil handling; flight operations, crew administration and flight planning; aircraft servicing and cleaning; surface transport; and catering services. Ground handling services do not include: self-handling; security services; fixed intra-airport transport systems; line maintenance; aircraft repair and maintenance; or the operation or management of centralised airport infrastructure such as de-icing facilities, fuel distribution systems, or baggage handling systems;

"measures of a Party" means measures adopted or maintained by

(a) central, regional, or local governments or authorities; or

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

"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 or the applicable conditions;

"service supplied in the exercise of governmental authority" means, for each Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

"service supplier of a Party" means a person of a Party that seeks to supply or supplies a service; and

"specialty air services" means a specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, aerial advertising, flight training,

[1] For greater certainty, "person of a Party" in this subparagraph means: a national, or an "enterprise of a Party" as defined in subparagraph (a) of this definition.

sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

Article 8.2
Scope

1. This Chapter applies to measures of a Party affecting cross-border trade in services by service suppliers of the other Party. Those measures include measures affecting:

   (a) the production, distribution, marketing, sale or delivery of a service;

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

   (c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;

   (d) the presence in the Party's territory of a service supplier of the other Party; and

   (e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. In addition to paragraph 1:

   (a) Article 8.9 (Recognition) and 8.11 (Transparency) also apply to measures of a Party affecting the supply of a service in its territory by a covered investment.

   (b) Article 8.8 (Domestic Regulation) also applies to measures of a Party that impose licensing requirements and procedures, qualification requirements and procedures, and technical standards,[2] affecting the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of a covered investment in the form of an enterprise, as these terms are defined in Article 13.1 (Definitions – Investment).

[2] As far as measures relating to technical standards are concerned, Article 8.8 (Domestic Regulation) only applies to those measures affecting cross-border trade in services or the supply of services in its territory by a covered investment in the form of an enterprise.

(c) Annex 8A (Express Delivery Services) also applies to measures of a Party affecting the supply of express delivery services, including by a covered investment.

(d) Annex 8B (International Maritime Transport Services) also applies to measures of a Party affecting the supply of international maritime transport services;

3. This Chapter does not apply to:

(a) financial services as defined in Article 9.1 (Definitions – Financial Services);

(b) government procurement;

(c) services supplied in the exercise of governmental authority;[3]

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance; or

(e) audio-visual services.

4. This Chapter does not impose any obligation on a Party with respect to a national 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 national 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. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

(a) repair and maintenance services on an aircraft or a part thereof during which the aircraft or the part is withdrawn from service, and aircraft line maintenance;

(b) selling and marketing of air transport services;

[3] Article 8.8 (Domestic Regulation) does not apply to activities carried out in the exercise of governmental authority. "activities carried out in the exercise of governmental authority" means activities carried out neither on a commercial basis nor in competition with one or more economic operators.

(c) computer reservation system services;

(d) specialty air services;[4]

(e) airport operation services; and

(f) ground handling services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

7. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, they may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

8. If the Annex on Air Transport Services of GATS is amended, the Parties may jointly review any new definitions.

Article 8.3
National Treatment[5]

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

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

[4] Subject to compliance with each Party's laws and regulations governing the admission of aircraft to, departure from and operation within, their territory.

[5] For greater certainty, whether treatment is accorded in "like circumstances" under Article 8.3 (National Treatment) or Article 8.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

Article 8.4
Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of a non-Party.[6]

Article 8.5
Market Access

Neither Party shall adopt or maintain, either on the basis of its entire territory or on the basis of the territory of a central, regional or local level of government, a measure that:

(a) imposes a limitation on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

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

(iv) 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; or

(b) restricts or requires specific types of legal entity or joint venture through which a service supplier may supply a service.

[6] For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to services and service suppliers of territories for whose international relations the United Kingdom is responsible.

[7] Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

Article 8.6
Local Presence

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

Article 8.7
Non-Conforming Measures

1. Article 8.3 (National Treatment), Article 8.4 (Most-Favoured-Nation Treatment), Article 8.5 (Market Access) and Article 8.6 (Local Presence) do not apply to:

   (a) any existing non-conforming measure that is maintained by a Party at:

      (i) the central level of government, as set out by that Party in its Schedule to Annex I;

      (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

      (iii) a local level of government;

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

   (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 8.3 (National Treatment), Article 8.4 (Most-Favoured-Nation Treatment), Article 8.5 (Market Access) or Article 8.6 (Local Presence).

2. Article 8.3 (National Treatment), Article 8.4 (Most-Favoured-Nation Treatment), Article 8.5 (Market Access) and Article 8.6 (Local Presence) do not apply to any measure of a Party with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

3. If a Party considers that a non-conforming measure applied by a regional level of government of the other Party, as referred to in subparagraph 1(a)(ii),

creates a material impediment to the cross-border supply of services in relation to the former Party, it may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.[8]

Article 8.8
Domestic Regulation

1. For the purposes of this Article:

"authorisation" means permission for the cross-border supply of a service or for the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of a covered investment in the form of an enterprise resulting from a procedure a person of a Party must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards;

"competent authority" means a central, regional or local government or authority or non-governmental body in the exercise of powers delegated by a central, regional or local government or authority, which is entitled to take a decision concerning authorisation.

2. (a) Subject to subparagraph (b), this Article applies to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards.

(b) This Article does not apply to a measure to the extent that the measure is not subject to an obligation in this Chapter or Chapter 13 (Investment) by reason of Article 8.7 (Non-Conforming Measures) or Article 13.13 (Non-Conforming Measures – Investment).

3. Each Party shall ensure that measures relating to authorisation are based on criteria which preclude a competent authority from exercising its power of assessment in an arbitrary manner. If a Party adopts or maintains a measure relating to authorisation, it shall ensure that:

(a) those measures are based on criteria[9] that are:

[8] For greater certainty, a Party may request consultations with the other Party regarding non-conforming measures applied by the central level of government, as referred to in subparagraph 1(a)(i).

[9] Those criteria may include, but are not limited to, competence and the ability to supply a service or carry out an activity including to do so in a manner consistent with the Party's regulatory

(i) clear and transparent;

(ii) objective; and

(iii) established in advance and made publicly accessible.

(b) the procedures are impartial, easily accessible to all applicants and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where those requirements exist;

(c) the procedures do not in themselves unjustifiably prevent the fulfilment of requirements; and

(d) those measures do not discriminate between men and women.[10]

4. (a) If a Party requires authorisation, the Party shall promptly publish[11] the information necessary for service suppliers of a Party or persons carrying out or seeking to carry out the activity for which authorisation is required to comply with the requirements and procedures for obtaining, maintaining, amending and renewing that authorisation. Each Party shall ensure that this information is easily accessible through electronic means. Where it exists, that information shall include but is not limited to:

(i) the requirements and procedures;

(ii) contact information of relevant competent authorities;

(iii) fees;

(iv) technical standards;

(v) procedures for appeal or review of decisions concerning applications;

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requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

[10] Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by a Party of temporary special measures aimed at accelerating *de facto* equality between men and women, shall not be considered discrimination for the purposes of this subparagraph.

[11] For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website. Each Party is encouraged to consolidate electronic publications into a single portal.

(vi) procedures for monitoring or enforcing compliance with the terms and conditions of licences or qualifications;

(vii) opportunities for public involvement, such as through hearings or comments;

(viii) indicative or, to the extent possible, fixed timeframes for processing of an application; and

(ix) the length of authorisation, and where relevant, the date of its renewal.

b) Each Party shall require its competent authorities to respond to any reasonable request for information or assistance, to the extent practicable.

5. If a Party requires authorisation, it shall, to the extent practicable ensure that its competent authorities avoid requiring an applicant to approach more than one competent authority for each application for authorisation, recognising that if an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

6. If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent practicable, permit the submission of an application at any time throughout the year.[12] If a specific time period for applying exists, the Party shall ensure that its competent authorities allow a reasonable period of time for the submission of an application;

(b) to the extent possible, accept applications in electronic format. For greater certainty, this includes applications made from within the territory of the other Party;

(c) accept copies of documents, that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process;

(d) to the extent practicable, publish in advance a fixed or indicative timeframe for processing of an application;

[12] For greater certainty, competent authorities are not required to start considering applications outside of their official working hours and working days.

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

(f) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's laws and regulations;

(g) if they consider an application complete for processing under the Party's laws and regulations,[13] within a reasonable period of time after the submission of the applications, ensure that:

(i) the processing of the application is completed;

(ii) the applicant is informed of the decision concerning the application[14] to the extent possible in writing;[15] and

(iii) an authorisation is granted as soon as the competent authority determines that the conditions for authorisation have been met;

(h) if they consider an application incomplete for processing under the Party's laws and regulations, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) at the request of an applicant, identify the additional information required to complete the application and provide guidance to the applicant about the type of information required to complete the application; and

(iii) provide the applicant with the opportunity[16] to correct deficiencies;

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they inform the applicant within a reasonable period of time; and

[13] Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".
[14] Competent authorities may meet this requirement by informing an applicant in advance, in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application.
[15] "In writing" may include in electronic form.
[16] The opportunity does not require a competent authority to provide extensions of deadlines.

(i) if an application is rejected, to the extent possible, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application[17] solely on the basis of a previously rejected application.

7. Each Party shall ensure that authorisation, once granted, enters into effect without undue delay, subject to applicable terms and conditions.[18]

8. Each Party shall ensure that the authorisation fees[19] charged by its competent authorities are made public, reasonable, transparent, and do not in themselves restrict the supply of the relevant service or the carrying out of the relevant activity. Each Party is encouraged to accept payment of authorisation fees by electronic means.

9. If a Party requires examinations for authorisation, it shall:

(a) ensure that its competent authorities schedule the examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination; and

(b) to the extent practicable, accept requests in electronic format to take those examinations and consider the use of electronic means in other aspects of the examination processes.

10. If a Party adopts or maintains a measure relating to authorisation, it shall ensure that its competent authority processes an application, reaches and administers its decisions objectively, impartially and in a manner independent from any supplier of the service or person carrying out the activity for which authorisation is required.[20]

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

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[17] Competent authorities may require that the content of the application has been revised.
[18] Competent authorities are not responsible for delays due to reasons outside their competence.
[19] Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service obligation.
[20] For greater certainty, this paragraph does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

12. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party[21] shall publish in advance:

(a) laws or regulations of general application it proposes to adopt in relation to matters falling within the scope of paragraph 2; or

(b) documents that provide sufficient details about that possible new law or regulation to allow interested persons or the other Party to assess whether and how their interests might be significantly affected.

13. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party is encouraged to apply paragraph 12 to procedures and administrative rulings of general application it proposes to adopt in relation to matters falling within the scope of paragraph 2.

14. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall provide interested persons and the other Party with a reasonable opportunity to comment on those proposed measures or documents published under paragraphs 12 and 13.

15. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall consider comments received under paragraph 14.[22]

16. In publishing a law or regulation referred to in subparagraph 12(a), or in advance of that publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, a Party is encouraged to explain the purpose and rationale of that law or regulation.

17. Each Party shall, to the extent practicable, endeavour to allow reasonable time between the publication of the text of a law or regulation referred to in subparagraph 12(a) and the date on which service suppliers of a Party or persons carrying out or seeking to carry out an activity must comply with that law or regulation.

18. Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant

[21] Paragraphs 12 to 15 recognise that each Party has different systems to consult interested persons on certain measures before they are adopted, and that the alternatives set out in paragraph 12 reflect different legal systems.

[22] This paragraph is without prejudice to the final decision of a Party that adopts or maintains any measure for authorisation.

international organisations,[23] designated to develop technical standards to use open and transparent processes.

19. If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a Party shall apply a selection procedure to potential candidates which is impartial and transparent and provides for adequate publicity about the launch, conduct and completion of the procedure. The selection procedure may take into account legitimate policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

20. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from service suppliers of a Party and persons carrying out or seeking to carry out an activity.

Article 8.9
Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, the Party may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on 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 8.4 (Most-Favoured-Nation Treatment) or Article 13.6 (Most-Favoured-Nation Treatment – Investment) 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. If a Party is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, the Party shall afford adequate opportunity to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, the Party shall afford adequate opportunity to the other Party to demonstrate that education,

[23] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of each Party.

experience, licences or certifications obtained or requirements met in that Party's territory should be recognised.

4. Neither Party shall accord recognition in a manner that would constitute a means of discrimination between a Party and a non-Party 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.

Article 8.10
Denial of Benefits

A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of that Party and to services of that services supplier if persons of a non-Party own or control the enterprise, 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 enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to services of that enterprise.

Article 8.11
Transparency

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter.[24]

2. If a Party does not provide advance notice and opportunity for comment pursuant to paragraph 2 of Article 28.2 (Publication – Transparency and Anti-Corruption) with respect to regulations that relate to the subject matter in this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.

3. To the extent possible, each Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

Article 8.12
Payments and Transfers

[24] The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its law[25] that relates to:

   (a) bankruptcy, insolvency or the protection of the rights of creditors;

   (b) issuing, trading or dealing in securities or derivatives;

   (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

   (d) criminal or penal offences; or

   (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 8.13
Committee on Services and Investment

1. The Parties hereby establish a Committee on Services and Investment, composed of government representatives of each Party.[26]

2. The Committee shall:

   (a) review and monitor the implementation and operation of this Chapter (which includes Annex 8A (Express Delivery Services) and Annex 8B (International Maritime Transport Services)), Chapter 9 (Financial Services) (which includes Annex 9A (Cross-Border Trade in Financial Services), Annex 9B (Authorities Responsible for Financial Services) and Annex 9C (Financial Services Regulatory Cooperation)), Chapter 10 (Professional Services and the

[25] For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's law relating to its social security, public retirement or compulsory savings programmes.

[26] Representatives of the authorities responsible for financial services as specified in Annex 9B (Authorities Responsible for Financial Services) will discuss matters relating to financial services.

Recognition of Professional Qualifications), Chapter 11 (Temporary Entry for Business Persons), Chapter 12 (Telecommunications), Chapter 13 (Investment), and Chapter 14 (Digital Trade) ("the relevant Chapters");

(b) consider ways to further enhance trade and investment between the Parties, including through amendments to each Party's Schedules to Annex I (Schedules of Non-conforming Measures for Services and Investment), Annex II (Schedules of Non-conforming Measures for Services and Investment), Annex III (Schedules of Non-Conforming Measures for Financial Services) and Annex IV (Schedules of Specific Commitments on Temporary Entry for Business Persons); and

(c) facilitate the exchange of information between the Parties in relation to the relevant Chapters.

3. The Committee 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 the relevant Chapters; and

(d) consider any other matter related to the relevant Chapters, or as directed by the Joint Committee.

4. The Committee shall meet one year after entry into force, and thereafter as agreed by both Parties.

5. The Committee shall report to the Joint Committee.

CHAPTER 9

FINANCIAL SERVICES

Article 9.1
Definitions

For the purposes of this Chapter:

"cross-border financial service supplier" means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of that service;

"cross-border trade in financial services" or "cross-border supply of financial services" means the supply of a financial service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

"commercial presence" means any type of business or professional establishment, including through:

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

(b) the creation or maintenance of a branch or representative office,

within the territory of a Party for the purposes of supplying a service, including a financial service;

"electronic payments" means the payer's transfer of a monetary claim acceptable to the payee made through electronic means;

"enterprise of a Party" means:

(a) an enterprise constituted or organised under the law of that Party and carrying out substantial business activities in the territory of that Party; or

(b) an enterprise that is constituted or organised under the law of that Party and is directly or indirectly owned or controlled by a national of that Party or by an enterprise referred to in subparagraph (a);

"established financial service supplier" means a financial service supplier that supplies a financial service through commercial presence;

"established financial service supplier of the other Party" means an established financial service supplier located in the territory of a Party that is controlled by a person of the other Party;

"financial service supplier" means any person of a Party seeking to supply or supplying financial services, but does not include a public entity;

"financial service" means any service of a financial nature, including all insurance and insurance related services, all banking and other financial services (excluding insurance), and services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) direct insurance (including co-insurance):

(i) life;

(ii) non-life;

(b) reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(g) financial leasing;

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

(i) guarantees and commitments;

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

(i) money market instruments (including cheques, bills or certificates of deposits);

(ii) foreign exchange;

(iii) derivative products including futures and options;

(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(v) transferable securities; or

(vi) other negotiable instruments and financial assets, including bullion;

(k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately), and provision of services related to those issues;

(l) money broking;

(m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;

"financial service computing facility" means a computer server or storage device for the processing or storage of information for commercial use but does not include computer servers or storage devices of, or used to operate, financial market infrastructures;

“financial market infrastructures” means systems in which financial service suppliers participate with other financial service suppliers, including the operator of the system, used for the purposes of clearing, settling, or recording of payments, securities, derivatives, or other financial transactions;

“investment” means “investment” as defined in Article 13.1 (Definitions - Investment),[1] except that for the purposes of this Chapter, with respect to “loans” and “debt instruments” referred to in that Article:

(a) a loan to or debt instrument issued by an established financial service supplier is an investment only if it is treated as regulatory capital by the Party in whose territory the established financial service supplier is located; and

(b) a loan granted by or debt instrument owned by an established financial service supplier, other than a loan to or debt instrument issued by an established financial service supplier referred to in subparagraph (a), is not an investment;

“investor” means a Party, or a person of a Party, that attempts to make,[2] is making, or has made an investment in the territory of the other Party;

“new financial service” means a financial service, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party, but which is supplied in the territory of the other Party;

“person of a Party” means a national or an enterprise of a Party and, for greater certainty, does not include a branch of an enterprise of a non-party;

“public entity” means:

(a) a government, a central bank or a monetary authority of a Party or any entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or

[1] For greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by an established financial service supplier, is an investment for the purposes of Chapter 13 (Investment), if that loan or debt instrument meets the criteria for “investment” set out in Article 13.1 (Definitions - Investment).

[2] For greater certainty, the Parties understand that an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licences.

activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(b) a private entity performing functions normally performed by a central bank or monetary authority when exercising those functions; and

"self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central or regional government.

Article 9.2
Scope

1. This Chapter applies to any measure adopted or maintained by a Party affecting trade in financial services with respect to:

(a) an established financial service supplier of the other Party;

(b) an investor of the other Party, and an investment of that investor, in an established financial service supplier in the Party's territory; and

(c) cross-border financial service suppliers.

2. Chapter 8 (Cross-Border Trade in Services) and Chapter 13 (Investment) apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter:

(a) Article 8.10 (Denial of Benefits – Cross-Border Trade in Services), Article 13.7 (Minimum Standard of Treatment – Investment), Article 13.8 (Treatment in Case of Armed Conflict or Civil Strife – Investment), Article 13.9 (Expropriation and Compensation – Investment), Article 13.10 (Transfers – Investment), Article 13.14 (Subrogation – Investment), Article 13.15 (Special Formalities and Information Requirements – Investment), Article 13.16 (Denial of Benefits – Investment), Article 13.17 (Investment and Environmental, Health and other Regulatory Objectives – Investment), Article 13.18 (Investment and the Environment – Investment), and Article 13.19 (Corporate Social Responsibility – Investment) are incorporated into and made a part of this Chapter; and

(b) Article 8.12 (Payments and Transfers – Cross-Border Trade in Services) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to

obligations pursuant to paragraph 3 of Article 9.5 (National Treatment) and subparagraph 1(c) of Article 9.6 (Market Access).

3. This Chapter does not apply to a measure adopted or maintained by a Party relating to:

   (a) activities or services forming part of a public retirement plan or statutory system of social security; or

   (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

   except that this Chapter applies to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.

4. This Chapter does not apply to government procurement of financial services.

5. This Chapter does not apply to subsidies or grants provided by a Party with respect to the supply of financial services, including government-supported loans, guarantees and insurance.

6. This Chapter does not impose any obligation on a Party with respect to a national 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 national 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.

Article 9.3
Prudential Exception

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (Trade in Goods), Chapter 4 (Rules of Origin and Origin Procedures), Chapter 5 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), and Chapter 7 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,[3] including:

   (a) the protection of investors, depositors, policy holders, or persons to whom a financial service supplier owes a fiduciary duty;

[3] The Parties understand that the term 'prudential reasons' includes the maintenance of the safety, soundness, integrity, or financial responsibility of payment, settlement and clearing systems.

(b) the maintenance of the safety, soundness, integrity, or financial responsibility of an established financial service supplier or, a cross-border financial service supplier; or

(c) ensuring the integrity and stability of a Party's financial system.

2. Where those measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

Article 9.4
Specific Exceptions

1. Nothing in this Chapter, Chapter 8 (Cross-Border Trade in Services), Chapter 12 (Telecommunications), Chapter 13 (Investment) or Chapter 14 (Digital Trade), shall apply to measures taken or activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary policies and related credit policies, or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 13.11 (Performance Requirements – Investment) with respect to measures covered by Chapter 13 (Investment), under Article 13.10 (Transfers – Investment) or Article 8.12 (Payments and Transfers – Cross-Border Trade in Services).

2. Nothing in this Chapter shall require a Party to:

(a) furnish or allow access to information relating to the financial affairs and accounts of individual customers of financial service suppliers or to any confidential or proprietary information which, if disclosed, would impede law enforcement, interfere with specific regulatory or supervisory matters, or would otherwise be contrary to public interest or prejudice legitimate commercial interests of particular enterprises; or

(b) disclose confidential or proprietary information in the possession of public entities.

Article 9.5
National Treatment[4]

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of established financial service suppliers, and investments in established financial service suppliers in its territory.

2. Each Party shall accord to established financial service suppliers of the other Party, and to investments of investors of the other Party in established financial service suppliers, treatment no less favourable than that it accords, in like circumstances, to its own established financial service suppliers, and to investments of its own investors in established financial service suppliers with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of established financial service suppliers and investments.

3. Each Party shall accord to:

   (a) financial services as specified by the Party in Annex 9A (Cross-Border Trade in Financial Services) or cross-border financial service suppliers of the other Party seeking to supply or supplying those financial services; and

   (b) cross-border financial service suppliers of the other Party seeking to supply or supplying financial services as defined in subparagraph (b) or subparagraph (c) of the definition of "cross-border trade in financial services" or financial services supplied through that cross-border trade,

   treatment no less favourable than that it accords, in like circumstances, to its own financial services and financial service suppliers.

4. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 through 3 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to established financial service suppliers, investors, and investments of those investors in established financial service suppliers, or financial services or financial service suppliers, of the Party of which it forms a part.

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[4] For greater certainty, whether treatment is accorded in "like circumstances" under Article 9.5 (National Treatment) or Article 9.8 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, established financial service suppliers or financial service suppliers on the basis of legitimate public welfare objectives.

Article 9.6
Market Access

1. A Party shall not adopt or maintain, with respect to:

   (a) an established financial service supplier of the other Party;

   (b) an investor or an investment of an investor of the other Party in an established financial service supplier in the Party's territory; or

   (c) a cross-border financial service supplier of the other Party:

      (i) seeking to supply or supplying the financial services as specified by the Party in Annex 9A (Cross-Border Trade in Financial Services); or

      (ii) seeking to supply or supplying financial services as defined in subparagraph (b) or subparagraph (c) of the definition of "cross-border trade in financial services",

   either on the basis of its entire territory or on the basis of the territory of a central, regional, or local level of government, a measure that:

   (d) imposes limitations on:

      (i) the number of established financial service suppliers or cross-border financial service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

      (iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[5]

      (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding in established financial service suppliers or the total value of individual or aggregate foreign investment in established financial service suppliers;

[5] Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

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

(e) restricts or requires specific types of legal entity or joint venture through which an established financial service supplier or cross-border financial service supplier may supply a service.

2. For greater certainty, this Article does not prevent a Party imposing terms, conditions, and procedures for the authorisation of the establishment and expansion of a commercial presence in so far as they do not circumvent the Party's obligation under paragraph 1 and are consistent with the other provisions of this Chapter.

Article 9.7
Local Presence

Neither Party shall require a cross-border financial service supplier of the other Party to establish or maintain a representative office, or an enterprise or a branch of an enterprise, or to be resident in its territory, as a condition for the cross-border supply of a financial service. With respect to cross-border supply as defined in subparagraph (a) of the definition of "cross-border trade in financial services", this Article only applies to the financial services specified by the Party in Annex 9A (Cross-Border Trade in Financial Services).

Article 9.8
Most-Favoured-Nation Treatment

1. Each Party shall accord to:

(a) investors and investments of investors of the other Party in established financial service suppliers, treatment no less favourable than that it accords, in like circumstances, to investors and investments of investors of a non-party in established financial service suppliers;

(b) established financial service suppliers of the other Party, treatment no less favourable than that it accords, in like circumstances, to established financial service suppliers of a non-party;

(c) financial services or cross-border financial service suppliers of the other Party, treatment no less favourable than that it accords, in like

circumstances, to financial services and cross-border financial service suppliers of a non-party.[6]

2. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms.

Article 9.9
Senior Management and Boards of Directors

1. Neither Party shall require established financial service suppliers of the other Party, to engage natural persons of any particular nationality as members of the board of directors, senior managerial or other essential personnel.

2. Neither Party shall require that more than a minority of the board of directors of established financial service suppliers of the other Party be composed of persons residing in the territory of the Party.

Article 9.10
Non-Conforming Measures

1. Article 9.5 (National Treatment), Article 9.6 (Market Access), Article 9.7 (Local Presence), Article 9.8 (Most-Favoured-Nation Treatment) and Article 9.9 (Senior Management and Boards of Directors) do not apply to:

   (a) any existing non-conforming measure that is maintained by a Party at:

      (i) the central level of government, as set out in Section A of its Schedule to Annex III (Schedules of Non-Conforming Measures for Financial Services);

      (ii) a regional level of government, as set out in Section A of its Schedule to Annex III (Schedules of Non-Conforming Measures for Financial Services); or

      (iii) a local level of government;

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

[6] For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to investors and investments of investors in established financial services suppliers, established financial service suppliers, financial services or cross-border financial service suppliers of territories for whose international relations the United Kingdom is responsible.

(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 9.5 (National Treatment), Article 9.6 (Market Access), Article 9.7 (Local Presence), Article 9.8 (Most-Favoured-Nation Treatment), or Article 9.9 (Senior Management and Boards of Directors); or

(d) any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in Section B of its Schedule to Annex III (Schedules of Non-Conforming Measure for Financial Services).

2. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

3. Where Article 8.3 (National Treatment – Cross-Border Trade in Services), Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services), Article 8.5 (Market Access – Cross-Border Trade in Services), Article 8.6 (Local Presence – Cross-Border Trade in Services), Article 13.4 (Market Access – Investment), Article 13.5 (National Treatment - Investment), Article 13.6 (Most-Favoured-Nation Treatment – Investment), or Article 13.12 (Senior Management and Boards of Directors - Investment) do not apply to a measure due to that measure being:

(a) set out by a Party as a non-conforming measure in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment); or

(b) a measure which a Party may adopt or maintain under an entry set out by a Party in its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment),

that measure shall be treated as a non-conforming measure not subject to Article 9.5 (National Treatment), Article 9.6 (Market Access), Article 9.7 (Local Presence), Article 9.8 (Most-Favoured-Nation Treatment), or Article 9.9 (Senior Management and Boards of Directors), as the case may be, to the extent that the measure is covered by this Chapter.

4. Article 9.5 (National Treatment) and Article 9.8 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 15.8 (National Treatment – Intellectual Property), or by Article 3 or Article 4 of the TRIPS Agreement.

Article 9.11
Transparency

1. Articles 26.2 (General Provisions – Good Regulatory Practice), 26.6 (Public Consultation – Good Regulatory Practice), 26.10 (Regulatory Cooperation – Good Regulatory Practice), and 26.11 (Contact Points – Good Regulatory Practice) and Articles 28.2 (Publication – Transparency and Anti-Corruption), 28.3 (Administrative Proceedings – Transparency and Anti-Corruption), and 28.5 (Provision of Information – Transparency and Anti-Corruption) do not apply to a measure covered by this Chapter.

2. 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.

3. Each Party shall:

   (a) ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner;

   (b) ensure that its laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies are promptly published or made available in a manner that enables an interested person and the other Party to become acquainted with them;

   (c) to the extent practicable, ensure advance publication of any laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies that it proposes to adopt and their purpose, and provide an interested person and the other Party a reasonable opportunity to comment on them;

   (d) maintain or establish appropriate mechanisms to respond, within a reasonable period of time, to an inquiry or a request for information from an interested person and the other Party regarding measures of general application to which this Chapter applies;

   (e) allow, to the extent practicable, a reasonable period of time between the publication of a final law or regulation of general application to which this Chapter applies and the date when it enters into effect; and

   (f) ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party, to which this Chapter applies, are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

4. In developing a new law or regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its law and regulations, comments regarding how the proposed law or regulation of general application may affect the operations of financial service suppliers, including financial service suppliers of the Party or the other Party. These comments may include:

   (a) submissions to a Party by the other Party regarding its regulatory measures that are related to the objectives of the proposed law or regulation of general application; or

   (b) submissions to a Party by interested persons, including the other Party or financial service suppliers of the other Party, with regard to the potential effects of the proposed law or regulation of general application.

5. Before the competent authority of a Party adopts a final law or regulation of general application, a Party shall, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed law or regulation of general application.[7]

6. If a Party adopts or maintains measures relating to authorisation for the supply of a service, the Party shall ensure that:

   (a) the competent authority reaches and administers its decisions in a manner independent from any supplier of the services for which authorisation is required;[8]

   (b) those measures are based on objective and transparent criteria;[9]

   (c) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if those requirements exist;

   (d) the procedures do not in themselves unjustifiably prevent fulfilment of requirements; and

   (e) those measures do not discriminate on the basis of gender.[10]

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[7] For greater certainty, a Party may address those comments collectively on an official website.

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

[9] Those criteria may include competence and the ability to supply a service, including to do so in a manner consistent with a Party's regulatory requirements. Competent authorities may assess the weight to be given to each criterion.

[10] Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Parties of temporary special measures aimed at accelerating de facto equality across all genders, shall not be considered discrimination for the purposes of this provision.

7. If a Party requires authorisation for the supply of a financial service, the competent authorities of the Party shall:

(a) make publicly available the information necessary for financial service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending, and renewing that authorisation.

Where it exists, that information shall include:

(i) fees;

(ii) contact information of competent authorities;

(iii) procedures for appeal or review of decisions concerning applications;

(iv) procedures for monitoring or enforcing compliance with the terms and conditions of licences;

(v) opportunities for public involvement, such as through hearings or comments;

(vi) indicative timeframes for processing of an application; and

(vii) any other relevant requirements and procedures;

(b) avoid, to the extent practicable, 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;

(c) permit, to the extent practicable, submission of an application at any time throughout the year.[11] If a specific time period for applying exists, the Party shall ensure that the regulatory authorities allow a reasonable period for the submission of an application;

(d) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;

(e) accept copies of documents, that are authenticated in accordance with the Party's laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process;

[11] Competent authorities are not required to start considering applications outside of their official working hours and working days.

(f) ensure that the authorisation fees charged by its competent authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant service;

(g) 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 a reasonable period of time, in line with each Party's law. An application is not considered complete until the competent authority has received all necessary information and all relevant hearings, if any, have been held;

(h) on request of an applicant, inform the applicant of the status of their application without undue delay;

(i) if they require additional information from the applicant, notify the applicant without undue delay;[12]

(j) promptly notify the applicant of the outcome of their application,[13] to the extent possible, in writing;[14]

(k) before rejecting an application for authorisation, notify the applicant with the relevant reasons and give the applicant the opportunity to make representations in support of the application;

(l) on request of an unsuccessful applicant, to the extent possible, inform the applicant of the reasons for denial of the application and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application[15] solely on the basis that an application had been previously rejected; and

(m) ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.[16]

[12] Competent authorities are not required to provide an extension of the deadline where an applicant is provided with the opportunity to provide additional information.
[13] Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application or rejection of the application.
[14] "In writing" may include in electronic form.
[15] Competent authorities may require that the content of that application has been revised.
[16] Competent authorities are not responsible for delays due to reasons outside their competence.

Article 9.12
Financial Data and Information[17]

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means and the use of financial service computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. Neither Party shall prohibit or restrict a financial service supplier of the other Party from transferring, including by electronic means, information including personal information, where those transfers are necessary for the conduct of the ordinary business of the financial service supplier.

3. Subject to paragraphs 4 and 5, it is prohibited for a Party to require, as a condition for conducting business in the Party's territory, a financial service supplier of the other Party to use or locate financial service computing facilities, in the former Party's territory.[18]

4. Each Party has the right to require a financial service supplier of the other Party to use or locate financial service computing facilities in the former Party's territory, where it is not able to ensure appropriate[19] access to information required for the purposes of financial regulation and supervision, provided that the following conditions are met:

   (a) to the extent practicable, the Party provides a financial service supplier of the other Party with a reasonable opportunity to remediate any lack of access to information; and

   (b) the Party or its regulatory authorities inform the other Party or its regulatory authorities before imposing any requirements to a financial service supplier of the other Party to use or locate financial service computing facilities in the former Party's territory.

5. Nothing shall restrict the right of a Party to adopt or maintain measures inconsistent with paragraph 2 or paragraph 3 to achieve a legitimate public policy objective such as the protection of personal information, personal

[17] For Australia, Article 9.12 (Financial Data and Information) does not apply to Australia's Foreign Investment Framework, which comprises *Australia's Foreign Investment Policy, Foreign Acquisitions and Takeovers Act 1975 (Cth)*, *Foreign Acquisitions and Takeovers Regulation 2015 (Cth)*, *Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth)*, *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Cth)*, *Financial Sector (Shareholdings) Act 1998 (Cth)* and Ministerial Statements.

[18] For greater certainty, this prohibition also applies to circumstances in which a financial service supplier of the other Party uses the services of an external business for such use, storage or processing of information.

[19] For greater certainty, "appropriate" access may include sufficient, direct, regular or timely access that is provided without undue delay.

privacy, and the confidentiality of individual records and accounts, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on transfers of information or on the use or location of computing facilities greater than are required to achieve the objective.

7. This Article does not apply to information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection.

8. This Article does not apply to credit information, or related personal information, of a natural person.

Article 9.13
Payment and Clearing

Under terms and conditions that accord national treatment, each Party shall grant to established financial service suppliers of the other Party in the Party's 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.

Article 9.14
Performance of Back-Office Functions

1. Each Party recognises that the performance of the back-office functions of an established financial service supplier in its territory by the head office or an affiliate of the established financial service supplier, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that established financial service supplier. Subject to paragraph 3, to the extent practicable, each Party shall allow the performance of those functions by the head office or affiliate of an established financial service supplier in its territory or by an unrelated service supplier.

2. While a Party may require established financial service suppliers to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

3. For greater certainty, nothing in paragraph 1 prevents a Party from requiring an established financial service supplier in its territory to retain certain functions.

Article 9.15
Self-Regulatory Organisations

If a Party requires a financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to supply a financial service in or into the territory of that Party, or when the Party provides, directly or indirectly, privileges or advantages to financial service suppliers supplying financial services through a self-regulatory organisation, then the requiring Party shall ensure that the self-regulatory organisation observes the obligations contained in Article 9.5 (National Treatment) and Article 9.8 (Most-Favoured-Nation Treatment).

Article 9.16
Electronic Payments

1. Noting the rapid growth of electronic payments, in particular, those provided by non-banks and FinTech enterprises, the Parties shall endeavour to support, subject to maintaining resilience, the development of efficient, safe, and secure cross-border electronic payments by:

   (a) fostering the adoption and use of internationally accepted standards for electronic payments;

   (b) promoting interoperability and the interlinking of electronic payment infrastructures; and

   (c) encouraging innovation and competition in electronic payments.

2. To this end, each Party shall, subject to maintaining resilience, endeavour to:

   (a) for the electronic payment systems solely operated by a Party, publicly disclose objective and risk-based criteria for participation which permit fair and open access;

   (b) not require all payment card transactions to be routed through a national or single electronic payment gateway;

   (c) adopt, for relevant electronic payment systems, international standards for electronic payment messaging for electronic data exchange between payment service providers and services suppliers to enable greater interoperability between electronic payment systems;

(d) facilitate the use of open platforms and architectures and encourage payment service providers to safely and securely make available new technologies and standards for their financial products and services to third parties, where possible, to facilitate greater interoperability and innovation in electronic payments; and

(e) facilitate innovation and competition and the introduction of new financial and electronic payment products and services in a timely manner such as through adopting regulatory and industry sandboxes and cooperation at international fora.

3. In view of paragraph 1, the Parties recognise the importance of upholding safety, efficiency, trust and security in electronic payment systems through regulations, and that the adoption and enforcement of regulations and policies should be proportionate to the risks undertaken by the payment service providers.

Article 9.17
Financial Services New to the Territory of a Party

1. Each Party shall permit financial service suppliers of the other Party to supply a new financial service that the first Party would permit its own financial service suppliers to supply, in like circumstances, without adopting a law or modifying an existing law.[20] For cross-border financial service suppliers, this Article only applies to the financial services specified in Annex 9A (Cross-Border Trade in Financial Services).

2. Notwithstanding subparagraph 1(e) of Article 9.6 (Market Access), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where that authorisation is required, a decision shall be made within a reasonable time, and the authorisation may only be refused for prudential reasons.

Article 9.18
Financial Services New to the Territories of both Parties

1. Subject to paragraph 2, each Party may permit financial service suppliers of the other Party to supply a financial service new to the territories of both Parties. For cross-border financial service suppliers, this article only applies to the financial services specified in Annex 9A (Cross-Border Trade in Financial Services).

[20] For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

2. Notwithstanding subparagraph 1(e) of Article 9.6 (Market Access), a Party may determine the institutional and juridical form through which that financial service may be supplied and may require authorisation for the supply of the service.
3. For the purposes of this Article, a financial service new to the territory of both Parties is a financial service, including services related to existing and new products or the manner in which a product is delivered, that is not supplied in a Party's territory.

Article 9.19
Sustainable Finance

1. The Parties recognise the importance of international cooperation to facilitate the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities, in order, thereby, to increase investment in sustainable activities.

2. The inclusion of environmental considerations in investment decision-making and other business activities involves, inter alia, the assessment and pricing of climate-related risks and opportunities, and the exploration of environmental and sustainable projects and infrastructure.

3. The Parties acknowledge the importance of encouraging financial service suppliers to develop an approach to managing climate-related financial risks. Specifically, the Parties recognise the importance of encouraging the uptake of climate-related financial disclosures for financial service suppliers with material exposure to climate change, including forward-looking information, informed by initiatives in international fora, such as the Task Force on Climate-Related Financial Disclosures.

4. The Parties shall cooperate in relevant international fora, and where agreeable, in the development and adoption of internationally recognised standards for the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities.

Article 9.20
Recognition of Prudential Measures

1. A Party may recognise a prudential measure of a non-party in the application of a measure covered by this Chapter.[21] That recognition may be:

   (a) accorded autonomously;

   (b) achieved through harmonisation or other means; or

[21] For greater certainty, nothing in Article 9.8 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord recognition to prudential measures of the other Party.

(c) based upon an agreement or arrangement with the non-party.

2. A Party that accords recognition of a prudential measure under paragraph 1 to a non-party, shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.

3. If a Party accords recognition of a prudential measure under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 9.21
Institutional Provisions

1. The Committee on Services and Investment established pursuant to Article 8.13 (Committee on Services and Investment - Cross-Border Trade in Services) shall be responsible for the effective implementation and operation of this Chapter.

2. The authorities responsible for financial services for each Party are set out in Annex 9B (Authorities Responsible for Financial Services).

Article 9.22
Consultations

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request to hold consultations. The Parties shall report the results of their consultations to the Committee on Services and Investment.

2. With regard to matters relating to existing non-conforming measures maintained by a Party at a regional level of government as referred to in subparagraph 1(a)(ii) of Article 9.10 (Non-Conforming Measures):

(a) a Party may request information on any non-conforming measure at the regional level of government of the other Party. Each Party's authorities responsible for financial services as specified in Annex 9B (Authorities Responsible for Financial Services) shall establish a contact point to respond to those requests and to facilitate the

exchange of information regarding the operation of measures covered by those requests; and

(b) if a Party considers that a non-conforming measure applied by a regional level of government of the other Party creates a material impediment to trade or investment by an established financial service supplier, an investor, investments in an established financial service supplier or a cross-border financial service supplier, the Party may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and considering whether further steps are necessary and appropriate.

3. Each Party shall ensure that when there are consultations pursuant to paragraphs 1 and 2, its delegation includes officials with the relevant expertise in the area covered by this Chapter from the authorities responsible for financial services as specified in Annex 9B (Authorities Responsible for Financial Services).

4. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between regulatory authorities, or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

Article 9.23
Dispute Settlement

1. Chapter 30 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall ensure for disputes arising under this Chapter that in addition to the requirements set out in subparagraph 1(a) of Article 30.10 (Qualifications of Panellists – Dispute Settlement) all panellists appointed in disputes arising under this Chapter shall have the necessary expertise relevant to financial services, which may include the regulation of financial service suppliers.

3. If the Director-General of the WTO or the Secretary General of the Permanent Court of Arbitration is responsible for appointing a panellist pursuant to paragraph 7 or paragraph 8 of Article 30.9 (Establishment and Reconvening of Panels – Dispute Settlement), the Parties shall request that the appointing authority appoint a panellist who meets the requirements set out in paragraph 2.

4. Further to paragraph 5 of Article 30.16 (Temporary Remedies for Non-Compliance – Dispute Settlement), in considering what obligations to suspend the complaining Party shall apply the following principles. If the measure affects:

(a) the financial services sector and any other sector, the complaining Party may suspend obligations in the financial services sector that do not exceed a level equivalent to the level of nullification or impairment in the complaining Party's financial services sector; or

(b) only a sector other than the financial services sector, the complaining Party shall not suspend obligations in the financial services sector.

Article 9.24
Financial Services Regulatory Cooperation

The Parties shall promote and seek to further develop regulatory cooperation in financial services in accordance with Annex 9C (Financial Services Regulatory Cooperation).

ANNEX 9A

Cross-Border Trade in Financial Services

Australia

Insurance and insurance-related services

1. Subject to any limitations set out elsewhere in Australia's commitments, Articles 9.5 (National Treatment), 9.6 (Market Access) and 9.7 (Local Presence) apply to the cross-border supply or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 9.1 (Definitions) with respect to:

   (a) insurance of risks relating to:

      (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom;

      (ii) goods in international transit;

      (iii) credit and suretyship;

      (iv) land vehicles;

      (v) fire and natural forces;

      (vi) other damage to property;

      (vii) motor vehicle liability, except in relation to any liability which, in accordance with domestic law, must be insured by an insurer who is authorised under such laws;

      (viii) general liability;

      (ix) miscellaneous financial loss;

      (x) difference in conditions and difference in limits, where the difference in conditions or difference in limits cover is provided under a master policy issued by an insurer to cover risks across multiple jurisdictions;

   (b) reinsurance and retrocession;

   (c) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of financial service in Article 9.1 (Definitions), of insurance risks related to the services listed in subparagraphs (a) and (b); and

(d) services auxiliary to insurance as described in subparagraph (d) of the definition of financial service in Article 9.1 (Definitions).

2. Paragraph 1 does not permit suppliers of the services listed in subparagraphs 1(a)(iii) through (x) to provide these services to a retail client.

3. For the purposes of the commitments made in subparagraphs 1(a)(iii) through(x), for Australia, "retail client" means:

(a) a natural person; or

(b) a small business as defined under section 761G(12) of the *Corporations Act 2001* (Cth).

Banking and other financial services (excluding insurance)

4. Subject to any limitations set out elsewhere in Australia's commitments, Articles 9.5 (National Treatment), 9.6 (Market Access) and 9.7 (Local Presence) apply to the cross-border supply or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 9.1 (Definitions) with respect to:

(a) the provision and transfer of financial information, and financial data processing and related software, as described in subparagraph (o) of the definition of banking and other financial services (excluding insurance) in Article 9.1 (Definitions);

(b) advisory and other auxiliary financial services relating to banking and other financial services, as described in subparagraph (p) of the definition of banking and other financial services (excluding insurance) in Article 9.1 (Definitions), but not intermediation as described in that subparagraph;

(c) securities related transactions on a wholesale basis between and among financial institutions and other entities; and

(d) portfolio management services by a financial service supplier of the United Kingdom to:

(i) a collective investment vehicle or management company of such a vehicle;

(ii) insurance companies; and

(iii) pension funds and management companies of such funds.

5. For the purposes of the commitment made in paragraph 4(d), for Australia:

(a) collective investment scheme[22] means a "managed investment scheme" as defined under Section 9 of the *Corporations Act 2001 (Cth)*, other than a managed investment scheme operated in contravention of Subsection 601ED (5) of the *Corporations Act 2001 (Cth)*, or an entity that:

(i) carries on a business of investment in securities, interests in land, or other investments; and

(ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of Section 82 of *the Corporations Act 2001 (Cth)*) made on terms that the funds subscribed would be invested;

(b) portfolio management services to a collective investment scheme located in the Area of Australia, exclude:

(i) custodial services[23] and execution services that are not related to managing a collective investment scheme; and

(ii) trustee services.

6. For greater certainty, paragraph 4 does not permit suppliers of the services listed in subparagraphs 4(d)(i) through (iii) to provide these services to a retail client.

7. For the purposes of the commitments made in paragraph 4(d)(i) through (iii), for Australia, "retail client" means a person who is defined as a retail client under section 761G of the *Corporations Act 2001 (Cth)* and is not excluded from being a retail client under section 761GA of the *Corporations Act 2001 (Cth)*.

[22] For greater certainty, a Party may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme.
[23] Custodial services are included in paragraph (d) only with respect to investments for which the primary market is outside of the territory of Australia.

United Kingdom

Insurance and insurance-related services

1. Subject to any limitations set out elsewhere in the United Kingdom's commitments, Articles 9.5 (National Treatment), 9.6 (Market Access) and 9.7 (Local Presence) apply to the cross-border supply or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 9.1 (Definitions) with respect to:

   (a) insurance of risks relating to:[24]

      (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom;

      (ii) goods in international transit;

      (iii) credit and suretyship;

      (iv) land vehicles;

      (v) fire and natural forces;

      (vi) other damage to property;

      (vii) motor vehicle liability, except in relation to any liability which, in accordance with domestic law, must be insured by an insurer who is authorised under such laws;

      (viii) general liability;

      (ix) miscellaneous financial loss;

      (x) difference in conditions and difference in limits, where the difference in conditions or difference in limits cover is provided under a master policy issued by an insurer to cover risks across multiple jurisdictions;

   (b) reinsurance and retrocession;

[24]For greater certainty, insurance activities in the categories mentioned in subparagraphs 1(a)(iii) through (x) are included in the scope of the commitments only where a supplier is carrying on that insurance business entirely outside that Party's territory.

(c) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of financial service in Article 9.1 (Definitions), of insurance risks related to the services listed in subparagraphs (a) and (b); and

(d) services auxiliary to insurance as described in subparagraph (d) of the definition of financial service in Article 9.1 (Definitions).

2. Paragraph 1 does not permit suppliers of the services listed in subparagraphs 1(a)(iii) through (x) to provide these services to a retail client.

3. In this Annex, for the United Kingdom, "retail client" means:

(a) a natural person; or

(b) an enterprise which satisfies two or more of the requirements specified in section 465(3) of the *Companies Act 2006*.

Banking and other financial services (excluding insurance)

4. Subject to any limitations set out elsewhere in the United Kingdom's commitments, Articles 9.5 (National Treatment), 9.6 (Market Access) and 9.7 (Local Presence) apply to the cross-border supply or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 9.1 (Definitions) with respect to:

(a) the provision and transfer of financial information, and financial data processing and related software, as described in subparagraph (o) of the definition of banking and other financial services (excluding insurance) in Article 9.1 (Definitions);

(b) advisory and other auxiliary financial services relating to banking and other financial services, as described in subparagraph (p) of the definition of banking and other financial services (excluding insurance) in Article 9.1 (Definitions), but not intermediation as described in that subparagraph; and

(c) portfolio management services by a financial service supplier of Australia to:

(i) a collective investment vehicle or management company of such a vehicle;

(ii) insurance companies; and

(iii) pension funds and management companies of such funds.

5. For the purposes of the commitment made in paragraph 4(c), for the United Kingdom:

(a) a collective investment vehicle means:

(i) a collective investment scheme as defined in section 235 of the *Financial Services and Markets Act 2000*; or

(ii) an alternative investment fund as defined in regulation 3 of the *Alternative Investment Fund Managers Regulations 2013*;

(b) portfolio management means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments; and

(c) portfolio management services do not include:

(i) custodial services;

(ii) trustee services; or

(iii) execution services.

ANNEX 9B

Authorities Responsible for Financial Services

The authorities responsible for financial services for each Party are:

(a) for Australia, the Department of Foreign Affairs and Trade or its successor and the Department of the Treasury or its successor; and

(b) for the United Kingdom, Her Majesty's Treasury or its successor.

ANNEX 9C

Financial Services Regulatory Cooperation

Article 9C.1
Objectives of Regulatory Cooperation

1. The Parties recognise that promoting cooperation between the Parties and their financial regulatory authorities supports several objectives including:

   (a) enhancing financial services trade and investment between the Parties;

   (b) strengthening financial systems and promoting financial stability;

   (c) improving market integrity and countering undesirable market fragmentation;

   (d) promoting fair and competitive markets;

   (e) promoting robust and efficient financial service suppliers, markets, and infrastructure;

   (f) protecting consumers, investors, depositors, policy holders and persons to whom a fiduciary and / or statutory duty is owed by a financial service supplier; and

   (g) providing a transparent and predictable environment for financial service suppliers.

2. The Parties shall wherever practicable work together bilaterally and in international bodies to achieve the objectives referred to in paragraph 1 (hereinafter referred to in this Annex as "regulatory cooperation").

3. The Parties shall, wherever practicable, base their regulatory cooperation on the principles and prudential standards agreed at the international level where applicable[25] and follow the principles set out in Article 9C.3 (Principles of Regulatory Cooperation), as implemented in the framework developed in accordance with Article 9C.5 (Framework for Regulatory Cooperation).

4. This Annex is without prejudice to the right of a Party to determine its own appropriate level of prudential regulation, including the establishment and enforcement of measures that provide a higher level of prudential protection than those set out in internationally agreed standards.

[25] For greater certainty, for the purposes of this Annex, standards adopted by international standard-setting bodies to which both Parties' relevant competent authorities have agreed and in which both Parties participate may be considered as internationally agreed standards.

Article 9C.2
Scope of Regulatory Cooperation

1. Regulatory cooperation between the Parties shall cover all areas of financial services, as defined in Article 9.1 (Definitions), unless the Parties agree otherwise.

2. Article 26.2 (General Provision – Good Regulatory Practice), Article 26.6 (Public Consultation – Good Regulatory Practice), Article 26.10 (Regulatory Cooperation – Good Regulatory Practice) and Article 26.11 (Contact Points – Good Regulatory Practice) do not apply to any matter covered by this Annex**.**

3. The provisions of this Annex shall be without prejudice to the distribution and exercise of the duties of the regulatory and supervisory authorities of the Parties, in line with their statutory objectives. The Parties recognise that their regulatory cooperation in financial services should be based on due consideration of each Party's legislative and regulatory autonomy and differences in legislative and regulatory frameworks, market structures and in the range of business models that may exist between the Parties.

Article 9C.3
Principles of Regulatory Cooperation

1. Mutual Compatibility of Regulatory and Supervisory Frameworks

   (a) The Parties shall, wherever practicable, work to achieve mutual compatibility of their respective regulatory and supervisory frameworks for financial services in areas of common interest in a way that supports the objectives set out in Article 9C.1 (Objectives of Regulatory Cooperation). That work may include developing consistent regulatory approaches on an outcomes basis and reducing unnecessarily burdensome, duplicative or divergent regulatory requirements.

   (b) As the basis for pursuing the mutual compatibility referred to in subparagraph (a), each Party shall use its best endeavours to ensure that internationally agreed standards for regulation and supervision in the area of financial services are implemented and applied in its territory.

   (c) To support regulatory cooperation, the Parties shall, wherever practicable, work together in international standard-setting bodies to develop effective international standards and facilitate coherent implementation.

2. Regulatory Deference

The Parties shall, wherever agreeable and in accordance with their respective regulatory and supervisory frameworks, defer to the regulatory and supervisory frameworks of the other Party. The foregoing shall be without prejudice to each Party's legislative and regulatory autonomy and right to assess, on the basis of its own frameworks, the frameworks of the other Party, including the effective enforcement of those frameworks, with a view to establishing deference. For the purposes of any such assessment, a Party shall not require that the other Party's regulatory and supervisory frameworks are identical to its own frameworks but shall base its assessment on regulatory outcomes.

3. Sharing of Information

(a) Without prejudice to its own domestic processes, each Party shall use its best endeavours to inform the other Party and provide the other Party with adequate opportunity for comment when it consults on new regulatory initiatives, proposed measures or actual measures in the area of financial services that may be of relevance to that other Party.

(b) In the areas where one of the Parties defers to the regulatory and supervisory framework of the other Party, the Parties shall keep each other informed of how they provide for effective implementation and enforcement of regulatory and supervisory frameworks, consult on changes to the regulatory or supervisory framework, and ensure appropriate mechanisms are in place for the ongoing exchange of information on supervision and enforcement.

(c) If a Party concludes negotiations for an agreement or arrangement as described in Article 9.20 (Recognition of Prudential Measures) with a non-party, the Party shall directly notify the other Party to this Agreement and, upon conclusion of the aforementioned negotiations, provide adequate opportunity to that Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.

4. Review of Impact

(a) A Party shall, in the process of formulating its planned regulatory or supervisory initiatives, in the areas of financial services where that Party defers to the regulatory and supervisory framework of the other Party, give due consideration to the impact of those initiatives on its decision to defer to the other Party's regulatory and supervisory frameworks.

(b) Each Party shall review a measure which has been brought to its attention by a specific written request of the other Party which identifies the measure as having an impact on the ability of the other Party's financial service suppliers to provide financial services within the first Party's territory. Any requests for review shall only be made where the impact is material and shall include a clear explanation of the impact of the measure and its materiality. Any review shall consider whether and to what extent the measure may be rendered mutually compatible.

(c) The Party shall respond to the request in writing, and within a reasonable period of time.

Article 9C.4
Joint Financial Regulatory Forum

1. The Parties hereby establish a Joint Financial Regulatory Forum (hereinafter referred to in this Annex as the "Forum").

2. The Forum shall serve as a platform to facilitate regulatory cooperation between the Parties so as to achieve the objectives set out in Article 9C.1 (Objectives of Regulatory Cooperation). The Forum shall observe the principles of regulatory cooperation laid out in Article 9C.3 (Principles of Regulatory Cooperation) and implemented in the framework referred to in Article 9C.5 (Framework for Regulatory Cooperation).

3. The meetings of the Forum shall be held annually, unless the Parties agree otherwise, and whenever the Parties consider it expedient or necessary giving consideration to existing regulatory relationships and communications.

4. The Forum shall be composed of representatives of Australia and the United Kingdom, including:

   (a) for Australia, the Department of the Treasury, Australian Prudential Regulation Authority, Australian Securities and Investments Commission and the Reserve Bank of Australia and other agencies as relevant to the matters under discussion, and any of their successors, which have, at technical level, responsibility for financial services regulatory issues; and

   (b) for the United Kingdom, Her Majesty's Treasury, the Bank of England and the Financial Conduct Authority, and any of their successors which have, at technical level, responsibility for financial services regulatory issues.

5. Without prejudice to the right of each Party to decide on the composition of its representation in the Forum, each Party may request that the other Party

invite representatives with relevant seniority or expertise from other financial regulatory or supervisory authorities. This is with a view to contributing to the Forum's discussions and preparatory work in matters related to the activity of those financial regulatory or supervisory authorities, or the objectives of regulatory cooperation, as set out in Article 9C.1 (Objectives of Regulatory Cooperation).

6. The meetings of the Forum will be co-chaired by senior officials from the Department of the Treasury of Australia and Her Majesty's Treasury of the United Kingdom, or their respective successors.

7. Each co-chair shall designate a specific contact point to facilitate the work of the Forum.

8. The Forum may establish expert sub-working groups to examine specific issues or explore cooperation in specific areas of financial services.

Article 9C.5
Framework for Regulatory Cooperation

1. The Forum shall develop a framework for improving regulatory cooperation. The framework will be guided by the principles set out in Article 9C.3 (Principles of Regulatory Cooperation).

2. The framework for regulatory cooperation shall include:

   (a) without prejudice to each Party's own legislative and administrative processes, mechanisms for information exchange and consultation with the other Party, in appropriate forms giving consideration to existing communication processes;

   (b) guidelines to enhance regulatory cooperation between the Parties including guidelines for any expert sub-working groups established under paragraph 8 of Article 9C.4 (Joint Financial Regulatory Forum). These guidelines may cover different forms of regulatory cooperation, including deference to each other's regulatory and supervisory frameworks or implementation of international standards in specific mutually agreed areas;

   (c) a procedure for reviewing the measures referred to in subparagraph 4(b) of Article 9C.3 (Principles of Regulatory Cooperation);

   (d) terms of reference and guidelines on the governance of the Forum; and

   (e) if so agreed, any other arrangements to enhance regulatory cooperation.

3. The framework for regulatory cooperation may also envisage specific arrangements to facilitate cooperation in cross-border supervision and enforcement.

Article 9C.6
Mediation

1. The Parties shall act in good faith to try to resolve any disputes arising under this Annex.

2. The Parties shall make all reasonable efforts to resolve any disputes arising under this Annex at working-level.

Article 9C.7
Termination of Deference

1. A Party may rescind its decision to defer to the regulatory and supervisory frameworks of the other Party in a specific area of financial services and revert to the application and enforcement of its own regulatory and supervisory frameworks in circumstances such as, but not exclusively, where:

   (a) the regulatory and supervisory frameworks of the other Party are no longer equivalent in outcome;

   (b) the other Party fails to enforce its regulatory and supervisory frameworks effectively; or

   (c) there is insufficient cooperation, including sharing of information, of the other Party in the areas set out under paragraph 3 of Article 9C.3 (Principles of Regulatory Cooperation).

2. Prior to taking a decision to rescind pursuant to paragraph 1, a Party shall give written notification of its intention to rescind to the other Party. Following receipt of the notification, the Parties shall consult with each other within a reasonable timeframe which shall not exceed six months, and which may include mediation pursuant to Article 9C.6 (Mediation).

3. Following publication of the decision by a Party to rescind deference, that Party shall accord the other Party a reasonable period of time prior to reverting to the application and enforcement of their own regulatory and supervisory frameworks, including sufficient time to:

   (a) enable financial service suppliers to apply for, and have their application determined in respect of the necessary authorisations in the jurisdiction of the Party terminating deference; and

(b) pass provisions protecting the acquired rights of financial service suppliers that entered into force prior to the decision to rescind deference.

Article 9C.8
Emerging Issues

1. To support innovation in the areas of financial services, the Parties shall:

(a) endeavour to collaborate, share knowledge, experiences and developments in financial services and facilitate the cross-border development of new financial services;

(b) promote and encourage cooperation relating to innovative financial services,[26] through their respective trade promotion agencies and regulators, and encourage enterprises undertaking innovative financial services to use facilities and assistance available in the other Party's territory to explore new business opportunities;

(c) encourage relevant competent authorities to cooperate in relevant international fora to improve opportunities for each Party's enterprises undertaking innovative financial services;

(d) endeavour to cooperate on the development of regulation and standards for open banking; and

(e) endeavour to cooperate on the development of underpinning technologies for innovative financial services.

2. The Parties may share best practices to promote diversity[27] in financial services and recognise the importance of building a diverse, including gender-balanced, financial services industry, and the positive impact that diversity has on balanced decision-making, consumers, workplace culture, investment, and competitive markets.

Article 9C.9
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Annex.

[26] Innovative financial services includes FinTech and financial services-related RegTech activities which involve the improved use of technology across financial services.
[27] Diversity includes gender, ethnicity, and professional and educational background.

CHAPTER 10

PROFESSIONAL SERVICES AND RECOGNITION OF PROFESSIONAL QUALIFICATIONS

Article 10.1
Definitions

1. For the purposes of this Chapter:

   "legal arbitration, conciliation, and mediation services" means the preparation of documents to be submitted to, the preparation for and appearance before, an arbitrator, conciliator, or mediator in any dispute involving the application and interpretation of law.[1] It does not include arbitration, conciliation, and mediation services in disputes not involving the application and interpretation of law which fall under services incidental to management consulting. It also does not include acting as an arbitrator, conciliator, or mediator; and

   "professional qualifications" means qualifications attested by evidence of formal qualifications or professional experience and can include post-academic training[2] or experience required for the right to practise.

2. Definitions, included in Article 8.1 (Definitions - Cross-Border Trade in Services), are incorporated into and made a part of this Chapter to the extent that the relevant terms are used in this Chapter.

Article 10.2
Scope

1. This Chapter applies to measures of a Party affecting the supply of professional services, including by a covered investment.[3]

2. Professional services include accountancy and auditing services, architectural services, engineering services, legal services, and other types of professional services.

3. This Chapter does not apply to the services or measures of a Party listed in

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[1] As a sub-category, international legal arbitration conciliation or mediation services refers to the same services when the dispute involves parties from two or more countries.

[2] Training means training resulting in a record, issued by a body whose ordinary activities include the issuing of those records, of having attained a particular standard.

[3] For greater certainty, nothing in this Chapter affects the rights, obligations or reservations of each Party under other Chapters of this Agreement, including Chapter 8 (Cross-Border Trade in Services), Chapter 9 (Financial Services), Chapter 11 (Temporary Entry for Business Persons) and Chapter 13 (Investment).

paragraphs 3 through 5 of Article 8.2 (Scope - Cross-Border Trade in Services).

Article 10.3
Objectives

The objectives of this Chapter are:

(a) to encourage the development of systems for the recognition of professional qualifications and to better facilitate the international trade in professional services between the Parties;

(b) to 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 practice; and

(c) to encourage each Party to be at the forefront of the liberalisation of international trade in professional services.

Article 10.4
General Principles for Professional Services

1. The Parties recognise that professional services 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 on professionals of the Party in that professional services sub-sector;

(b) accommodate the provision of professional services, in the following ways:

(i) on a temporary fly-in, fly-out basis;

(ii) on a cross-border basis through the use of telecommunications technology;

(iii) by establishing a commercial presence; and

(iv) through a combination of fly-in, fly-out and one or both of the other modes listed in subparagraphs (ii) and (iii);

(c) permit service suppliers of each Party to work together;

(d) permit enterprises of the other Party to use a firm name of their choice in line with the conventions of the Party; and

(e) establish dialogues with the relevant bodies of the other Party, with a view to the development of mutual recognition arrangements.

3. A Party may consider, if feasible, taking steps to encourage its relevant bodies to consider implementing procedures for the temporary, or project-specific licensing of professional service suppliers of the other Party. That regime should not operate to prevent a professional service supplier gaining a local licence once that supplier satisfies the applicable local licensing requirements.

Article 10.5
Recognition of Professional Qualifications

1. If access to or pursuit of a regulated profession[4] in the jurisdiction of the other Party is contingent on possession of specific professional qualifications, that Party shall encourage, as appropriate, its relevant bodies to establish and operate systems for recognition of professional qualifications obtained in the other Party's jurisdiction.

2. Nothing in paragraph 1 shall prevent a Party, or a relevant body of a Party, from:

(a) negotiating mutual recognition arrangements; or

(b) requiring that natural persons meet additional conditions that apply to the practice of a particular profession in that Party.

3. Each Party shall encourage its relevant bodies to take into account, as appropriate, plurilateral or multilateral agreements that relate to professional services in the development of systems for the recognition of professional qualifications.

[4] "Regulated profession" means a profession, the practice of which, including the use of a title or designation, is subject to the possession of specific professional qualifications by virtue of a measure of a Party.

Article 10.6
Professional Services Working Group

1. The Parties hereby establish a Professional Services Working Group (Working Group) composed of representatives of each Party[5] to facilitate:

   (a) the achievement of the objectives of this Chapter; and

   (b) the effective implementation and administration of systems for recognition of professional qualifications, as provided in paragraph 1 of Article 10.5 (Recognition of Professional Qualifications).

2. The Working Group shall liaise, as appropriate, to support the relevant bodies of each Party in pursuing the objectives of this Chapter. This support may include providing points of contact, facilitating meetings, and providing information regarding regulation of professional services.

3. The Working Group shall support relevant bodies in the development of systems for recognition of professional qualifications, including having regard to how those relevant bodies establish, and the manner in which they administer, those systems. This support may include:

   (a) providing information on:

      (i) systems used by other professions; and

      (ii) the development of mutual recognition arrangements;

   (b) identifying possible improvements in the systems; and

   (c) sharing best practices.

4. The Working Group may consider developing model mutual recognition arrangements and procedures for the 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 request updates from the Dialogue established under Article 10.8 (Legal Services Regulatory Dialogue) on the progress of the conclusion of any arrangement which stems from discussions within the Dialogue.

6. The Working Group shall meet annually for three years from the date of entry into force of this Agreement, and thereafter as agreed by the Parties.

[5] The relevant bodies in each Party's jurisdiction may also be invited to participate in the Working Group.

7. The Working Group shall report to the Committee on Services and Investment on its progress, including with respect to a recommendation for initiatives to promote recognition of professional qualifications, temporary licensing, and on the further direction of its work, no later than two years after the date of entry into force of this Agreement, or as agreed by the Parties.

Article 10.7
Legal Services

1. Nothing in this Article shall affect the right of a Party to regulate and supervise the supply of legal services, referred to in paragraph 2, in a non-discriminatory manner.

2. Paragraph 3 applies to measures of a Party affecting the supply of legal advisory services and legal arbitration, conciliation, and mediation services in relation to:

   (a) the law of the other Party;

   (b) other foreign law to the extent the lawyer of the other Party is qualified to practise that law (and not being the law of the host Party); or

   (c) international law.

3. A Party (host Party) shall:

   (a) allow a national of the other Party who is professionally qualified and authorised in the other Party to practise as a lawyer to supply services, referred to in paragraph 2, without having to requalify as, or be authorised to practise as, a domestic (host Party) lawyer; and

   (b) not impose disproportionately complex or burdensome administrative or regulatory conditions on, or for, the supply of these services by persons referred to in subparagraph (a).

4. The obligations in paragraph 3 do not extend to:

   (a) legal representation services in matters or proceedings before administrative agencies, the courts, or other duly constituted official tribunals of a Party;

   (b) legal advisory and legal authorisation, documentation, and certification services supplied by legal professionals entrusted with public functions such as notaries, and services supplied by bailiffs; and

(c) services supplied by patent or trademark attorneys.

Article 10.8
Legal Services Regulatory Dialogue

1. The Parties recognise that legal services play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.

2. The Parties shall establish a Legal Services Regulatory Dialogue (the Dialogue) composed of representatives from the legal professions of each Party.[6] The Dialogue may establish expert sub-groups to consider matters set out in paragraph 3.

3. The objectives of the Dialogue are to:

   (a) consider any matters affecting the re-qualification of lawyers of one Party seeking admission to practise in the other Party. Issues in scope for consideration include:

      (i) the progressive reduction and removal of academic pre-requisites and additional practical legal training, particularly for experienced lawyers;

      (ii) post-qualification supervision;

      (iii) the improvement in transparency and availability of existing conditional admission routes;

      (iv) the feasibility of recognising legal qualifications obtained in one Party without the requirement for an aptitude examination or adaptation period to be undertaken in the other Party; and

      (v) timeframes for requalification and admission to practise law;

   (b) share expertise on matters affecting the types of business structures through which lawyers and enterprises of one Party may establish and supply legal services in the other Party, including limited liability partnerships, incorporated legal practices, or multi-disciplinary partnerships; and

[6] These may include representatives, for Australia, from the Law Council of Australia, the Legal Services Council and Admissions Committee established under the Legal Profession Uniform Law, and the Law Admissions Consultative Committee, and for the United Kingdom, from the Law Society of England and Wales, the Solicitors Regulation Authority, the General Council of the Bar of England and Wales, the Bar Standards Board, the Law Society of Scotland, the Faculty of Advocates, the Law Society of Northern Ireland, and the General Council of the Bar of Northern Ireland.

(c) share information and knowledge on other regulatory matters, including on licensing and standards, recognition of professional qualifications, and on wider matters affecting the trade in legal services between the Parties.

4. The Parties shall encourage the Dialogue to meet annually, or more frequently as required, for the first three years from the date of entry into force of this Agreement, and thereafter as determined by the Dialogue.

5. The Parties shall encourage the Dialogue to provide the Professional Services Working Group with a report on the progress of objectives set out in paragraph 3 no later than 20 months after the date of entry into force of this Agreement and subsequently provide, if requested, any updates on facilitating the conclusion of any arrangement which stems from discussions within the Dialogue.

CHAPTER 11

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 11.1
Definitions

For the purposes of this Chapter:

"business person" means a national of a Party who is engaged in trade in goods, the supply of services, or the conduct of investment activities;

"immigration formality" means a visa, permit, pass or other document or electronic authority granting temporary entry;

"immigration measure" means any measure affecting the entry and stay of foreign nationals; and

"temporary entry" means entry into the territory of a Party by a business person of the other Party who does not intend to establish permanent residence.

Article 11.2
Scope

1. This Chapter applies to measures that affect the temporary entry of business persons of a Party into the territory of the other Party, under any of the following categories as defined in each Party's Annex IV (Schedules of Specific Commitments on Temporary Entry for Business Persons):

   (a) for Australia:

      (i) business visitors;

      (ii) installers and servicers;

      (iii) intra-corporate transferees;

      (iv) independent executives; and

      (v) contractual service suppliers

   (b) for the United Kingdom:

      (i) business visitors for establishment purposes;

(ii) short-term business visitors;

(iii) intra-corporate transferees;

(iv) investors;

(v) contractual service suppliers; and

(vi) independent professionals.

2. This Chapter does not apply to measures affecting nationals seeking access to the employment market of the other Party, nor does 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 nationals 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 business 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 11.3
Application Procedures

1. As expeditiously as possible after receipt of a complete application for an immigration formality, each Party shall make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.

2. At the request of an applicant, a Party that has received a complete application for an immigration formality shall endeavour to promptly provide information concerning the status of the application.

3. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality are reasonable, in that they do not unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement.

Article 11.4
Grant of Temporary Entry

1. Each Party shall set out in Annex IV (Schedules of Specific Commitments on Temporary Entry for Business Persons) the commitments it makes with regard to temporary entry of business persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of business persons specified by that Party in paragraph 1 of Article 11.2 (Scope).

2. A Party shall grant temporary entry or extension of temporary stay to business persons of the other Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business 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 or extension of temporary stay.

3. The sole fact that a Party grants temporary entry to a business person of the other Party pursuant to this Chapter shall not be construed to exempt that business 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.

4. A Party may refuse to issue an immigration formality to a business person of the other Party if the temporary entry of that person might affect adversely:

   (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

   (b) the employment of any natural person who is involved in such dispute.

5. When a Party refuses, pursuant to paragraph 4, to issue an immigration formality, it shall inform the applicant accordingly.

6. In respect of the commitments on temporary entry in this Chapter, neither Party shall:

   (a) impose or maintain any limitations on the total number of visas to be granted to business persons of the other Party; or

   (b) require economic needs tests, including labour market tests, or other procedures of similar effect, as a condition for temporary entry.

7. For greater certainty, each Party's measures regarding employment[1] shall continue to apply, including those concerning minimum wages or collective wage agreements.

Article 11.5
Provision of Information

1. Further to Article 28.2 (Publication – Transparency and Anti-Corruption) and Article 28.5 (Provision of Information – Transparency and Anti-Corruption), each Party shall make publicly available information relating to current requirements for the temporary entry by business persons of the other Party, specified in paragraph 1 of Article 11.2 (Scope).

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 of 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. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly make publicly available and inform the other Party, through existing mechanisms, of the introduction of any significant new requirements and procedures or of the changes in any requirements and procedures that affect the effective application for the grant of entry into, and where applicable, permission to work in its territory.

[1] For the United Kingdom, this includes the continued application of all social security measures.

Article 11.6
Relation to Other Chapters

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 29 (Administrative and Institutional Provisions), Chapter 30 (Dispute Settlement), Chapter 32 (Final Provisions), Article 28.2 (Publication – Transparency and Anti-Corruption), and Article 28.5 (Provision of Information – Transparency and Anti-Corruption), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 11.7
Dispute Settlement

1. Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

   (a) the matter involves a pattern of practice; and

   (b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) 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 the institution of 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 business persons concerned.

Article 11.8
Cooperation on return and readmissions

The Parties shall endeavour to cooperate on the return and readmission of business persons staying in the territory of a Party, where such business person is in contravention of the host Party's measures relating to temporary entry.

CHAPTER 12

TELECOMMUNICATIONS

Article 12.1
Definitions

For the purposes of this Chapter:

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

"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;

"essential facilities" means facilities of a public telecommunications network or service that:

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

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

"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;

"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;

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

"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;

"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 a relevant market for public telecommunications networks or services as a result of:

(a) control over essential facilities; or

(b) use of its position in that market;

"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;

"non-discriminatory" means treatment no less favourable than that accorded, in like circumstances, to users of like public telecommunications networks or services, including with respect to timeliness;

"number portability" means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

"public telecommunications network" means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

"public telecommunications service" means any telecommunications service that is offered to the public generally;

"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;

"telecommunications" means the transmission and reception of signals by any electromagnetic means;

"telecommunications regulatory authority [1] " means a body or bodies responsible for the regulation of telecommunications; and

"user" means a service consumer or a service supplier using a public telecommunications network or service.

[1] For greater certainty, for Australia, the telecommunications regulatory authorities are the Australian Communications and Media Authority (or its successor) and the Australian Competition and Consumer Commission (or its successor).

Article 12.2
Scope

1. This Chapter applies to measures of a Party affecting trade in telecommunications services.

2. This Chapter does not apply to:

   (a) audio-visual services;

   (b) any measure affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services; or

   (c) any measure affecting broadcast or cable distribution of radio or television programming, except that:

      (i) Article 12.4 (Access and Use) applies with respect to a cable or broadcast services supplier's access to and use of public telecommunications services; and

      (ii) Article 12.21 (Transparency) applies to any measure affecting broadcast or cable distribution of radio or television programming, to the extent that the measure also affects public telecommunications networks or services.

3. Nothing in this Chapter shall be construed to:

   (a) require a Party, or require a Party to compel an enterprise, to establish, construct, acquire, lease, operate, or provide a telecommunications network or service not offered to the public generally;

   (b) require a Party to compel an enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

   (c) prevent a Party from prohibiting a person who operates a private network from using its private network to supply a public telecommunications network or service to third persons.

Article 12.3
Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications networks or services and to enhance consumer welfare, and that economic regulation may not be needed

if there is effective competition or if a service is new to a market. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognise that a Party may:

   (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;

   (b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities; or

   (c) use any other appropriate means that benefit the long-term interests of end-users.

3. A Party that refrains from engaging in regulation in accordance with this Article remains subject to the obligations under this Chapter.

Article 12.4
Access and Use

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

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

   (a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;

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

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

   (d) use operating protocols of their choice; and

   (e) perform switching, signalling, processing, and conversion functions.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks or services for the movement of information in 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 either Party.

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

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

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

   subject to the requirement that the measures taken are not applied in a manner that 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 or services other than as necessary to:

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

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

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

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

   (b) a requirement, if necessary, for the interoperability of those networks and services;

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

   (d) notification, registration, and licensing.

Article 12.5
Access to Essential Facilities and Unbundled Network Elements

1. Subject to paragraph 2, each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications networks or services of the other Party:

   (a) access to essential facilities[2]; and

   (b) access to network elements on an unbundled basis,

   for the purpose of providing public telecommunications networks or services on terms and conditions, and at cost-oriented rates, which are reasonable, non-discriminatory, and transparent. Subject to technical feasibility, access shall be provided on a timely basis.

2. Each Party may determine, in accordance with its laws and regulations:

   (a) the essential facilities to which a major supplier must provide access; and

   (b) the network elements a major supplier must provide on an unbundled basis.

3. If a Party makes a determination under subparagraphs 2(a) or 2(b), it shall take into account factors such as the competitive effect of lack of access and the long-term interests of end-users.

Article 12.6
Resale

1. Neither Party shall prohibit the resale of any public telecommunications services.

2. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by major suppliers of public telecommunications services, taking into account the need to promote competition or benefits to the long-term interests of end-users. Where a Party has determined that a service must be offered for resale by major suppliers, that Party shall ensure that any major suppliers in its territory do not impose unreasonable or discriminatory conditions or limitations on the resale of that service.

[2] The major supplier's essential facilities may include leased circuit services, poles, ducts, conduits, and rights-of-way.

Article 12.7
Competitive Safeguards

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services in its territory that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 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, on a timely basis, to suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that is necessary for them to provide services.

Article 12.8
Treatment by Major Suppliers

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications networks or services of the other Party treatment no less favourable than that major supplier accords in like circumstances to itself, its subsidiaries, its affiliates, or non-affiliated suppliers of public telecommunications networks or services regarding the:

(a) availability, provisioning, rates**,** or quality of like public telecommunications networks or services; and

(b) availability of technical interfaces necessary for interconnection.

Article 12.9
Interconnection with Suppliers

1. Each Party shall ensure that suppliers of public telecommunications networks or services in its territory:

   (a) provide interconnection with suppliers of public telecommunications networks or services of the other Party; or

(b) enter into negotiations for interconnection with suppliers of public telecommunications networks or services of the other Party, if requested to do so by that supplier.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications networks or services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

Article 12.10
Interconnection with Major Suppliers

1. Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities of suppliers of public telecommunications networks or services of the other Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance);

(c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(d) on a timely basis, and 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

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

2. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect with major suppliers in its territory through at least one of the following options:

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

(b) the terms and conditions of an interconnection agreement in effect.

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications 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.

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

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

Article 12.11
Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, for those services designated by that Party, without impairment to quality, reliability, or convenience, to the extent technically feasible, on a timely basis, and on reasonable and non-discriminatory terms and conditions.

Article 12.12
Access to Numbers

Each Party shall ensure that suppliers of public telecommunications services of the other Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

Article 12.13
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 between the Parties and enhance consumer welfare.

2. A Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers, when visiting the territory of a Party from the territory of the other Party, can access telecommunications services using the device of their choice.

3. Each Party shall ensure that suppliers of public telecommunications services in its territory, or its telecommunications regulatory authority, make publicly available information on retail rates for international mobile roaming services for voice, data, and text messages offered to consumers when visiting the territory of the other Party.

4. The Parties recognise that a Party, if it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring that those rates are reasonable. If a Party considers it appropriate, it may cooperate on and implement mechanisms with the other Party to facilitate the implementation of those measures, including by entering into arrangements with the other Party.

5. If the Parties enter into an arrangement to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of public telecommunications services of both Parties, each Party shall ensure that suppliers of public telecommunications services of the other Party have access to the regulated rates or conditions[3] for wholesale international mobile roaming services for the suppliers' customers roaming in that Party's territory.[4]

6. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 5 shall be deemed to be in compliance with its obligations under Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services), Article 12.4 (Access and Use), and Article 12.8 (Treatment by Major Suppliers) with respect to international mobile roaming services.

7. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

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[3] For greater certainty, access under paragraph 5 to the rates or conditions regulated by a Party shall be available to a supplier of the other Party only if those regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in this paragraph. The telecommunications regulatory authority of the first Party shall, in the case of disagreement, determine whether the rates or conditions are reasonably comparable.

[4] For greater certainty, neither Party shall, solely on the basis of any obligations owed to it by the other Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

Article 12.14
Submarine Cable Landing Stations and Systems

1. Each Party shall ensure, in accordance with its laws and regulations, that suppliers of public telecommunications networks or services of the other Party has access to submarine cable landing stations and systems in its territory on reasonable, non-discriminatory, and transparent terms and conditions for the purpose of providing a public telecommunications network or service.

2. Each Party may mitigate the risk of damage to submarine telecommunications cable landing stations and systems in its territory that are operated, owned, or controlled by a person of the other Party, which may include measures to maintain the functionality of the cable system.

Article 12.15
Independent Regulatory Authorities

1. Each Party shall ensure that its telecommunications regulatory authority is separate from, and not accountable to, any supplier of public telecommunications networks or services. With a view to ensuring the independence and impartiality of telecommunications regulatory authorities, each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest[5] or maintain an operating or management role in any supplier of public telecommunications networks or services.

2. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory authority are impartial with respect to all market participants.

3. Neither Party shall accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of the other Party on the basis that the supplier receiving more favourable treatment is owned by the national government of the Party.

Article 12.16
Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.

2. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner, and

[5] This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory authority from owning equity in a supplier of public telecommunications networks or services.

shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to these principles shall not be regarded per se as anti-competitive.

Article 12.17
Licensing and Authorisation Process

1. Each Party may permit a supplier of public telecommunications services to provide their services without prior formal authorisation, such as a licence.

2. If a Party requires a supplier of a public telecommunications services to have a licence, the Party shall ensure the public availability of:

   (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.

3. Each Party shall ensure that, on request, an applicant receives the reasons for the:

   (a) denial of a licence;

   (b) imposition of supplier-specific conditions on a licence;

   (c) revocation of a licence; or

   (d) refusal to renew a licence.

Article 12.18
Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including radio spectrum, 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 detailed identification of radio spectrum that is allocated or assigned for specific government uses is not required.

3. A measure of a Party allocating and assigning spectrum and managing frequency is not per se inconsistent with Article 8.5 (Market Access – Cross-Border Trade in Services) and Article 13.4 (Market Access – Investment).

Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner consistent with this Agreement. This includes the ability 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. Each Party may rely on market-based approaches, such as auctions, to assign spectrum for commercial use.

Article 12.19
Flexibility in the Choice of Technology

1. Neither Party shall prevent a supplier of public telecommunications services from choosing the technologies it wishes to use to supply its services.

2. Notwithstanding paragraph 1, a Party may apply a measure that limits the technologies that a supplier of public telecommunications networks or services may use to supply its services, provided that the measure is designed to achieve a legitimate public policy interest and is not adopted or applied in a manner that creates unnecessary obstacles to trade in services.

3. If a Party finances the development of advanced networks,[6] it may make its financing conditional on the use of technologies that meet its legitimate public policy interests.

Article 12.20
Resolution of Telecommunications Disputes

Each Party shall ensure that:

(a) suppliers of public telecommunications networks or services of the other Party have timely recourse to a telecommunications regulatory authority or judicial authority of the Party to consider and, to the extent provided for in its laws and regulations, to resolve a dispute regarding the Party's measures relating to the obligations contained in this Chapter;

[6] For greater certainty, "advanced networks" includes broadband networks.

(b) in the event of a dispute referred to in subparagraph (a), the telecommunications regulatory authority or judicial authority of the Party:

(i) issues a binding decision to resolve a dispute;

(ii) provides a supplier that is a party to the dispute with the reasons for its decision; and

(iii) make its decision publicly available to the extent provided for in its laws and regulations;

(c) notwithstanding subparagraph (b), if the telecommunications regulatory authority of the Party declines to initiate an action on a request to resolve a dispute, it provides the supplier of the other Party that is a party to the dispute with the reasons for its decision;

(d) a supplier of public telecommunications networks or services of the other Party aggrieved by a decision of the telecommunications regulatory authority has the right to appeal that decision to a judicial authority. That appeal shall not constitute grounds for noncompliance by that supplier with the decision, unless its relevant authority determines otherwise.

(e) in the hearing of an appeal by a judicial authority referred to in subparagraph (d):

(i) a supplier that is a party to the appeal has a reasonable opportunity to obtain sufficient information to form informed views on the issues to be determined in the appeal and to provide those views to the judicial authority;

(ii) the judicial authority takes into account views provided by that supplier; and

(iii) the judicial authority makes available to that supplier its decision and the reasons on which the decision is based; and

(f) a supplier of public telecommunications services of the other Party that has requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period of time after the supplier requests interconnection, by its telecommunications regulatory authority to resolve a dispute regarding the terms, conditions, and rates for interconnection with that major supplier.

Article 12.21
Transparency

1. Further to Chapter 28 (Transparency and Anti-Corruption), each Party shall endeavour to ensure that:

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

   (b) suppliers of public telecommunications networks or services of the other Party are, on request, provided with a clear and detailed explanation of the reasons for a decision to deny access of the kind specified in Article 12.5 (Access to Essential Facilities and Unbundled Network Elements) and Article 12.10 (Interconnection with Major Suppliers) where that decision is made, approved, endorsed, or authorised by the Party.

2. Further to Chapter 28 (Transparency and Anti-Corruption), each Party shall ensure that its measures relating to public telecommunications networks or services are made publicly available, including:

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

   (b) specifications of technical interfaces;

   (c) conditions for attaching terminal or other equipment to the public telecommunications network;

   (d) notification, permit, registration, or licensing requirements, if any;

   (e) general procedures relating to resolution of telecommunications disputes provided for in Article 12.20 (Resolution of Telecommunications Disputes); and

   (f) information on bodies responsible for preparing, amending, and adopting standards-related measures.

Article 12.22
Enforcement

Each Party shall provide its telecommunications regulatory authority with the authority to enforce the Party's measures relating to the obligations in Article 12.4 (Access and Use), Article 12.5 (Access to Essential Facilities and Unbundled Network Elements), Article 12.6 (Resale), Article 12.7 (Competitive Safeguards), Article 12.8 (Treatment by Major Suppliers), Article 12.9 (Interconnection with

Suppliers), Article 12.10 (Interconnection with Major Suppliers), Article 12.11 (Number Portability), Article 12.12 (Access to Numbers), Article 12.14 (Submarine Cable Landing Stations and Systems), and Article 12.17 (Licensing and Authorisation Process). That authority shall be exercised transparently, in a timely manner, and include the ability to impose, or seek from administrative or judicial bodies, effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, or revocation of licences.

Article 12.23
Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services and undertake to promote those standards through the work of relevant international organisations.

Article 12.24
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; and

   (b) work together in regional and multilateral fora to promote a shared approach to these opportunities and challenges.

Article 12.25
Confidentiality

Each Party shall ensure, in accordance with its laws and regulations, the confidentiality of telecommunications and related traffic data[7] of users over public telecommunications networks and services without unduly restricting trade in services.

[7] For the purposes of this Article, "traffic data" means any data processed for the purpose of transmitting a communication over a public telecommunications network or service, and includes data relating to the duration or time of the communication, or the location from which the communication was made.

CHAPTER 13

INVESTMENT

Article 13.1
Definitions

For the purposes of this Chapter:

"activities carried out in the exercise of governmental authority" means activities carried out neither on a commercial basis nor in competition with one or more economic operators;

"enterprise" means an enterprise as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions), and a branch of an enterprise;

"enterprise of a Party" means:

(a) an enterprise, as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions), constituted or organised under the law of that Party, or a branch located in the territory of that Party,[1] and carrying out substantial business activities in the territory of that Party; or

(b) an enterprise, as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions), constituted or organised under the law of that Party and directly or indirectly owned or controlled by a national of that Party or by an enterprise referred to in subparagraph (a);

"freely usable currency" means "freely usable currency" as determined by the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund* done at Bretton Woods on 22 July 1944 ("IMF Articles of Agreement");

"investment" means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

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[1] For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans;[2, 3]

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licences, authorisations, permits, and similar rights conferred pursuant to the Party's law;[4] and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action;

"investor of a non-Party" means, with respect to a Party, an investor that attempts to make,[5] is making, or has made an investment in the territory of that Party, that is not an investor of the other Party;

"investor of a Party" means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party.

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[2] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[3] A loan issued by a Party to the other Party is not an investment.

[4] Whether a particular type of licence, authorisation, permit, or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

[5] For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-Party" and "investor of a Party", an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

Article 13.2
Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to:

   (a) investors of the other Party;

   (b) covered investments; and

   (c) with respect to Article 13.11 (Performance Requirements), Article 13.17 (Investment and Environmental, Health, and other Regulatory Objectives), Article 13.18 (Investment and Environment), and Article 13.19 (Corporate Social Responsibility), all investments in the territory of that Party.

2. A Party's obligations under this Chapter apply to measures adopted or maintained by:

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

   (b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional, or local governments or authorities of that Party.[6]

3. For greater certainty, this Chapter does not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.

4. With respect to the establishment, expansion or acquisition of an investment, Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements), and Article 13.12 (Senior Management and Boards of Directors) do not apply to activities carried out in the exercise of governmental authority.

5. Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements), and Article 13.12 (Senior Management and Boards of Directors) do not apply to audio-visual services.

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[6] For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive, or other action transferring or authorising the exercise of governmental authority.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

7. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

Article 13.3
Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement of a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 9 (Financial Services).

Article 13.4
Market Access

1. Neither Party shall adopt or maintain, with respect to market access through the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of any investment in its territory by an investor of the other Party, either on the basis of its entire territory or on the basis of the territory of a central, regional, or local level of government, a measure[7] that:

   (a) imposes limitations on:

[7] This paragraph does not prohibit measures which apply to a specific site or a particular limited area within the territory of a Party.

(i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers, or the requirement of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;[8]

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

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

(v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test; or

(b) requires that an economic activity is carried out through a specific type of legal entity or by a joint venture.

Article 13.5
National Treatment[9]

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment,

[8] Sub-paragraphs 1(a)(i) through (iii) do not cover measures taken in order to limit the production of an agricultural good.

[9] For greater certainty, whether treatment is accorded in "like circumstances" under Article 13.5 (National Treatment) or Article 13.6 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 13.6
Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.[10]

3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms.

Article 13.7
Minimum Standard of Treatment[11]

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which

[10] For greater certainty, paragraphs 1 and 2 do not cover treatment accorded by the United Kingdom to investors (and to their investments) of territories for whose international relations the United Kingdom is responsible.

[11] Article 13.7 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 13A (Customary International Law).

is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

Article 13.8
Treatment in Case of Armed Conflict or Civil Strife

1. Notwithstanding subparagraph 6(b) of Article 13.13 (Non-Conforming Measures), each Party shall accord to investors of the other Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for that loss.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 13.5 (National Treatment) but for subparagraph 6(b) of Article 13.13 (Non-Conforming Measures).

Article 13.9
Expropriation and Compensation[12]

1. Neither Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:

   (a) for a public purpose;[13]

   (b) in a non-discriminatory manner;

   (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and

   (d) in accordance with due process of law.

2. Compensation shall:

   (a) be paid without delay;

   (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

   (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

   (d) be fully realisable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate

[12] Article 13.9 (Expropriation and Compensation) shall be interpreted in accordance with Annex 13B (Expropriation).

[13] For greater certainty, for the purposes of this Article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as "public necessity", "public interest", or "public use".

for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

   (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

   (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that the issuance, revocation, limitation, or creation is consistent with Chapter 15 (Intellectual Property) and the TRIPS Agreement.[14]

6. For greater certainty, a Party's decision not to issue, renew, or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,

   (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy or grant; or

   (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction, and maintenance of that subsidy or grant,

   standing alone, does not constitute an expropriation.

Article 13.10
Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

[14] For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

(a) contributions to capital;[15]

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees, and other fees;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 13.8 (Treatment in Case of Armed Conflict or Civil Strife) and Article 13.9 (Expropriation and Compensation); and

(f) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its law[16] relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

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[15] For greater certainty, contributions to capital include the initial contribution.

[16] For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's law relating to its social security, public retirement, or compulsory savings programmes.

5. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

6. For greater certainty, nothing in this Article shall be construed to prevent a Party from applying its law relating to the imposition of economic sanctions in good faith.

Article 13.11
Performance Requirements

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:[17]

   (a) to export a given level or percentage of goods or services;

   (b) to achieve a given level or percentage of domestic content;

   (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

   (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment;

   (e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;

   (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;

   (g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;

[17] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

(h)

(i) to purchase, use, or accord a preference to, in its territory, technology of the Party or of a person of the Party;[18] or

(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology;

(i) to locate the regional or world headquarters of an enterprise in its territory;

(j) to achieve a given level or value of research and development in its territory;

(k) to adopt:

(i) a rate or amount of royalty below a certain level; or

(ii) a given duration of the term of a licence contract,[19]

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the investment and a person in the territory of the Party, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of a non-judicial governmental authority of the Party.[20]

2. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

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[18] For the purposes of this Article, the term "technology of the Party or of a person of the Party" includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive licence.

[19] A "licence contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

[20] For greater certainty, subparagraph (k) does not apply when the licence contract is concluded between the investment and a Party.

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment; or

(d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Subparagraphs 1(f), 1(h), and 1(k) do not apply:

(a) if a Party authorises use of an intellectual property right in accordance with of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(b) if the requirement is imposed or enforced, or the commitment or undertaking is enforced**,** by a court or administrative tribunal or by a competition authority to prevent or remedy a restriction or distortion of competition after a judicial or administrative process conducted pursuant to a Party's competition law.[21]

5. Subparagraph 1(k) does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright law.

6. Subparagraphs 1(a) through 1(c), 2(a), and 2(b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

7. Subparagraphs 1(b), 1(c), 1(f) through 1(j), 2(a) and 2(b) do not apply to government procurement.

8. Subparagraphs 2(a) and 2(b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

[21] The Parties recognise that a patent does not necessarily confer market power.

9. Subparagraphs (1)(h) and (1)(k) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that such measures are not applied in an arbitrary or unjustifiable manner, or in a manner that constitutes a disguised restriction on international trade or investment.

10. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process, or other proprietary knowledge to a person in its territory.

11. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

12. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, if a Party did not impose or require the commitment, undertaking, or requirement.

Article 13.12
Senior Management and Boards of Directors

A Party shall not require that an enterprise of that Party that is a covered investment appoint to senior management or board of director positions natural persons of a particular nationality or who are resident in the territory of that Party.

Article 13.13
Non-Conforming Measures

1. Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements) and Article 13.12 (Senior Management and Boards of Directors) do not apply to:

   (a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment);

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment); or

(iii) a local level of government;

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

(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 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements) or Article 13.12 (Senior Management and Boards of Directors).

2. Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements) and Article 13.12 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment).

3. If a Party considers that a non-conforming measure applied by a regional level of government of the other Party, as referred to in subparagraph 1(a)(ii), creates a material impediment to investment in relation to the former Party, it may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.[22]

4. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

[22] For greater certainty, a Party may request consultations with the other Party regarding a non-conforming measure applied by a central level of government, as referred to in subparagraph 1(a)(i).

5. Article 13.5 (National Treatment) and Article 13.6 (Most-Favoured-Nation Treatment) do not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 15.8 (National Treatment) of Chapter 15 (Intellectual Property), or by Article 3 or Article 4 of the TRIPS Agreement.

6. Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment) and Article 13.12 (Senior Management and Boards of Directors) do not apply to:

   (a) government procurement; or

   (b) subsidies or grants provided by a Party, including government supported loans, guarantees, and insurance.

7. For greater certainty, any amendments or modifications to a Party's Schedules to Annex I or Annex II (Schedules of Non-Conforming Measures for Services and Investment), pursuant to this Article, shall be made in accordance with Article 32.2 (Amendments – Final Provisions).

8. Australia shall work towards further liberalisation and transparency as regards subparagraphs 1(h) through (k) of Article 13.11 (Performance Requirements). To that end, Australia shall conduct consultations at the regional level of government in respect of subparagraphs 1(h) through (k) of Article 13.11 (Performance Requirements), against the measures maintained at the regional level of government in respect of which entry 45 in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment) and entry 30 in its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment) have been made.

9. Australia shall endeavour to conclude the consultations referred to in paragraph 8 within nine months of entry into force of this Agreement. Following the conclusion of these consultations, Australia shall:

   (a) promptly notify the United Kingdom of the outcome of the consultations; and

   (b) unless the Parties agree otherwise, amend accordingly Australia's Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment) and its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment), as soon as is reasonably practicable.

Article 13.14
Subrogation

If a Party, or any agency, institution, statutory body, or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance, or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

Article 13.15
Special Formalities and Information Requirements

1. Nothing in Article 13.5 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the law of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 13.5 (National Treatment) and Article 13.6 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 13.16
Denial of Benefits[23]

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit

[23] For greater certainty, the benefits of this Chapter may be denied at any time before or after an investment is made.

transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

Article 13.17
Investment and Environmental, Health, and other Regulatory Objectives

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, or other regulatory objectives.

Article 13.18
Investment and the Environment

1. The Parties recall the provisions of this Agreement that are applicable to promoting mutually supportive investment and environmental outcomes and that are consistent with the sovereign right of each Party to set its levels of environmental protection, including as set out in the relevant provisions, exceptions, and exclusions of this Chapter, of Annex I (Schedules of Non-Conforming Measures for Services and Investment) and Annex II (Schedules of Non-Conforming Measures for Services and Investment), of Chapter 31 (General Provisions and Exceptions), and of Chapter 22 (Environment).

2. The Parties further recall that such provisions, exceptions, and exclusions include those applicable to:

   (a) maintaining and effectively enforcing domestic environmental law and policies;

   (b) recognising that it is inappropriate to waive or derogate from environmental law to encourage investment;

   (c) affirming commitments under multilateral environmental agreements;

   (d) supporting the transition to low carbon and climate resilient economies; and

   (e) encouraging investment in environmental goods and services.

Article 13.19
Corporate Social Responsibility

Each Party reaffirms the importance of encouraging investors operating within its territory or subject to its jurisdiction voluntarily to incorporate into their internal policies those internationally recognised standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party, such as the *OECD Guidelines for Multinational Enterprises* done at Paris on 21 June 1976 and the *United Nations Guiding Principles on Business and Human Rights* done at Geneva on 16 June 2011.

ANNEX 13A

CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 13.7 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

ANNEX 13B

EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Paragraph 1 of Article 13.9 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by paragraph 1 of Article 13.9 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

   (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

      (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

      (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;[24] and

      (iii) the character of the government action.

   (b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health,[25] safety, and the environment,

[24] For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

[25] For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances, and blood and blood-related products.

do not constitute indirect expropriations, except in rare circumstances.

ANNEX 13C

FOREIGN INVESTMENT FRAMEWORK

1. A decision or requirement under Australia's Foreign Investment Framework, which comprises Australia's *Foreign Investment Policy; Foreign Acquisitions and Takeovers Act 1975* (Cth); *Foreign Acquisitions and Takeovers Regulation 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2020* (Cth); *Financial Sector (Shareholdings) Act 1998* (Cth); and Ministerial Statements, shall not be subject to dispute settlement under Chapter 30 (Dispute Settlement).

2. A decision or requirement by the United Kingdom under the *National Security and Investment Act 2021* or on public interest grounds under Part 3 of the *Enterprise Act 2002*, shall not be subject to dispute settlement under Chapter 30 (Dispute Settlement).

CHAPTER 14

DIGITAL TRADE

Article 14.1
Definitions

For the purposes of this Chapter:

"cipher" or "cryptographic algorithm" means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext;

"commercial information and communication technology product" (commercial ICT product) means a product that is designed for commercial applications and whose intended function is information processing and communication by electronic means, including transmission and display, or electronic processing applied to determine or record physical phenomena, or to control physical processes;

"computing facilities" means computer servers and storage devices for processing or storing information for commercial use;

"covered person" means:

(a) a covered investment as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions);

(b) an investor of a Party as defined in Article 13.1 (Definitions – Investment); or

(c) a service supplier of a Party as defined in Article 8.1 (Definitions – Cross-Border Trade in Services),

but does not include a financial service supplier as defined in Article 9.1 (Definitions – Financial Services);

"cryptography" means the principles, means or methods for the transformation of data in order to conceal or disguise its content, prevent its undetected modification or prevent its unauthorised use, and is limited to the transformation of information using one or more secret parameters, for example, crypto variables or associated key management;

"electronic authentication" means an electronic process that enables the confirmation of:

(a) the electronic identification of a person; or

(b) the origin and integrity of data in electronic form;

"electronic invoicing" means the automated creation, exchange, and processing of requests for payments between suppliers and buyers using a structured digital format;

"electronic signature" means data in electronic form that is in, affixed to, or logically associated with, an electronic data message that may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message;[1]

"electronic transmission" or "transmitted electronically" means a transmission made using any electromagnetic means, including by photonic means;

"electronic trust service" means an electronic service which may include:

(a) the creation, verification, and validation of electronic signatures, electronic seals, electronic time stamps, electronic registered delivery services, and certificates related to those services;

(b) the creation, verification, and validation of certificates for website authentication; or

(c) the preservation of electronic signatures, seals, or certificates related to those services;

"encryption" means the conversion of data (plaintext) into a form that cannot be easily understood without subsequent re-conversion (ciphertext) through the use of a cryptographic algorithm and the appropriate cryptographic key;

"enterprise" means an enterprise as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions) and a branch of an enterprise;

"key" means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that a person with knowledge of the key can reproduce or reverse the operation, but a person without knowledge of the key cannot;

"personal information" means any information, including data, about an identified or identifiable natural person;

[1] For greater certainty, nothing in this provision prevents a Party from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the electronic data message has not been altered or verifying the identity of the signatory.

"trade administration documents" means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

"unsolicited commercial electronic message" means an electronic message[2] which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, via a public telecommunications service.[3]

Article 14.2
Scope and General Provisions

1. This Chapter applies to measures of a Party affecting trade enabled or facilitated by electronic means.

2. This Chapter does not apply to:

   (a) audio-visual services; or

   (b) government procurement, except for Article 14.5 (Conclusion of Contracts by Electronic Means) and 14.6 (Electronic Authentication and Electronic Trust Services).

3. Article 14.10 (Cross-Border Transfer of Information by Electronic Means) and Article 14.11 (Location of Computing Facilities) do not apply to a measure to the extent that the measure is not subject to an obligation in Chapter 8 (Cross-Border Trade in Services) or Chapter 13 (Investment) by reason of:

   (a) Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) or Article 13.13 (Non-Conforming Measures – Investment); or

   (b) any exception that is applicable to that obligation.

4. Article 14.10 (Cross-Border Transfer of Information by Electronic Means), Article 14.11 (Location of Computing Facilities), Article 14.18 (Source Code), and Article 14.19 (Commercial Information and Communication Technology Products that Use Cryptography) shall not apply to information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

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[2] For greater certainty, an electronic message includes electronic mail and text (Short Message Service) and multimedia (Multimedia Message Service) messages.

[3] For Australia, an unsolicited commercial electronic message does not include a commercial electronic message that is a designated commercial electronic message under the *Spam Act 2003* (Cth), as amended from time to time, or any successor legislation.

Article 14.3
Customs Duties

1. Neither Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of the other Party.

2. For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, including content transmitted electronically, provided that those taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 14.4
Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce 1996* done at New York on 12 June 1996 or the *United Nations Convention on the Use of Electronic Communications in International Contracts* done at New York on 23 November 2005.

2. Each Party shall endeavour to:

   (a) avoid any unnecessary regulatory burden on electronic transactions; and

   (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

3. The Parties recognise the importance of developing mechanisms to facilitate the use of electronic transferable records. To this end, in developing such mechanisms, the Parties shall endeavour to take into account, as appropriate, relevant model legislative texts developed and adopted by international bodies, such as the *UNCITRAL Model Law on Electronic Transferable Records 2017* done at New York on 13 July 2017.

Article 14.5
Conclusion of Contracts by Electronic Means

1. Except in circumstances otherwise provided for in its law, each Party shall ensure that:

   (a) its legal framework allows for contracts to be concluded by electronic means; and

(b) its law neither creates obstacles for the use of electronic contracts nor results in electronic contracts being deprived of legal effect, enforceability, or validity, solely on the ground that the contract has been made by electronic means.

2. The Parties recognise the importance of transparency for minimising barriers to the use of electronic contracts in digital trade. To that end, each Party shall:

(a) promptly publish the circumstances referred to in paragraph 1 on a single official website hosted by the central level of government; and

(b) review these circumstances with a view to reducing them over time.

Article 14.6
Electronic Authentication and Electronic Trust Services

1. Except in circumstances otherwise provided for under its law, neither Party shall deny the legal validity or effect, or admissibility as evidence in legal proceedings, of an electronic document or an electronic signature solely on the ground that it is in electronic form.

2. Neither Party shall adopt or maintain measures that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for that transaction; or

(b) prevent parties to an electronic transaction from being able to prove to judicial or administrative authorities that the use of electronic authentication in that transaction complies with the applicable legal requirements.

3. Notwithstanding paragraph 2, a Party may require that for a particular category of transactions, the method of electronic authentication is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent, and non-discriminatory and shall only relate to the specific characteristics of the category of transactions concerned.

4. The Parties shall encourage the use of interoperable electronic authentication and the mutual recognition of electronic authentication.

5. To the extent provided for in its law, a Party shall apply paragraphs 1 through 4 to other electronic processes or means of facilitating or enabling electronic transactions, such as electronic seals, electronic time stamps, electronic registered delivery services, or electronic trust services.

Article 14.7
Digital Identities

1. Recognising that cooperation between the Parties on digital identities will increase regional and global connectivity, and recognising that each Party may take different legal and technical approaches to digital identities, the Parties shall pursue the development of mechanisms to promote compatibility between their respective digital identity regimes.

2. To this end, the Parties shall endeavour to facilitate initiatives to promote such compatibility, which may include:

   (a) developing appropriate frameworks and common standards to foster technical interoperability between each Party's implementation of digital identities;

   (b) supporting the development of international frameworks on digital identity regimes;

   (c) implementing use cases for the mutual recognition of digital identities; and

   (d) exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation, security standards, and the promotion of the use of digital identities.

Article 14.8
Paperless Trading

1. Each Party shall endeavour to:

   (a) make trade administration documents available to the public in electronic form; and

   (b) accept a trade administration document submitted electronically as the legal equivalent of the paper version of that document.

2. The Parties shall cooperate bilaterally and in international fora, where appropriate, to promote acceptance of electronic versions of trade administration documents and on other matters related to paperless trading.

3. In developing initiatives concerning the use of paperless trading, the Parties shall endeavour to take into account the principles and guidelines of relevant international bodies.

Article 14.9
Electronic Invoicing

1. The Parties recognise the importance of electronic invoicing to increase the efficiency, accuracy, and reliability of commercial transactions. Each Party also recognises the benefits of ensuring that the systems used for electronic invoicing within its territory are interoperable with the systems used for electronic invoicing in the other Party's territory.

2. Each Party shall endeavour to ensure that the implementation of measures related to electronic invoicing in its territory supports cross-border interoperability between the Parties' electronic invoicing frameworks. To this end, the Parties shall take into account international frameworks when developing measures related to electronic invoicing.

3. The Parties recognise the economic importance of promoting the global adoption of interoperable electronic invoicing systems. To this end, the Parties shall endeavour to share best practices and collaborate on promoting the adoption of interoperable systems for electronic invoicing.

Article 14.10
Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Neither Party shall prohibit or restrict the cross-border transfer of information by electronic means, including personal information, if this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

   (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade; and

   (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

Article 14.11
Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including

requirements that seek to ensure the security and confidentiality of communications.

2. Neither Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

   (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade; and

   (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

Article 14.12
Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of users of digital trade and the contribution that this makes to enhancing consumer confidence in digital trade.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of digital trade. In the development of its legal framework for the protection of personal information, each Party shall take into account principles and guidelines of relevant international bodies, including collection limitation, data quality, purpose specification, use limitation, security safeguards, transparency, individual participation, and accountability.[4]

3. Each Party shall adopt non-discriminatory practices in protecting users of digital trade from personal information protection violations occurring within its jurisdiction.

4. Each Party shall publish information on the personal information protections it provides to users of digital trade, including how:

   (a) a natural person can pursue a remedy; and

   (b) an enterprise can comply with any legal requirements.

[4] For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as comprehensive privacy, personal information, or personal data protection laws, sector-specific laws covering data protection or privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to data protection or privacy.

5. Each Party shall encourage enterprises in its territory to publish, including on the Internet, their policies and procedures related to protection of personal information.

6. Recognising that the Parties may take different legal approaches to protecting personal information, each Party shall encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

Article 14.13
Open Government Data

1. For the purposes of this Article, government information means non-proprietary information, including data, held by the central level of government.

2. The Parties recognise that facilitating public access to and use of government information fosters economic and social development, competitiveness and innovation.

3. To the extent that a Party chooses to make government information available to the public, it shall endeavour to ensure:

   (a) that the information is appropriately anonymised, contains descriptive metadata, is in a machine-readable and open format, and can be searched, retrieved, used, reused, and redistributed; and

   (b) to the extent practicable, that the information is made available in a spatially enabled format with reliable, easy to use, and freely available application programming interfaces and is regularly updated.

4. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to and the use of government information that the Party has made public, with a view to enhancing and generating business and research opportunities, especially for SMEs.

Article 14.14
Data Innovation

1. The Parties recognise that digitalisation and the use of data in digital trade promote economic growth. To support the cross-border transfer of information by electronic means and promote data-driven innovation in digital trade, the Parties further recognise the need to create an environment that enables and supports, and is conducive to, experimentation and innovation, including through the use of regulatory sandboxes where applicable.

2. The Parties shall endeavour to support data innovation through:

   (a) collaborating on data-sharing projects, including projects involving researchers, academics and industry, using regulatory sandboxes as required to demonstrate the benefits of the cross-border transfer of information by electronic means;

   (b) cooperating on the development of policies and standards for data mobility, including consumer data portability; and

   (c) sharing research and industry practices related to data innovation.

Article 14.15
Open Internet Access

Subject to their applicable policies, laws, and regulations, the Parties recognise the benefits of consumers[5] in their territories having the ability to:

(a) access, distribute, and use services and applications of their choice available on the Internet, subject to reasonable, transparent, and non-discriminatory network management;

(b) connect devices of their choice to the Internet, provided that these devices do not harm the network; and

(c) access information on the network management practices of their Internet access service supplier.

Article 14.16
Online Consumer Protection

1. The Parties recognise the importance of transparent and effective measures that enhance consumer confidence and trust in digital trade.

[5] For the purposes of this Article, "consumer" means any natural or juridical person using the internet for personal, trade, business, or professional purposes.

2. Each Party shall maintain consumer protection laws and regulations that proscribe:

   (a) misleading, deceptive, and fraudulent commercial practices; and

   (b) unconscionable conduct or unfair commercial practices,

   that cause harm, or potential harm, to consumers engaged in digital trade.[6]

3. The Parties recognise the importance of, and where appropriate shall promote, cooperation between their respective national consumer protection agencies or other relevant bodies on activities aimed at online consumer protection.[7]

4. The Parties further recognise the importance of improving awareness of and providing access to consumer redress mechanisms to protect consumers engaged in digital trade, including for consumers of a Party transacting with suppliers of the other Party.

5. The Parties recognise the benefits of dispute resolution mechanisms in facilitating the resolution of disputes regarding electronic commerce transactions, including alternative dispute resolution mechanisms.

Article 14.17
Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

   (a) require a supplier of unsolicited commercial electronic messages to facilitate the ability of a recipient to prevent ongoing reception of those messages;

   (b) require the consent, as specified according to its laws and regulations, of recipients to receive commercial electronic messages; or

   (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made, and

[6] For the purposes of this Article, the term "engaged" includes the pre-transaction phase of online commercial activities.

[7] To this end, the Parties affirm that cooperation under Article 17.6 (Cooperation on Competition Policy and Consumer Protection – Competition Policy and Consumer Protection) includes cooperation with respect to online commercial activities.

contain the necessary information to enable recipients to request cessation free of charge and at any time.

3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

4. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 14.18
Source Code

1. Neither Party shall require the transfer of, or access to, source code[8] of software owned by a person of the other Party, as a condition for the import, distribution, sale, or use of that software, or of a product containing that software, in its territory.

2. This Article does not preclude a government agency, regulatory body, administrative tribunal, or judicial authority of a Party, or a designated conformity assessment body operating in the Party's territory, from requiring a person of the other Party to preserve and make available[9] the source code of software for an investigation, inspection, examination, enforcement action, or judicial or administrative proceeding, subject to safeguards against unauthorised disclosure.

3. Paragraph 1 does not apply to a remedy imposed, enforced, or adopted in accordance with a Party's law following an investigation, inspection, examination, enforcement action, or judicial or administrative proceeding.

4. Paragraph 1 does not apply to the voluntary transfer of, or granting of access to, source code by a person of the other Party on a commercial basis, such as in the context of a freely negotiated contract.

5. For greater certainty, nothing in paragraph 1 shall prevent a person of a Party from licensing its software on a free and open-source basis.

[8] For greater certainty, for the purposes of this Article, a reference to "source code" includes an algorithm embedded in the source code, but does not include the expression of the algorithm in any other form, including in prose.

[9] The Parties understand that this making available shall not be construed to negatively affect the status of the source code of software as a trade secret.

Article 14.19
Commercial Information and Communication Technology Products that Use Cryptography

1. Neither Party shall impose or maintain a technical regulation or conformity assessment procedure that requires a manufacturer or supplier of a commercial information and communication technology (ICT) product that uses cryptography,[10] as a condition of the manufacture, sale, distribution, import, or use of the ICT product,[11] to:

   (a) transfer or provide access to a particular technology, production process, or other information, for example, a private key or other secret parameter, algorithm specification, or other design detail, that is proprietary to the manufacturer or supplier and relates to the cryptography in the product to the Party or a person in the Party's territory;[12]

   (b) partner or otherwise cooperate with a person in the Party's territory in the development, manufacture, sale, distribution, import, or use of the ICT product; or

   (c) use or integrate a particular cipher or cryptographic algorithm.

2. This Article does not apply to:

   (a) a requirement that a Party adopts or maintains relating to access to networks, including user devices, that are owned or controlled by that Party, including those of central banks;

   (b) measures by a Party adopted or maintained pursuant to supervisory, investigatory, or examination authority relating to financial service suppliers or financial markets; or

   (c) the manufacture, sale, distribution, import, or use of the commercial ICT product by or for a Party.

3. For greater certainty, this Article shall not be construed to prevent a Party's law enforcement authorities from requiring service suppliers using encryption they control to provide, pursuant to that Party's legal procedures, access to encrypted and unencrypted communications.

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[10] For the purposes of this Article, a "commercial ICT product" is a good and, for greater certainty, does not include a financial instrument.

[11] For greater certainty, for the purposes of this Article, measures of a Party affecting trade enabled or facilitated by electronic means includes measures relating to the development, manufacture, sale, distribution, import, or use of ICT products.

[12] For greater certainty, this Article does not affect the rights and obligations of a Party under Article 14.18 (Source Code).

Article 14. 20
Cybersecurity

1. The Parties recognise that threats to cybersecurity undermine confidence in digital trade. The Parties further recognise the importance of:

   (a) workforce development in the area of cybersecurity, including possible initiatives relating to mutual recognition of qualifications, diversity, and equality; and

   (b) enhancing the cybersecurity capability of businesses, including SMEs, and enabling greater cybersecurity resilience within industry.

2. The Parties shall endeavour to:

   (a) build the capabilities of their respective national entities responsible for cybersecurity incident response, taking into account the evolving nature of cybersecurity threats;

   (b) strengthen existing collaboration mechanisms for cooperating to anticipate, identify, and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks, and use those mechanisms to swiftly address cybersecurity incidents; and

   (c) maintain a dialogue on matters related to cybersecurity, including for the sharing of information and experiences for awareness and best practices.

3. Given the evolving nature of cybersecurity threats, the Parties recognise that risk-based approaches may be more effective than prescriptive approaches in addressing those threats. Accordingly, where appropriate, each Party shall endeavour to employ, and shall encourage enterprises within its jurisdiction to use, risk-based approaches that rely on open and transparent cybersecurity standards and risk management best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events.

Article 14.21
Cooperation

1. Recognising the global nature of digital trade, the Parties shall endeavour to:

   (a) work together to address challenges for SMEs in the use of digital trade;

(b) exchange information and share experiences and best practices on laws, regulations, policies, enforcement, and compliance regarding digital trade, including:

(i) personal information protection;

(ii) online consumer protection;

(iii) unsolicited commercial electronic messages;

(iv) cybersecurity;

(v) electronic authentication and electronic trust services;

(vi) digital government; and

(vii) electronic contracts;

(c) exchange information and share views on consumer access to products and services offered online between the Parties;

(d) participate actively in multilateral fora, including the WTO, to promote the development of international frameworks for digital trade, including in relation to the development and adoption of relevant international standards;

(e) work together in areas of mutual interest relating to the development and application of standards and conformity assessment procedures with a view to facilitating digital trade;

(f) encourage development by the private sector of methods of self-regulation that foster digital trade, including codes of conduct, model contracts, guidelines, and compliance mechanisms;

(g) collaborate to improve opportunities for each Party's RegTech enterprises, including through their respective trade promotion agencies and regulators, and in relevant international fora; and

(h) facilitate participation by women in digital trade, acknowledging the objectives in Chapter 24 (Trade and Gender Equality).

CHAPTER 15

INTELLECTUAL PROPERTY

Section A
General Provisions

Article 15.1
Definitions

1. For the purposes of this Chapter:

"Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979;

"broadcasting" means the transmission by wire or wireless means, including by satellite, for public reception of sounds or of images and sounds or of the representations thereof, and including transmission of encrypted signals if the means for decrypting are provided to the public by the transmitting broadcasting organisation or with its consent, and "broadcast" shall be construed accordingly;

"Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), done at Budapest on 28 April 1977, as amended on 26 September 1980;

"Declaration on TRIPS and Public Health" means the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), adopted on 14 November 2001;

"fixation" means the embodiment of sounds or moving images or representations thereof, in each case, from which they can be perceived, reproduced or communicated through a device;

"Hague Agreement" means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, done at Geneva on 2 July 1999;

"intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

"Locarno Agreement" means the Locarno Agreement Establishing an International Classification for Industrial Designs, done at Locarno on 8 October 1968, as amended on 28 September 1979;

"Madrid Protocol" means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, done at Madrid on 27 June 1989;

"Marrakesh Treaty" means the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, done at Marrakesh on 27 June 2013;

"Nice Agreement" means the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957;

"Paris Convention" means the Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883 as revised at Stockholm on 14 July 1967;

"PCT" means the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979, and modified on 3 February 1984 and on 3 October 2001;

"performers" means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore, and "performances" shall be construed accordingly;

"phonogram" means the fixation of the sounds of a performance or of other sounds other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

"PLT" means the Patent Law Treaty adopted by the WIPO Diplomatic Conference, done at Geneva on 1 June 2000;

"producer of a phonogram" means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

"rights management information" means:

(a) information that identifies a work, performance, or phonogram, the author, performer of the performance, the producer of a phonogram, or any other right holder with respect to the work, performance, or phonogram;

(b) information about the terms and conditions of use of the work, performance, or phonogram; or

(c) any numbers or codes that represent the information described in subparagraphs (a) and (b),

when any of these items of information is attached to a copy of the work, performance or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram to the public;

with respect to copyright and related rights, "right to authorise or prohibit" refers to exclusive rights;

"Rome Convention" means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961;

"Singapore Treaty" means the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006;

"TIPRIC" means the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989;

"trade secret" means information that:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

"trade secret holder" means any person lawfully in control of a trade secret;

"UPOV 1991" means the International Convention for the Protection of New Varieties of Plants, done at Paris on 2 December 1961, as revised at Geneva on 19 March 1991;

"WCT" means the WIPO Copyright Treaty, done at Geneva on 20 December 1996;

"WIPO" means the World Intellectual Property Organization;

for greater certainty, "work" includes a cinematographic work, photographic work, and computer program; and

"WPPT" means the WIPO Performances and Phonograms Treaty, done at Geneva on 20 December 1996.

2. For the purposes of Article 15.8 (National Treatment) and Article 15.31 (Procedures for the Recognition and Protection of Geographical Indications):

"a national" means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the

agreements listed in Article 15.7 (International Agreements) or the TRIPS Agreement.

Article 15.2
Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 15.3
Principles

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that those measures are consistent with the provisions of this Chapter.

2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 15.4
Understandings in Respect of this Chapter

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture, and the arts; and

(c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users, and the general public.

Article 15.5
Nature and Scope of Obligations

1. The Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement.

2. The Parties recognise the importance of adequate, effective and balanced protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

3. Each Party shall give effect to this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

Article 15.6
Understandings Regarding Certain Public Health Measures

1. The Parties affirm the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:

   (a) the Parties affirm the right to fully use the flexibilities as duly recognised in the Declaration on TRIPS and Public Health;

   (b) the Parties agree that this Chapter does not and should not prevent a Party from taking measures to protect public health; and

   (c) the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.

2. In recognition of the Parties' commitment to access to medicines and public health, this Chapter does not and should not prevent the effective utilisation of Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

3. The Parties recognise the importance of contributing to the international efforts to implement Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

Article 15.7
International Agreements

Each Party affirms that it has ratified or acceded to the following agreements:

(a) TRIPS Agreement;

(b) Paris Convention;

(c) Berne Convention;

(d) Rome Convention;

(e) WCT;

(f) WPPT;

(g) Marrakesh Treaty;

(h) Madrid Protocol;

(i) Nice Agreement;

(j) Singapore Treaty;

(k) Budapest Treaty;

(l) UPOV 1991;

(m) PCT; and

(n) PLT.

Article 15.8
National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection[1] of intellectual property rights subject to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT, and the TIPRIC. In respect of performers, producers

[1] For the purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter.

of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided under this Agreement.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that this derogation is:

   (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

   (b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 15.9
Transparency

1. Each Party shall endeavour to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

2. Each Party shall, subject to its law, endeavour to publish online information that it makes public concerning applications for trade marks, geographical indications, registered designs, patents, and plant variety rights.[2, 3]

3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trade marks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.[4]

Article 15.10
Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a

[2] For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 15.27 (Electronic Trade Marks Systems).
[3] For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.
[4] For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted intellectual property right.

Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Unless otherwise provided in this Chapter, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.

3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Article 15.11
Exhaustion of Intellectual Property Rights

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

Article 15.12
Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions

The Parties affirm their commitment to work together through discussion and by the exchange of information at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

Section B
Cooperation

Article 15.13
Contact Points for Cooperation

Each Party may designate and notify the other Party of one or more contact points for the purpose of cooperation under this Section.

Article 15.14
Cooperation

The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, including through appropriate coordination, and exchange of information between the relevant agencies of the Parties. The areas of cooperation may include:

(a) the establishment of arrangements between each Party's respective collecting societies;

(b) engagement with SMEs regarding the use, protection and enforcement of intellectual property rights which may include public-private engagement with SMEs;

(c) education and awareness relating to the protection and enforcement of intellectual property rights;

(d) cooperation on aspects of intellectual property policy and law with the aim of supporting the development and deployment of environmental and low-emissions technologies, clean and renewable energy and enabling infrastructure, and energy-efficient goods and services;

(e) best practices, projects, and programmes aimed at reducing intellectual property rights infringement, including:

(i) coordination to prevent exports of counterfeit goods, including with other countries;

(ii) sharing of experience of intellectual property rights enforcement between customs, law enforcement and judicial bodies;

(iii) public education and awareness activities on the impact of intellectual property infringement; and

(iv) voluntary stakeholder initiatives to reduce intellectual property infringement, including over the internet; and

(f) activities for improving the international intellectual property regulatory framework.

Article 15.15
Committee on Intellectual Property Rights

1. The Parties hereby establish a Committee on Intellectual Property Rights ("IPR Committee"), composed of government representatives of each Party.

2. The IPR Committee shall consider matters relating to the implementation and operation of this Chapter, including consultations and reviews under Articles 15.32 (System and Standard of Protection for Geographical Indications), 15.33 (Protection of Geographical Indications), and 15.34 (Consultations on Geographical Indications).

3. The IPR Committee shall:

(a) exchange information, pertaining to intellectual property rights matters, including how intellectual property protection contributes to innovation, creativity, economic growth, and employment, and this may include information relating to:

(i) developments in domestic and international intellectual property law and policy;

(ii) economic benefits related to trade and other analysis of the contributions arising from the protection and enforcement of intellectual property rights;

(iii) intellectual property issues particularly relevant to SMEs including affordable and accessible justice; science, technology, and innovation activities; and to the generation, transfer, and dissemination of technology;

(iv) approaches for reducing the infringement of intellectual property rights, as well as effective strategies for removing the underlying incentives for infringement; and

(v) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO;

(b) promote collaborative operations in customs and exchange of best practices;

(c) report its findings and the outcomes of its discussions to the Joint Committee; and

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

4. The IPR Committee shall, in relation to geographical indications:

(a) enter into consultations and conduct reviews pursuant to Articles 15.32 (System and Standard of Protection for Geographical Indications), 15.33 (Protection of Geographical Indications), and 15.34 (Consultations on Geographical Indications);

(b) report the outcomes of those consultations and reviews to the Joint Committee;

(c) monitor the implementation of amendments to this Agreement, pursuant to Section D (Geographical Indications); and

(d) provide a forum for coordination and exchange of views on issues related to Section D (Geographical Indications).

5. The IPR Committee shall meet as necessary to carry out its functions pursuant to Articles 15.32 (System and Standard of Protection for Geographical Indications), 15.33 (Protection of Geographical Indications), and 15.34 (Consultations on Geographical Indications); and otherwise shall meet within one year after the date of entry into force of this Agreement and thereafter as agreed by the Parties.

Article 15.16
Patent Cooperation and Work Sharing

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices to the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavour to cooperate between their respective patent offices to facilitate the sharing and use of search and examination work of the Parties. This may include:

(a) making search and examination results available to the patent office of the other Party;[5] and

(b) exchanging information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

Article 15.17
Public Domain

The Parties recognise the importance of a rich and accessible public domain.

[5] The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

Article 15.18
Cooperation in the Area of Traditional Knowledge Associated with Genetic Resources

1. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.

2. The Parties shall endeavour to pursue quality patent examination, which may include:

   (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;

   (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources; and

   (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources.

Article 15.19
Cooperation on Request

Cooperation activities undertaken under this Chapter are subject to the availability of resources, and on request, and on terms and conditions mutually decided upon between the Parties.

Section C
Trade Marks

Article 15.20
Types of Signs Registrable as Trade Marks

Neither Party shall require as a condition of registration that a sign be visually perceptible. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trade mark.

Article 15.21
Collective and Certification Marks

Each Party shall provide that trade marks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its laws and regulations, provided that those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trade mark system.[6]

Article 15.22
Rights Conferred

Each Party shall provide that the owner of a registered trade mark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trade mark is registered where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of each Party making rights available on the basis of use.

Article 15.23
Exceptions

A Party may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interests of the owner of the trade mark and of third parties.

Article 15.24
Well-Known Trade Marks

Each Party shall provide for the protection of well-known trade marks as referred to in Article 6*bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO, 20 to 29 September 1999.

[6] Any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of those means.

Article 15.25
Procedural Aspects of Examination, Opposition and Cancellation

Each Party shall provide a system for the examination and registration of trade marks which includes among other things:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trade mark;

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trade mark;

(c) providing an opportunity to oppose the registration of a trade mark and an opportunity to seek cancellation[7] of a trade mark through, at a minimum, administrative procedures; and

(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

Article 15.26
Bad Faith Applications

Each Party shall provide that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trade mark was, according to its laws and regulations, made in bad faith.

Article 15.27
Electronic Trade Marks Systems

Further to Article 15.9 (Transparency), each Party shall provide:

(a) a system for the electronic application for, and maintenance of, trade marks; and

(b) a publicly available electronic information system, including an online database, of trade mark applications and of registered trade marks.

[7] For greater certainty, cancellation for the purposes of this Section may be implemented through invalidation or revocation proceedings.

Article 15.28
Term of Protection for Trade Marks

Each Party shall provide that initial registration and each renewal of registration of a trade mark is for a term of no less than 10 years.

Article 15.29
Efforts toward the Harmonisation of Trade Mark Systems

The Parties recognise the importance of reducing differences in law and practice between the Parties' respective systems for the protection of trade marks. In addition, each Party shall endeavour to participate in international trade mark harmonisation efforts, including the WIPO fora dealing with reform and development of the international trade mark system.

Article 15.30
Domain Names

1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the Parties recognise the benefits of appropriate remedies being available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trade mark.

2. The Parties understand that those remedies may, but need not, include, among other things; revocation, cancellation, transfer, damages, or injunctive relief.

Section D
Geographical Indications

Article 15.31
Procedures for the Recognition and Protection of Geographical Indications

1. The Parties recognise that geographical indications may be protected through a trade mark or *sui generis* system, or other legal means.

2. In providing recognition and protection for geographical indications each Party shall:

   (a) provide transparent recognition and protection procedures which are readily available and understandable to the public;

(b) accept applications or petitions for recognition and protection without requiring intercession by a Party on behalf of its nationals;

(c) provide an administrative process to verify that a term being proposed for protection meets the relevant requirements as set out in the laws and regulations of that Party;

(d) publish the geographical indication proposed for recognition and protection;

(e) provide procedures to object to recognition and protection and for recognition and protection to be refused or otherwise not afforded. The grounds of objection shall include the following:

(i) the proposed geographical indication conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good; or

(ii) the proposed geographical indication is the term customary in common language as the common name for the good concerned in the territory of that Party; and

(f) provide procedures for the cancellation[8] or invalidation of recognition and protection.

Article 15.32
System and Standard of Protection for Geographical Indications

1. If Australia enters into an international agreement with a non-party that:

(a) enters into force after the date this Agreement is signed by both Parties; and

(b) includes obligations[9] concerning a system or standard of protection for geographical indications for spirits, agricultural products or foodstuffs that is different to that in effect in Australia upon entry into force of this Agreement, that system or standard being "a new standard of protection",[10]

[8] For greater certainty, cancellation for the purposes of this Section may be implemented through nullification or revocation proceedings.
[9] For greater certainty, "obligations" in the relevant international agreement shall be read to include any limitations or exceptions that may apply to those obligations under that international agreement and does not refer to obligations in respect of individual geographical indications of the non-party.
[10] For the purposes of this Section, "protection" shall include, matters affecting the availability, acquisition, scope, maintenance, and enforcement of geographical indications as well as those matters affecting the use of geographical indications specifically addressed in this Agreement.

the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of the non-party agreement and no later than four months after the date of that event, to review this Section with a view to amending this Agreement so that no less favourable treatment is applied under this Section in relation to the protection of geographical indications. That review shall be undertaken through the IPR Committee pursuant to Article 15.15 (Committee on Intellectual Property Rights).

2. If this Agreement had not yet entered into force by the date the Parties would otherwise have been required to enter into consultations pursuant to paragraph 1, the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement, and no later than four months after the date of that event, to review this Section with a view to amending this Agreement so that no less favourable treatment is applied under this Section in relation to the protection of geographical indications. That review shall be undertaken through the IPR Committee pursuant to Article 15.15 Committee on Intellectual Property Rights).

Article 15.33
Protection of Geographical Indications

If Australia enters into an international agreement with a non-party that enters into force after the date this Agreement is signed by both Parties, and that protects specific geographical indications for spirits, agricultural products or foodstuffs to a new standard of protection then:

(a) the United Kingdom may provide to Australia a list of specific geographical indications for spirits, agricultural products and foodstuffs that it seeks to be protected in Australia;

(b) Australia shall examine and publish for opposition those geographical indications under its domestic requirements as soon as reasonably practicable following receipt of the United Kingdom's list;

(c) in accordance with this Section, and subject to those geographical indications satisfying Australia's domestic requirements for the protection of a geographical indication to the new standard of protection, Australia shall protect those geographical indications to the new standard of protection; and

(d) the Parties shall then enter into consultations as soon as reasonably practicable following Australia's examination and objections process relating to the list of United Kingdom geographical indications under its domestic requirements and no later than four months after the date of that event, to consider amendments to this Agreement, with a view to including a list in an Annex to this Agreement to indicate the United Kingdom geographical indications which are protected in

Australia. That review shall be undertaken through the IPR Committee pursuant to Article 15.15 (Committee on Intellectual Property Rights).

Article 15.34
Consultations on Geographical Indications

If, no later than two years following the date of entry into force of this Agreement, an agreement meeting the criteria described in Article 15.32 (System and Standard of Protection for Geographical Indications) has not entered into force, the Parties shall review this Section with a view to considering further provisions governing the protection or recognition of geographical indications. Such a review shall consider the Parties' interests and sensitivities concerning the protection of geographical indications for spirits, agricultural products, and foodstuffs. That review may be undertaken through the IPR Committee pursuant to Article 15.15 (Committee on Intellectual Property Rights).

Article 15.35
Amendments Relating to Geographical Indications

Amendments relating to geographical indications shall enter into force in accordance with Article 32.2 (Amendments – Final Provisions).

Section E
Patents and Data

Article 15.36
Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

   (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing for these purposes that product;

   (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 15.37
Patentable Subject Matter

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.[11]

2. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.

3. A Party may also exclude from patentability:

   (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

   (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

Article 15.38
Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that those exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 15.39
Experimental Use

Without limiting Article 15.38 (Exceptions), each Party shall provide that any person may do an act that would otherwise infringe a patent if the act is done for experimental purposes relating to the subject matter of a patented invention.

[11] For the purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful" respectively.

Article 15.40
Regulatory Review Exception

Without prejudice to the scope of, and consistent with, Article 15.38 (Exceptions), each Party:

(a) shall provide that a third person may do an act that would otherwise infringe a patent with respect to a pharmaceutical product invention if the act is done for purposes connected with obtaining regulatory approval[12] in that Party or another country or both; and

(b) may provide that a third person may do an act that would otherwise infringe a patent with respect to all other types of invention if the act is done for purposes connected with obtaining regulatory approval in that Party or another country or both.

Article 15.41
Other Use Without Authorisation of the Right Holder

The Parties understand that nothing in this Chapter shall limit a Party's rights and obligations under the TRIPS Agreement to authorise use of a patent.

Article 15.42
Patent Filing

Each Party shall provide that if an invention is made independently by more than one inventor, and separate applications claiming that invention are filed with, or for, the relevant authority of the Party, that Party shall grant the patent on the application that is patentable and that has the earliest filing date or, if applicable, priority date, unless that application has, prior to publication,[13] been withdrawn, abandoned or refused.

Article 15.43
Amendments, Corrections and Observations

1. Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application.

[12] For the purpose of Article 15.40(a), a party may treat "regulatory approval" to mean "marketing approval".

[13] For greater certainty, a Party may grant the patent to the subsequent application that is patentable, if an earlier application has been withdrawn, abandoned, or refused, or is not prior art against the subsequent application.

2. Each Party shall not revoke or invalidate a patent, either totally or in part, without the patent owner being given the opportunity to make observations on the intended revocation or invalidation, and to make amendments and corrections where permitted under a Party's law within a reasonable time limit.

3. A Party may provide that amendments made pursuant to paragraph 1 or 2 do not go beyond the scope of the disclosure of the invention, as of the filing date.

Article 15.44
Publication of Patent Applications

1. Recognising the benefits of transparency in the patent system, each Party shall publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.

2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.

3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

Article 15.45
Information Relating to Published Patent Applications and Granted Patents

For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:

(a) search and examination results, including details of, or information related to, relevant prior art searches;

(b) as appropriate, non-confidential communications from applicants; and

(c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

Article 15.46
Conditions on Patent Applicants

Each Party shall require an applicant for a patent to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Article 15.47
Extension of the Duration of Rights Conferred by a Patent

1. The Parties recognise that pharmaceutical products protected by a patent in their respective territories may be subject to an administrative authorisation procedure before being put on their respective markets. With respect to a pharmaceutical product[14] that is subject to a patent, each Party shall make available either:

   (a) an adjustment of the patent term; or

   (b) a period of additional *sui generis* protection conferring the rights conferred by the patent,

   to compensate the patent owner for reduction[15] of the effective patent term as a result of the marketing approval process.

2. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions, limitations, waivers and exceptions provided that the Party continues to give effect to this Article.

Section F
Undisclosed Test or Other Data

Article 15.48
Protection of Undisclosed Test or Other Data for Agricultural Chemical Products

If a Party requires, as a condition for granting marketing approval for an agricultural chemical product that utilises a new active substance, the submission of undisclosed test or other data, that Party shall not permit third persons, without the consent of the person that previously submitted that information, to place on the market the same or a similar product on the basis of:

[14] For the purpose of this Article, a Party may treat "pharmaceutical product" as "pharmaceutical substance", as provided in its relevant law.
[15] For the purposes of this Article, a Party may treat "reduction" as "unreasonable curtailment".

(a) that information; or

(b) the marketing approval granted to the person that submitted that information,

for at least 10 years from the date of marketing approval of the previously approved agricultural chemical product; such date to be determined in accordance with each Party's law.[16] [17]

Article 15.49
Protection of Undisclosed Test or Other Data for Pharmaceutical Products

1. If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning the safety or efficacy or quality of the product, that Party shall not permit third persons, without the consent of the person that previously submitted that information, to place on the market the same or a similar[18] product on the basis of:

   (a) that information; or

   (b) the marketing approval granted to the person that submitted that information,

   for at least five years from the date of marketing approval of the previously approved pharmaceutical product, such date to be determined in accordance with each Party's law.

2. For the purposes of this Article, a new pharmaceutical product is one that does not consist of or contain an active substance that has previously been approved for marketing in the Party.[19]

[16] Nothing in this Article limits a Party from establishing conditions, limitations or exceptions when implementing the obligations set forth in this Article, provided that those conditions, limitations or exceptions are consistent with this Chapter.
[17] Each Party may determine what constitutes an "agricultural chemical product" in accordance with its law.
[18] For greater certainty, for the purposes of this Section, a pharmaceutical product is "similar" to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant's request for that approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety or efficacy or quality of the previously approved pharmaceutical product, or the prior approval of that previously approved product.
[19] Nothing in this Article limits a Party from establishing conditions, limitations or exceptions when implementing the obligations set forth in this Article, provided that those conditions, limitations or exceptions are consistent with this Chapter.

Section G
Registered Industrial Designs

Article 15.50
Protection of Registered Industrial Designs

1. Each Party shall provide for the protection of independently created registered industrial designs that are new or original. This protection shall confer an exclusive right upon their holders in accordance with this Article.

2. A Party may provide limited exceptions to the protection of registered industrial designs in a manner consistent with Article 25 and paragraph 2 of Article 26 of the TRIPS Agreement.

3. Each Party shall ensure that an owner of a protected registered industrial design has at least the right to prevent third parties not having the owner's consent from making, offering for sale, selling, importing, or using articles bearing or embodying a design which is a copy, or substantially a copy, of the protected registered industrial design when such acts are undertaken for commercial purposes.

Article 15.51
Duration of Protection

Each Party shall ensure that the total term of protection available for registered designs is no less than 10 years.

Article 15.52
Multiple Design Applications

Each Party shall provide a system for the registration of industrial designs which allows for two or more designs to be registered through the filing of one application.

Article 15.53
Improving Industrial Design Systems

The Parties recognise the importance of improving the quality and efficiency of their respective industrial design registration systems.

Article 15.54
International Classification System for Industrial Designs

Each Party shall endeavour to use a classification system for industrial designs that is consistent with the Locarno Agreement.

Article 15.55
International Registration of Industrial Designs

Each Party shall make all reasonable efforts to accede to the Hague Agreement, if it is not already party to it.

Section H
Copyright and Related Rights

Article 15.56
Authors

1. Each Party shall provide authors with the exclusive right to authorise or prohibit:

   (a) the reproduction in any manner or form, in whole or in part, of their works;

   (b) the distribution to the public, by sale or otherwise, of the original and copies[20] of their works;

   (c) the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

   (d) the commercial rental[21] to the public of their works.

2. For the purposes of this Article, "communication to the public" shall be construed in accordance with Article 8 of the WCT.

[20] For the purposes of this Article, the expressions "copies" and "original and copies" refer exclusively to fixed copies that can be put into circulation as tangible objects.
[21] A Party may satisfy this obligation by complying with Article 7 of the WCT.

Article 15.57
Performers

1. Each Party shall provide performers with the exclusive right to authorise or prohibit:

   (a) the fixation of their unfixed performances;

   (b) the reproduction by any means and in any form, in whole or in part, of fixations of their performances;

   (c) the distribution to the public, by sale or otherwise, of the original and copies of their performances fixed in phonograms;

   (d) the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

   (e) the broadcasting and the communication to the public of their unfixed performances except where the performance is itself already a broadcast performance; and

   (f) the commercial rental to the public of the originals and copies of their performances fixed in phonograms even after distribution of them by, or pursuant to authorisation by, the performer.

2. For the purposes of this Article, "communication to the public" means the transmission to the public by any medium, other than by broadcasting.[22]

Article 15.58
Producers of Phonograms

Each Party shall provide producers of phonograms with the exclusive right to authorise or prohibit:

(a) the reproduction in any manner or form, in whole or in part, of their phonograms;

(b) the distribution to the public, by sale or otherwise, of the original or copies of their phonograms;

[22] For the purpose of this Article, "communication to the public" does not include the making available to the public of fixations of performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental to the public of the original and copies of their phonograms, even after distribution of them by, or pursuant to authorisation by the producer of the phonogram.

Article 15.59
Broadcasting Organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts;

(b) the reproduction in any manner or form, in whole or in part, of fixations of their broadcasts; and

(c) the rebroadcasting of their broadcasts.

Article 15.60
Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes

The Parties agree to discuss measures to ensure adequate remuneration for performers and producers of phonograms when phonograms published for commercial purposes are used for broadcasting or for any communication to the public.

Article 15.61
Artist's Resale Right

1. Each Party shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. Each Party may determine the procedure for collection of the royalty, its amount and the criteria for the works, resales and authors eligible to receive the royalty under its law.

3. The Parties shall enter into consultations to conclude, as soon as reasonably practicable after entry into force of this Agreement, reciprocal arrangements

for authors of a Party to receive royalties from eligible resales of works referred to in paragraph 1 in the territory of the other Party. The Parties shall endeavour to facilitate the participation of relevant stakeholders in such consultations, including collective management organisations responsible for the collection and distribution of the resale royalty, and other relevant art sector stakeholders.[23]

Article 15.62
Limitations and Exceptions

1. With respect to works, performances, and phonograms, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article is without prejudice to the limitations and exceptions to any rights permitted by the TRIPS Agreement, the Berne Convention, the Rome Convention, the WCT, or the WPPT.

Article 15.63
Balance in Copyright and Related Rights Systems

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 15.62 (Limitations and Exceptions), including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism, comment, news reporting, teaching, scholarship, research, and other similar purposes, and facilitating access to published works for people with disability.[24]

Article 15.64
Term of Protection

1. Each Party shall provide that the rights of an author of a work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after the author's death.

[23] The Parties recognise that arrangements between relevant collective management organisations in Australia and the United Kingdom may be necessary to facilitate reciprocal arrangements for authors of a Party to receive royalties from eligible resales of works referred to in paragraph 1 in the territory of the other Party.

[24] For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 15.62 (Limitations and Exceptions).

2. In the case of a work of joint authorship, each Party shall provide that the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. Notwithstanding paragraphs 1 and 2, where the term of protection of a work is not determined by reference to the life of a natural person, each Party shall provide that the term of protection shall run for 70 years from the creation of the work or, if lawfully made available to the public within 50 years from creation, 70 years from the first such making available.[25]

4. Each Party shall provide that the rights of broadcasting organisations shall run for 50 years from the first transmission of a broadcast.

5. Each Party shall provide that the rights of performers for their performances in phonograms shall run for 50 years from fixation in phonogram of the performance or, if lawfully made available to the public during this time, 70 years from the first such making available.[26]

6. Each Party shall provide that the rights of producers of phonograms shall run for 50 years from the fixation in phonogram being made or, if lawfully made available to the public during this time, 70 years from the first such making available. Each Party may adopt effective measures to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

7. Each Party shall provide that the terms laid down in this Article shall be calculated from 1 January of the year following the event.

8. Each Party may provide for longer terms of protection than those provided for in this Article.

9. For greater certainty, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory. A Party shall not be required to extend the term of protection for subject matter that already exists on the date of entry into force of this Agreement.

Article 15.65
Collective Management Organisations

1. The Parties shall endeavour to promote cooperation between the collective management organisations established in their respective territories for the purpose of facilitating licensing of content between the Parties, as well as

[25] For the purposes of this Article, "making available to the public" shall be determined based on a Party's law.
[26] The obligations in paragraphs 5 and 6 do not apply to phonograms which came into existence before 1 January 1994.

encouraging the transfer of rights revenue between the respective collective management organisations for the use of such content.

2. The Parties shall endeavour to promote the transparency of collective management organisations established in their respective territories, particularly in relation to the collection of rights revenues, the deductions they make from the rights revenue collected, their distribution policies, and the repertoire they represent.

3. Each Party shall endeavour to promote the non-discriminatory treatment by collective management organisations of rights holders these organisations represent either directly or via another collective management organisation.

4. Each Party shall encourage collective management organisations established in its territory to regularly, diligently and accurately distribute amounts due to represented collective management organisations in a timely manner.

Article 15.66
Technological Protection Measures

1. Each Party shall provide adequate legal protection and effective legal remedies against the unauthorised circumvention of effective technological measures, where carried out knowingly or with reasonable grounds to know.

2. Each Party shall provide adequate legal protection and effective legal remedies against the manufacture, import, distribution, sale, rental, offer or advertisement for sale or rental, of devices, products or components or the provision of services which:

   (a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;

   (b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or

   (c) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

3. The obligations in this Article do not apply in respect of effective technological measures applied to computer programs.

4. Each Party may provide for exceptions and limitations to measures implementing paragraphs 1 and 2 in accordance with its law and the relevant international agreements referred to in Article 15.7 (International Agreements) provided that they do not significantly impair the adequacy of

legal protection of those measures and the effectiveness of legal remedies against the acts prescribed in paragraphs 1 and 2.

5. For the purposes of this Article, "effective technological measures" means any technology, device, or component which, in the normal course of its operation, is used by authors, performers, or producers of phonograms in connection with the exercise of their rights under this Section and which restricts acts, in respect of their works, performances, or phonograms, that are not authorised by the authors, performers, or producers of phonograms.

Article 15.67
Rights Management Information

1. Each Party shall provide adequate and effective legal remedies against any person knowingly performing, without authority, any of the following acts knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of protected works, performances or phonograms:

   (a) to remove or alter any electronic rights management information; or

   (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of protected works, performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

2. A Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraph 1. The obligations set forth in this Article are without prejudice to the limitations and exceptions to infringement of copyright and related rights under a Party's law.

Article 15.68
Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement

Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.

Section I
Trade Secrets

Article 15.69
Trade Secrets

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention, each Party shall ensure that trade secret holders have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.

2. Subject to paragraphs 3 and 4, each Party shall provide that at least each of the following shall be considered contrary to honest commercial practices:

   (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

   (b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

      (i) having acquired the trade secret in a manner referred to in subparagraph (a);

      (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or

      (iii) being in breach of a contractual or any other duty to limit the use of the trade secret;

   (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known[27] that the trade secret had been obtained directly or indirectly from another person who was disclosing the trade secret in a manner referred to in subparagraph (b).

3. Neither Party shall provide that the acquisition, use and disclosure of a trade secret is considered contrary to honest commercial practices:

[27] For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

(a) if the trade secret is obtained through:

(i) independent discovery or creation;

(ii) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information; or

(iii) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the Party's law; or

(b) if the acquisition, use or disclosure is required or permitted by the Party's law.

4. Each Party may provide for limited exceptions and limitations to the rights of trade secret holders in circumstances where the legitimate interests of third parties, the general public or the Party outweigh the legitimate interests of trade secret holders, such as in the following cases:

(a) for exercising the right to freedom of expression and information, including respect for the freedom and pluralism of the media; and

(b) for revealing misconduct, wrongdoing or illegal activity, provided that the person acquiring, using, and disclosing the trade secret did so for the purpose of protecting the general public interest.

Section J
Enforcement

Sub-Section J.1
General Obligations

Article 15.70
General Obligations

1. Each Party shall provide for the procedures set out in this Section in respect of the enforcement of intellectual property rights.

2. Each Party shall ensure that the procedures provided for in this Section shall:

(a) be fair and equitable;

(b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;

(c) permit effective action against any act of infringement, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements;

(d) be applied in such a manner as to avoid the creation of barriers to legitimate trade, including electronic commerce, and to provide for safeguards against their abuse;

(e) be implemented in a manner consistent with the Party's law concerning freedom of expression, fair process, and privacy; and

(f) be implemented in a manner that takes into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interest of third parties.

3. The Parties recognise the importance of ensuring that right holders[28] have access to justice and each Party shall ensure that it has in place a judicial system and alternative dispute resolution mechanisms to allow right holders to enforce their intellectual property rights.

4. This Section does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws and regulations in general, nor does it affect the capacity of each Party to enforce its laws and regulations in general; or

(b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of laws and regulations in general.

Sub-Section J.2
Enforcement – Civil Remedies

Article 15.71
Availability of Civil Enforcement

Each Party shall make available to a right holder civil judicial procedures concerning the enforcement of any intellectual property right covered under this Chapter.

[28] For greater certainty, references in this Section to a right holder shall include a trade secret holder; and do not limit the persons a Party may permit to enforce intellectual property rights, in accordance with its law.

Article 15.72
Measures for Preserving Evidence

1. Each Party shall provide that its judicial authorities have the authority, on application by a person who has presented reasonably available evidence sufficient to support their claim that their intellectual property right has been infringed or is about to be infringed, to order prompt and effective provisional measures to preserve relevant evidence in relation to the alleged infringement, subject to appropriate safeguards and the protection of confidential information.

2. Each Party shall provide that its judicial authorities have the authority to adopt provisional measures, where appropriate, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed, in the absence of a party.

3. Those provisional measures may include the detailed description or the physical seizure of:

   (a) suspected infringing goods;

   (b) materials and implements predominantly used in the production or distribution of these goods; or

   (c) documentary evidence relevant to the infringement.

Article 15.73
Provisional and Precautionary Measures

1. Each Party shall provide that its judicial authorities have the authority to, on request of the applicant:

   (a) issue against the alleged infringer or, where appropriate and subject to the Party's law, a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or forbid, on a provisional basis, the continuation of the alleged infringement of that right; and

   (b) order, where appropriate, the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

2. In the case of an alleged infringement, each Party shall provide that if the applicant demonstrates circumstances likely to endanger the recovery of

damages, its judicial authorities shall have the authority to order, subject to the Party's law, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

Article 15.74
Right to Information

1. Each Party shall provide that, during civil proceedings concerning an infringement of an intellectual property right and in response to a justified request of the applicant, the judicial authorities have the authority to order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by:

   (a) the infringer or an alleged infringer; and

   (b) any other person involved in the distribution and production of infringing goods or services on a commercial scale.

2. This Article applies without prejudice to other provisions in a Party's law governing privilege, the protection of confidentiality of information sources, or the processing of personal data.

Article 15.75
Injunctions

1. Each Party shall provide that where its judicial authorities have found an infringement of an intellectual property right, its judicial authorities have the authority to issue an injunction aimed at prohibiting or stopping the infringement.[29]

2. The injunction referred to in paragraph 1 shall be available against:

   (a) the infringer; and

   (b) where appropriate and subject to the Party's law, a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe the intellectual property right.

[29] The obligations in this section are without prejudice to the flexibilities available under Article 44.2 of the TRIPS Agreement.

Article 15.76
Corrective Measures

1. Each Party shall provide that, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, its judicial authorities have the authority to order that goods found to be infringing an intellectual property right are definitively removed from the channels of commerce, or destroyed. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce. Each Party shall also provide that its judicial authorities have the authority to also order, as appropriate, the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party shall provide that its judicial authorities have the authority to order that the measures referred to in paragraph 1 are to be carried out at the expense of the infringer.

Article 15.77
Damages

1. Each Party shall provide that its judicial authorities have the authority to order an infringer who, knowingly or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.

2. Each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 1, to pay the right holder the infringer's profits that are attributable to the infringement.

Article 15.78
Costs

Each Party shall provide that its judicial authorities have the authority to order, in accordance with its law, that court costs or fees and appropriate attorney fees and other expenses incurred by the successful party in legal proceedings concerning the infringement of intellectual property rights shall be borne by the unsuccessful party.[30]

[30] For greater certainty, nothing in this Article precludes a Party from providing that its judicial authorities have the authority to disallow costs that are unreasonably or unnecessarily incurred or that are disproportionate in amount.

Article 15.79
Safeguards

1. Each Party shall provide that its judicial authorities have the authority to require the applicant for a measure provided for in Article 15.72 (Measures for Preserving Evidence) or Article 15.73 (Provisional and Precautionary Measures) in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the person against whom a measure is sought and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.

2. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures with regard to intellectual property rights to provide to a person subject to that measure adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

3. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on a party, counsel, experts or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

Article 15.80
Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that those procedures conform to principles equivalent in substance to those set out in this Sub-Section.

Sub-Section J.3
Enforcement – Border Measures

Article 15.81
Border Measures

1. Each Party:

   (a) shall provide for applications to initiate procedures to suspend the release of, or to detain, suspected goods; and

   (b) may provide for applications in respect of other goods that are suspected of infringing intellectual property rights.

2. For the purposes of this Article:

   (a) "competent authorities" may include the appropriate judicial, administrative or law enforcement authorities under a Party's law;

   (b) "suspected goods" means goods under customs control that are suspected of infringing a trade mark or copyright, including counterfeit trade mark goods and pirated copyright goods;

   (c) "counterfeit trade mark goods" means any goods, including packaging, bearing without authorisation a trade mark that is identical to the trade mark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trade mark, and that thereby infringes the rights of the owner of the trade mark in question under the law of the Party providing the procedures under this Section; and

   (d) "pirated copyright goods" means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.

3. With respect to the initiation of the procedures provided for in paragraph 1 by a right holder, each Party shall provide that the relevant right holder is required:

   (a) to provide adequate evidence to satisfy the competent authorities that, pursuant to its law, there is *prima facie* an infringement of the right holder's intellectual property right; and

(b) to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognisable by its competent authorities.

4. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trade mark or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

5. A Party may provide that its competent authorities have the authority to inform the right holder of the names and addresses of the consignor, exporter, consignee or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods. This paragraph is without prejudice to a Party's law pertaining to privacy or confidential information, and applies if a Party's competent authorities have detained or suspended the release of suspected goods.

6. Each Party shall provide that its competent authorities have the authority to initiate border measures *ex officio* for imported goods and goods destined for export, without the need for a formal complaint from a third party or right holder, with respect to suspected goods. Each Party shall provide that its customs authorities use risk analysis to identify suspected goods, which may include random selection.

7. Each Party shall ensure that its competent authorities decide about granting or recording applications to suspend the release of suspected goods, within a reasonable period of time after the initiation of procedures described in paragraph 1.

8. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraphs 1 and 4, whether the suspected goods infringe an intellectual property right.[31] If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.

[31] A Party may comply with the obligation in this Article with respect to a determination that suspect goods under paragraph 5 infringe an intellectual property right through a determination that the suspect goods bear a false trade description.

9. Each Party shall provide that its competent authorities have the authority to order the destruction or disposal of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall provide that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

10. Each Party may provide that, where requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, including storage, handling, and any costs relating to the destruction or disposal of the goods.

11. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.

12. Each Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

13. There shall be no obligation to apply those procedures, as described in this Article, to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

Sub-Section J.4
Enforcement – Criminal Remedies

Article 15.82
Criminal Offences

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trade mark counterfeiting or copyright piracy on a commercial scale.

2. For the purpose of this Article, the term "on a commercial scale" includes at least:

   (a) acts carried out for commercial advantage or financial gain; and

(b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related right holder in relation to the marketplace.[32]

3. Each Party shall treat wilful importation or exportation of counterfeit trade mark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.[33]

4. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation[34] and domestic use, in the course of trade and on a commercial scale, of a label or packaging: [35]

(a) to which a trade mark has been applied without authorisation that is identical to, or cannot be distinguished from, a trade mark registered in its territory; and

(b) that is intended to be used in the course of trade on goods that are identical to goods for which that trade mark is registered.

5. With respect to the offences specified in this Article, each Party shall provide that criminal liability for aiding and abetting is available under its law. Each Party shall also provide that the offences specified in this Article are applicable in any free trade zones in a Party.

Article 15.83
Penalties

1. With respect to the offences specified in Article 15.82 (Criminal Offences), each Party shall provide for penalties that include imprisonment or monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.

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[32] The Parties agree that a Party may comply with paragraph (b) by addressing those significant acts under its criminal procedures and penalties for non-authorised uses of protected works, performances and phonograms in its law. The Parties also agree that a Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related right holder in relation to the marketplace.

[33] A Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trade mark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties.

[34] A Party may comply with its obligation relating to importation of labels or packaging through its law concerning distribution.

[35] A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trade mark offence.

2. Each Party shall provide that its judicial authorities have the authority to, in determining penalties, account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety.[36]

Article 15.84
Seizure, Forfeiture and Destruction

1. With respect to the offences specified in Article 15.82 (Criminal Offences), each Party shall provide the following:

   (a) its judicial or other competent authorities shall have the authority to order the seizure of suspected counterfeit trade mark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure;

   (b) its judicial authorities shall have the authority in accordance with that Party's law to order the forfeiture at least for serious offences, of assets derived from or obtained through the infringing activity;

   (c) its judicial authorities shall have the authority in accordance with that Party's law to order the forfeiture or destruction of:

      (i) all counterfeit trade mark goods or pirated copyright goods;

      (ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trade mark goods; and

      (iii) any other labels or packaging to which a counterfeit trade mark has been applied and that have been used in the commission of the offence; and

   (d) its judicial or other competent authorities shall have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil infringement proceedings.

[36] A Party may also account for those circumstances through a separate criminal offence.

2. With respect to forfeiture or destruction ordered in accordance with paragraph 1(c), each Party shall provide that:

   (a) in cases in which destruction of counterfeit trade mark goods or pirated copyright goods is not ordered, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder; and

   (b) in cases in which forfeiture or destruction is ordered, it shall occur without compensation of any kind to the offender.

3. With respect to the offences specified in Article 15.82 (Criminal Offences), a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

Article 15.85
***Ex Officio* Enforcement**

Each Party shall provide that its competent authorities have the authority to act upon their own initiative to initiate legal action with respect to the offences specified in Article 15.82 (Criminal Offences), without the need for a formal complaint by a third party or right holder.

Article 15.86
Liability of Legal Persons

Each Party shall provide that legal persons may incur liability for the offences specified in Article 15.82 (Criminal Offences) in accordance with its law.

Sub-Section J.5
Enforcement in the Digital Environment

Article 15.87
General Obligations on Enforcement in the Digital Environment

1. Each Party shall provide that the enforcement measures, procedures and remedies, referred to in Sub-Sections J.2 (Enforcement – Civil Remedies) and J.4 (Enforcement – Criminal Remedies), as applicable, are available under its law to the same extent to proceed against an act of infringement of intellectual property rights which takes place in the digital environment.

2. The Parties recognise the importance of providing enforcement measures, procedures and remedies that, as applicable, apply to the infringement of copyright and related rights over digital networks, including the use of means of widespread distribution for infringing purposes, and to the infringement of trade marks, including by users of online services.

Article 15.88
Limitations on Liability of Internet Service Providers

1. Each Party shall establish or maintain a system that applies in appropriate cases to limit the liability of, or remedies available against, an internet service provider ("ISP") for at least copyright and related rights infringement by a user of its services. For greater certainty, a Party may extend this system to cover other online service providers and intellectual property rights.

2. Each Party shall ensure that the system established or maintained pursuant to paragraph 1 includes conditions to qualify for the limitation, in accordance with a Party's law, including, where practicable, requiring the ISP to take action to prevent access to the materials infringing copyright or related rights.

3. This Article shall not affect the possibility of a court or administrative authority, in accordance with the legal system of a Party, requiring the ISP to terminate or prevent an infringement, including by the grant of an injunction pursuant to Article 15.89 (Blocking Orders).

Article 15.89
Blocking Orders

1. Each Party shall provide that its civil judicial authorities have the authority to grant an injunction against an ISP within its territory, ordering the ISP to take action to block access to a specific online location, in cases where:

   (a) that online location is located outside the territory of that Party;[37] and

   (b) the services of the ISP are used by a third party to infringe copyright or related rights in the territory of that Party.

2. For greater certainty, nothing in this Article precludes a Party from providing that its judicial authorities may grant an injunction to take action to block access to online locations used to infringe intellectual property rights in circumstances other than those specified in paragraph 1.

[37] A Party may limit the application of this paragraph to online locations that meet a certain threshold of copyright or related rights infringement, or facilitation of that infringement.

Article 15.90
Procedures for Domain Registrars

Each Party shall encourage its domain registry to take appropriate, timely, and effective measures to suspend domains used for infringing intellectual property on their respective country-code top-level domains.[38] That encouragement may be satisfied by measures including the facilitation of cooperative arrangements between, the relevant domain registry, law enforcement, and industry groups.

Article 15.91
Disclosure of Information

A Party may provide, in accordance with its law, that its competent authorities[39] may order an ISP to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trade mark or copyright or related rights infringement, and where that information is being sought for the purpose of protecting or enforcing those rights.

Sub-Section J.6
Enforcement Practices with Respect to Intellectual Property Rights

Article 15.92
Transparency of Judicial Decisions and Administrative Rulings

Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights:

(a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and

[38] For greater certainty, this Article is without prejudice to the independence of each Party's domain registry.

[39] For the purposes of this Article, "competent authorities" may include the appropriate judicial, administrative, or law enforcement authorities under a Party's law.

(b) are published[40] or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and the other Party to become acquainted with them.

Article 15.93
Voluntary Stakeholder Initiatives

Each Party shall endeavour to promote cooperative efforts within the business community to effectively address intellectual property infringement, including in the digital environment, while preserving legitimate competition. This may include encouraging the establishment of public or private advisory groups to address issues of at least trade mark counterfeiting and copyright piracy.

Article 15.94
Public Awareness

Each Party shall, as appropriate, use reasonable efforts to enhance public awareness of the importance of respecting intellectual property rights, including in the digital environment, and the detrimental effect of the infringement of intellectual property rights. This may include cooperation with the business community, civil society organisations, and right holder representatives.

Article 15.95
Specialised Enforcement Expertise, Information and Domestic Coordination

1. Each Party shall use reasonable efforts to develop specialised expertise within its competent authorities responsible for the enforcement of intellectual property rights, including with respect to infringement taking place in the digital environment.

2. Each Party shall use reasonable efforts to ensure the coordination between, and facilitation of joint actions by, its competent authorities with respect to the enforcement of intellectual property rights, subject to the Party's available resources.

Article 15.96
Environmental Considerations in Destruction and Disposal of Infringing Goods

[40] For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

The Parties recognise the importance of having due regard to environmental matters in their enforcement practices relating to the destruction and disposal of goods that have been found to infringe intellectual property rights.

CHAPTER 16

GOVERNMENT PROCUREMENT

Article 16.1
Definitions

For the purposes of this Chapter:

"build-operate-transfer contract" and "public works concession contract" means a contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of those works for the duration of the contract;

"commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

"construction service" means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

"electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

"in writing" or "written" means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;

"limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

"multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

"notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

"offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

"open tendering" means a procurement method whereby all interested suppliers may submit a tender;

"procuring entity" means an entity listed in Annex 16A;

"qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

"selective tendering" means a procurement method whereby the procuring entity invites only qualified suppliers to submit a tender;

"services" includes construction services, unless otherwise specified;

"standard" means a document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

"supplier" means a person or group of persons that provides or could provide a good or service to a procuring entity; and

"technical specification" means a tendering requirement that:

(a) sets out the characteristics of:

(i) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or

(ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or

(b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article 16.2
Scope

Application of Chapter

1. This Chapter applies to any measure regarding covered procurement.

2. For the purposes of this Chapter, "covered procurement" means government procurement:

   (a) of a good, service, or any combination thereof as specified in each Party's Schedule to Annex 16A;

   (b) by any contractual means, including: purchase; rental, lease or hire purchase, with or without an option to buy; build-operate-transfer contracts and public works concessions contracts;

   (c) for which the value, as estimated in accordance with paragraphs 8 and 9, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 16A, at the time of publication of a notice in accordance with Article 16.6 (Notices);

   (d) by a procuring entity; and

   (e) that is not otherwise excluded from coverage under this Agreement.

Activities Not Covered

3. Unless otherwise provided in a Party's Schedule to Annex 16A, this Chapter does not apply to:

   (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

   (b) non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;

   (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial

institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance if the applicable procedure or condition would be inconsistent with this Chapter.

Schedules

4. Each Party shall specify the following information in its Schedule to Annex 16A:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any General Notes;

(h) in Section H, the applicable Threshold Adjustment Formula; and

(i) in Section I, the publication of information required under paragraph 2 of Article 16.5 (Information on the Procurement System).

Compliance

5. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

6. No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.

7. Nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from developing new procurement policies, procedures or contractual means, provided that they are not inconsistent with this Chapter.

Valuation

8. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account:

(a) all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract;

(b) the value of any option clause; and

(c) any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

9. If the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be deemed a covered procurement, unless otherwise excluded under this Agreement.

Article 16.3
General Exceptions

1. Subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on

international trade between the Parties, nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from adopting or maintaining a measure:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to the good or service of a person with disabilities, of philanthropic institutions or of prison labour.

2. The Parties understand that subparagraph 1(b) includes environmental measures necessary to protect human, animal or plant life or health.

Article 16.4
General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to domestic goods, services, and suppliers.

2. With respect to any measure regarding covered procurement, neither Party, including its procuring entities, shall:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of the other Party.

3. All orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2.

Use of Electronic Means

4. When conducting covered procurement, a procuring entity shall use electronic means:

   (a) for the publication of notices; and

   (b) to the widest extent practicable, for information exchange and communication, the publication of tender documentation in procurement procedures, and for the submission of tenders.

5. When conducting covered procurement by electronic means, a procuring entity shall:

   (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

   (b) establish and maintain mechanisms that ensure the integrity of information provided by suppliers, including requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

6. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

   (a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering;

   (b) avoids conflicts of interest; and

   (c) prevents corrupt practices.

Rules of Origin

7. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

8. With regard to covered procurement, neither Party, including its procuring entities, shall seek, take account of, impose or enforce any offset, at any stage of a procurement.

Measures Not Specific to Procurement

9. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying those duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

Article 16.5
Information on the Procurement System

1. Each Party shall:

   (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedures regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

   (b) provide an explanation thereof to the other Party, on request.

2. Each Party shall list in Section I of its Schedule to Annex 16A:

   (a) the electronic or paper media in which the Party publishes the information described in paragraph 1; and

   (b) the electronic media in which the Party publishes the notices required by Article 16.6 (Notices), paragraph 8 of Article 16.8 (Qualification of Suppliers), and paragraph 2 of Article 16.15 (Transparency of Procurement Information).

Article 16.6
Notices

Electronic Publication of Procurement Notices

1. For covered procurement, notices of intended procurement and notices of planned procurement shall be directly accessible by electronic means, free of charge:

   (a) for central government entities that are covered under Annex 16A, through a single point of access, as listed in Section I of its Schedule to Annex 16A; and

   (b) for sub-central government entities and other entities covered under Annex 16A, at least, through links in a single electronic portal, as listed in Section I of its Schedule to Annex 16A. If a Party maintains multiple points of access, it shall limit the number of points of access to the extent possible.

Notice of Intended Procurement

2. For each covered procurement, except in the circumstances described in Article 16.12 (Limited Tendering), a procuring entity shall publish a notice of intended procurement. The notice shall remain readily accessible to the public, until at least the expiration of the time period indicated in the notice.

3. Unless otherwise provided in this Chapter, each notice of intended procurement shall include:

   (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement;

   (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured, or the estimated quantity if the quantity is not known, and a description of any options;

   (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

   (d) the time-frame for delivery of goods or services or the duration of the contract;

   (e) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(f) if applicable, the address and any final date for the submission of requests for participation in the procurement;

(g) the address and the final date for the submission of tenders;

(h) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(i) a list and a brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless those requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement; and

(j) if, pursuant to Article 16.8 (Qualification of Suppliers), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (notice of planned procurement), which should include the subject-matter of the procurement and the planned date of publication of the notice of intended procurement.

Article 16.7
Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a covered procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party or that

the supplier has prior work experience in the territory of that Party; and

(b) may require relevant prior experience if essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. If there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article 16.8
Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) if its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

3. Neither Party, including its procuring entities, shall:

(a) adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement; or

(b) use that registration system or qualification procedure to prevent or delay the inclusion of suppliers of the other Party on a list of suppliers or prevent those suppliers from being considered for a particular procurement.

4. If a Party or a procuring entity maintains a supplier registration system, it shall:

(a) ensure that interested suppliers have access to information on the registration system through electronic means and that interested suppliers may request registration at any time; and

(b) if a request by a supplier is made, inform the supplier within a reasonable period of time of the decision to grant or reject this request, and if rejected, on request provide an explanation.

Selective Tendering

5. If a procuring entity intends to use selective tendering, the procuring entity shall:

(a) include in the notice of intended procurement at least the information specified in subparagraphs 3(a), 3(b), 3(e), 3(f), 3(i) and 3(j) of Article 16.6 (Notices) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time-period for tendering, at least the information in subparagraphs 3(c), 3(d), 3(g) and 3(h) of Article 16.6 (Notices) to the qualified suppliers that it notifies as specified in subparagraph 3(b) of Article 16.10 (Time-Periods).

6. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

7. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 5, the procuring entity shall ensure that the tender documentation is made available at the same time to all the qualified suppliers selected in accordance with paragraph 6.

Multi-Use Lists

8. A Party, including its procuring entities may establish or maintain a multi-use list provided that it makes continuously available by electronic means, in the appropriate medium listed in its Schedule to Annex 16A, a notice inviting interested suppliers to apply for inclusion on the list.

9. The notice provided for in paragraph 8 shall include:

   (a) a description of the goods or services, or categories thereof, for which the list may be used;

   (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of those conditions;

   (c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and to obtain all relevant documents relating to the list; and

   (d) the period of validity of the list and the means for its renewal or termination, or if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.

10. A Party, including its procuring entities, that establishes or maintains a multi-use list, shall:

   (a) allow suppliers to apply at any time for inclusion on the multi-use list; and

(b) include on the list, within a reasonable period of time, all suppliers that satisfy the conditions for participation set out in the notice referred to in paragraph 6.

11. If a supplier that is not included on a multi-use list submits a request for participation in a procurement based on the multi-use list and submits all required documents, within the time period provided for in paragraph 2 of Article 16.10 (Time-Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Section B and Section C Entities

12. A procuring entity covered under Sections B (Sub-Central Government Entities) or C (Other Entities) of a Party's Schedule to Annex 16A may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 8 and includes the information required under paragraph 9, as much of the information required under paragraph 3 of Article 16.6 (Notices) as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in paragraph 3 of Article 16.6 (Notices), to the extent that information is available.

13. A procuring entity covered under Sections B (Sub-Central Government Entities) or C (Other Entities) of a Party's Schedule to Annex 16A may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 11 to tender in a given procurement, if there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

14. A procuring entity or other entity of a Party shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the decision with respect to the request or application.

15. If a procuring entity or other entity of a Party rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article 16.9
Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or effect of creating an unnecessary obstacle to trade between the Parties.

2. In prescribing the technical specifications for the good or service being procured, a procuring entity shall, if appropriate:

   (a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

   (b) base the technical specifications on international standards, if these exist; otherwise, on national technical regulations, recognised national standards or building codes.

3. If design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, if appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently

precise or intelligible way of describing the procurement requirements and provided that, in these cases, the procuring entity includes words such as "or equivalent" in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

7. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting or processing of that information outside the territory of the Party.

Tender Documentation

8. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, that documentation shall include a complete description of:

   (a) the procurement, including the nature, and the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

   (b) any conditions for participation, including information and documents that suppliers are required to submit;

   (c) all evaluation criteria the entity will apply in the awarding of the contract, and the relative importance of those criteria;

   (d) if the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) if the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) if there will be a public opening of tenders, the date, time and place for the opening and, if appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any date for the delivery of a good or the supply of a service.

9. In establishing any date for the delivery of a good or the supply of a service being procured, a procuring entity shall take into account factors such as the complexity of the procurement**,** the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

10. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

11. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by an interested or participating supplier, provided that the information does not give that supplier an advantage over other suppliers.

Modifications

12. If, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in a notice of intended procurement or tender documentation provided to a participating supplier, or amends or reissues a notice or tender documentation, it shall transmit in writing all those modifications or the amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow those suppliers to modify and re-submit their initial tenders, as appropriate.

Preliminary Market Research and Engagement

13. For greater certainty, a procuring entity may, prior to publication of a notice of intended procurement, conduct market research and engagement with suppliers with a view to informing and developing technical specifications and other tender documentation for a particular procurement or informing suppliers of its procurement plans and requirements. A procuring entity shall take appropriate steps to ensure that suppliers participating in that market research or engagement do not gain an unfair advantage over other interested suppliers.

Article 16.10
Time-Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account factors such as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to no less than 10 days.

3. Except as provided for in paragraphs 4, 5, 8 and 9 a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies the suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering set out in paragraph 3 to no less than 10 days if:

(a) the procuring entity has published a notice of planned procurement under Article 16.6 (Notices) at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under paragraph 3 of Article 16.6 (Notices) as is available;

(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering set out in paragraph 3 impracticable.

5. A procuring entity may reduce the time-period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering set out in paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. A procuring entity shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.

8. Notwithstanding any other provision in this Article, if a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, if the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 3 to not less than 10 days.

9. If a procuring entity covered under Sections B (Sub-Central Government Entities) or C (Other Entities) of a Party's Schedule to Annex 16A has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

Article 16.11
Negotiations

1. A Party may provide for its procuring entities to conduct negotiations if:

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under paragraph 2 of Article 16.6 (Notices); or

(b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 16.12
Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party, or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 16.6 (Notices) through 16.8 (Qualification of Suppliers), paragraphs 8 through 12 of Article 16.9 (Technical Specifications and Tender Documentation), and Articles 16.10 (Time-Periods), 16.11 (Negotiations), 16.13 (Electronic Auctions) and 16.14 (Treatment of Tenders and Awarding of Contracts) only under any of the following circumstances:

(a) if:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted were collusive,

provided that the requirements of the tender documentation are not substantially modified;

(b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement if a change of supplier for those additional goods or services:

(i) cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) for goods purchased on a commodity market;

(e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a prototype or a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the prototype of the first good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. Subsequent procurements of these newly developed goods or services, however, shall be subject to this Chapter;

(f) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, bankruptcy or receivership, but not for routine purchases from regular suppliers;

(g) if a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with this Chapter; and

(ii) the contest is judged by an independent jury with a view to award a design contract to the winner; or

(h) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

Article 16.13
Electronic Auctions

If a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender if the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

Article 16.14
Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be submitted by a supplier who satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notice and tender documentation, submits:

   (a) the most advantageous tender; or

   (b) if price is the sole criterion, the lowest price.

6. If a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

7. A procuring entity shall not use options, cancel a covered procurement, or modify or terminate awarded contracts in a manner that circumvents the obligations of this Chapter.

Article 16.15
Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the contract award decision and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article 16.16 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in an appropriate electronic medium listed in Annex 16A and the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

   (a) a description of the good or service procured;

   (b) the name and address of the procuring entity;

   (c) the name and address of the successful supplier;

   (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

   (e) the date of award; and

   (f) the procurement method used, and in cases where limited tendering was used in accordance with Article 16.12 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

   (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 16.12 (Limited Tendering); and

   (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Article 16.16
Disclosure of Information

Provision of Information to Parties

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the

characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if that disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

Article 16.17
Environmental, Social and Labour Considerations

A Party, including its procuring entities, may:

(a) take into account environmental, social and labour considerations throughout the procurement procedure, provided they are:

(i) based on objectively verifiable criteria;

(ii) non-discriminatory; and

(iii) indicated in the notice of intended procurement or tender documentation; and

(b) take appropriate measures to ensure compliance with its obligations in the fields of environmental, social and labour law, provided they are non-discriminatory.

Article 16.18
Ensuring Integrity in Procurement Practices

1. Each Party shall ensure that criminal or administrative measures exist to address corruption, fraud, and other illegal acts in its government procurement.

2. These measures may include procedures to render ineligible for, or exclude from, participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in corrupt, fraudulent or other illegal acts in relation to government procurement in the Party's territory. When applying those procedures, each party, including its procuring entities:

   (a) may consider the gravity of the supplier's acts or omissions, and any remedial measures or mitigating factors; and

   (b) shall treat a supplier of the other Party with due process, in accordance with its government procurement policies and frameworks.

3. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

4. Each Party may put in place policies or procedures that require successful suppliers to maintain and enforce appropriate measures, such as internal controls, business ethics, and compliance programmes, for preventing and detecting corruption, fraud, and other illegal acts, provided they are non-discriminatory.

Article 16.19
Domestic Review Procedures

1. Each Party shall maintain, establish or designate at least one impartial administrative or judicial authority ("review authority") that is independent of its procuring entities to review, in a non-discriminatory, timely, transparent and effective manner, a challenge or complaint ("complaint") by a supplier that there has been:

   (a) a breach of this Chapter; or

   (b) if the supplier does not have a right to directly challenge a breach of this Chapter under the law of a Party, a failure of a procuring entity to comply with the Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or had, an interest. The procedural rules for all complaints shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to the complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or to its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. If a body other than the review authority initially reviews a complaint, the Party shall ensure that the supplier may appeal the initial decision to the review authority that is independent of the procuring entity whose procurement is the subject of the complaint.

5 If the review authority has determined that there has been a breach or a failure as referred to in paragraph 1, a Party may limit compensation for the loss or damages suffered to either the costs reasonably incurred in the preparation of the tender or in bringing the complaint, or both.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) a procuring entity shall respond in writing to a supplier’s complaint and provide all relevant documents to the review authority;

(b) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity’s response before the review authority takes a decision on the complaint;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review authority shall provide its decisions or recommendations in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) prompt interim measures to preserve the supplier's opportunity to participate in the procurement; and

(b) corrective action that may include compensation under paragraph 5.

The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether those measures should be applied. Just cause for not acting shall be provided in writing.

Article 16.20
Modifications and Rectifications to Annex

1. A Party may modify or rectify its Schedule to Annex 16A, pursuant to paragraphs 2 through 10.

Notification of Proposed Modification

2. A Party shall notify any proposed modification or rectification (collectively referred to as a "modification") to its Schedule to Annex 16A in writing to the other Party.

3. The notification of proposed modification shall contain:

(a) for any proposed withdrawal of an entity from its Schedule to Annex 16A in exercise of its rights on the grounds that government control or influence over the procuring entity's covered procurement has been effectively eliminated, evidence of that elimination; or

(b) for any other proposed modification, information as to the likely consequences of the change for the coverage provided for in this Chapter; and

(c) a proposal for any necessary compensatory adjustments pursuant to paragraph 4.

Compensatory Adjustments

4. Subject to paragraphs 5 and 6, a Party shall provide appropriate compensatory adjustments for a change in coverage, if necessary, to maintain a level of coverage comparable to the coverage that existed prior to the modification.

5. The Parties may agree another form of resolution as an alternative to compensatory adjustments.

6. A Party is not required to provide compensatory adjustments to the other Party if the proposed modification:

   (a) covers a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

   (b) is minor or of a purely formal nature, including a rectification as described in paragraph 7.

Rectifications

7. The following modifications to a Party's Schedule to Annex 16A shall be considered a rectification, provided that they do not affect the coverage provided for in this Chapter:

   (a) a change in the name of a procuring entity;

   (b) a merger of two or more procuring entities listed within a Section of a Party's Schedule to Annex 16A;

   (c) the separation of a procuring entity listed in a Party's Schedule to Annex 16A into two or more procuring entities that are added to the procuring entities listed in the same Section of the Annex; and

   (d) changes in website references.

Objection to Notification

8. If the other Party disputes that:

   (a) a compensatory adjustment proposed under sub-paragraph 3(c) is adequate to maintain a level of coverage comparable to the coverage that existed prior to the modification;

   (b) the proposed modification covers a procuring entity over which the Party has effectively eliminated its control or influence; or

(c) the proposed modification is a change provided for in paragraph 6(b),

it shall notify the modifying Party of its objection in writing within 45 days of receipt of the notification of proposed modification referred to in paragraphs 2 and 3 or shall be deemed to have agreed to the proposed modification.

9. Where a Party submits an objection pursuant to paragraph 8, it shall set out, as may apply, the reasons why it believes:

(a) the modification is not a change provided for in subparagraphs 6(a) or 6(b) and describe the effect of the proposed modification on the coverage provided for in the Chapter; and

(b) a compensatory adjustment proposed under subparagraph 3(c) is not adequate to maintain a level of coverage comparable to the coverage that existed prior to the modification.

Implementation of Modifications

10. The Joint Committee shall adopt a modification to the Schedule to Annex 16A in accordance with paragraphs 2 and 3 of Article 16.2 (Functions of the Joint Committee – Administrative and Institutional Provisions) to reflect any agreed modification.

Article 16.21
Facilitation of Participation by SMEs

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement.

2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.

3. To facilitate participation by SMEs in covered procurement, each Party shall, to the extent possible and if appropriate:

(a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;

(b) make all tender documentation available free of charge;

(c) conduct procurement by electronic means or through other new information and communication technologies;

(d) consider the size, design, and structure of the procurement, including the use of subcontracting by SMEs;

(e) seek opportunities to simplify administrative processes; and

(f) require prompt payment by procuring entities, and that procuring entities encourage its use in subcontracting.

Article 16.22
Cooperation

1. The Parties recognise their shared interest in cooperating to promote international liberalisation of government procurement markets with a view to achieving enhanced understanding of their respective government procurement systems and to improving access to their respective markets.

2. The Parties shall endeavour to cooperate in matters such as:

(a) facilitating participation by suppliers in government procurement, in particular, with respect to SMEs;

(b) exchanging experiences and information, such as regulatory frameworks and best practices, including on the use and adoption of measures to promote environmental, social and labour considerations in government procurement;

(c) exchanging government procurement statistics and data;

(d) developing and expanding the use of electronic means in government procurement systems;

(e) institutional strengthening for the fulfilment of the provisions of this Chapter;

(f) encouraging greater participation by women in government procurement to the extent possible; and

(g) exchanging information relating to government procurement opportunities in each Party.

CHAPTER 17

COMPETITION POLICY AND CONSUMER PROTECTION

Article 17.1
Competition Law and Authorities

1. Each Party shall maintain national competition laws in their respective territories which:

   (a) proscribe anti-competitive agreements;

   (b) proscribe anti-competitive practices by entities that have substantial market power; and

   (c) address mergers with substantial anti-competitive effects.

2. Each Party shall apply its national competition laws to all commercial activities in its territory regardless of nationality or governmental ownership. This does not preclude a Party from applying its national competition laws to commercial activities outside its borders that may have anti-competitive effects within its jurisdiction.

3. Each Party may provide for certain exemptions from the application of its national competition laws, provided that those exemptions are transparent and are based on public policy grounds.

4. Each Party shall maintain an operationally independent national competition authority responsible for the enforcement of its national competition laws.

5. Each Party shall enforce its national competition laws in a manner that does not discriminate on the basis of nationality or governmental ownership.

Article 17.2
Procedural Fairness in Competition Law Enforcement

1. Each Party shall ensure that before it imposes a sanction or remedy against a person pursuant to its national competition law, it affords that person:

   (a) information about the national competition authority's competition concerns;

   (b) a reasonable opportunity to be legally represented; and

   (c) a reasonable opportunity to be heard and present evidence in its defence, except that a Party may provide for the person to be heard

and present evidence within a reasonable time after it imposes an interim sanction or remedy.

2. Each Party shall maintain written procedures pursuant to which its national competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavour to conduct their investigations within a reasonable time frame.

3. Each Party shall maintain rules of procedure and evidence that apply to proceedings conducted pursuant to its national competition law and to the determination of sanctions and remedies thereunder.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy pursuant to that Party's national competition law with the opportunity to seek review of the sanction or remedy in a court or other independent tribunal established under that Party's law.

5. Each Party may authorise its national competition authorities to resolve civil or administrative matters voluntarily by consent of the authority and the person subject to the enforcement action. A Party may provide for such voluntary resolution to be subject to review by a court or independent tribunal or a public comment period before becoming final.

6. If a Party's national competition authority issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall not state and shall avoid implying in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the Party's national competition law.[1]

7. Each Party shall provide for the protection of business confidential information, and other information treated as confidential under its law, obtained by its national competition authorities during the investigative process. If a Party's national competition authority uses or intends to use that information in a proceeding, the Party shall, if it is permissible under its law and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate response.

8. Each Party shall ensure that its national competition authorities afford a person under investigation conducted pursuant to the national competition law of that Party reasonable opportunity to consult with those national competition authorities with respect to significant legal, factual or procedural issues that arise during the investigation.

[1] For the UK, this does not preclude the issuing of provisional, reasoned objections by a national competition authority.

Article 17.3
Private Rights of Action

1. For the purposes of this article "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of national competition law.

2. Recognising that a private right of action is an important supplement to the public enforcement of national competition law, each Party shall maintain measures that provide a private right of action, both independently and following a finding of violation by a national competition authority.

3. Each Party shall ensure that a right provided pursuant to paragraph 2 is available to persons of the other Party on terms that are no less favourable than those available to its own persons.

4. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

Article 17.4
Transparency

1. The Parties recognise the value of making their competition enforcement policies as transparent as possible.

2. On request of a Party, the other Party shall make available to the requesting Party public information concerning:

   (a) its national competition law enforcement policies and practices; and

   (b) exemptions and immunities to its national competition laws.

3. Each Party shall ensure that a final decision pursuant to its national competition law is made in writing and sets out, in non-criminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.

4. Each Party shall further ensure that a final decision referred to in paragraph 3 and any order implementing that decision are published, or if publication is not practicable, are otherwise made available to the public. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its law.

Article 17.5
Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to enhancing consumer welfare in the territories of the Parties.

2. Each Party shall maintain consumer protection laws and regulations that proscribe:

   (a) misleading, deceptive and fraudulent commercial practices; and

   (b) unconscionable conduct or unfair commercial practices,

   that cause harm, or potential harm, to consumers.

3. Each Party shall maintain laws and regulations that provide consumers with statutory rights in relation to goods and services supplied to them, which at a minimum allow for remedies when:

   (a) goods are of unacceptable quality or are defective;

   (b) goods are not as described;

   (c) goods are not fit for their represented purpose; and

   (d) services are not performed with appropriate care or skill.

4. The Parties further recognise the importance of improving awareness of and providing access to consumer redress mechanisms, including for consumers of a Party transacting with suppliers of the other Party.

5. The Parties recognise the benefits of dispute resolution mechanisms in facilitating the resolution of disputes between consumers and suppliers, including alternative dispute resolution mechanisms.

Article 17.6
Cooperation on Competition Policy and Consumer Protection

1. The Parties recognise the importance of cooperation and coordination between their respective competition and consumer protection authorities to foster effective competition and consumer protection law enforcement in the territories of the Parties. To this end, the Parties may cooperate, through their competition and consumer protection authorities, on issues relating to the enforcement of competition and consumer protection law. Such cooperation may include:

   (a) notification by a Party to the other Party of its activities relating to enforcement of competition and consumer protection law that it

considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;

(b) exchange of information, including confidential information, between the Parties to foster understanding or to facilitate effective enforcement of competition and consumer protection law; and

(c) coordination of investigations that raise the same or related concerns relating to the enforcement of competition and consumer protection law.

2. The Parties recognise that it is in their common interest to work together on technical cooperation activities to strengthen competition and consumer protection policy development and the enforcement of competition and consumer protection law. Technical cooperation activities may include:

(a) the exchange of information on the development and implementation of competition and consumer protection policy and law;

(b) the sharing of studies, reviews and research relating to competition and consumer protection law and policy; and

(c) the exchange of officials of policy agencies or competition and consumer protection authorities to deepen cooperation and knowledge sharing.

3. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organisations in this area, including the Competition and Consumer Policy committees of the Organisation for Economic Co-operation and Development, the International Competition Network and the International Consumer Protection and Enforcement Network.

4. Any cooperation and coordination under paragraphs 1 and 2 shall be undertaken only to the extent that it is compatible with each Party's law and important interests and within the Parties' available resources.

5. To implement the objectives of this Article, the Parties may enter into separate commitments or arrangements on cooperation and coordination which may provide for, among other things, enhanced information sharing including confidential information, and mutual assistance in competition and consumer law enforcement.

Article 17.7
Consultation

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, a Party shall, on request of the other Party, enter into consultations with the requesting Party. In its request, the

requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall promptly acknowledge any such request and accord full and sympathetic consideration to the concerns of the requesting Party.

Article 17.8
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 18

STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Article 18.1
Definitions

For the purposes of this Chapter:

"Arrangement" means the *Arrangement on Officially Supported Export Credits*, developed within the framework of the Organization for Economic Co-operation and Development ("OECD") and adopted by its Council on 30 June 2021, or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of January 1, 1979;

"commercial activities" means activities which an enterprise undertakes with an orientation toward profit-making,[1] and which result in the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise;[2]

"commercial considerations" means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry;

"designate" means to establish, designate or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

"designated monopoly" means a privately owned monopoly that is designated after the date of entry into force of this Agreement and any government monopoly that a Party designates or has designated;

"government monopoly" means a monopoly that is owned, or controlled through ownership interests, by a Party or by another government monopoly;

"independent pension fund" means an enterprise that is owned, or controlled through ownership interests, by a Party that:

(a) is engaged exclusively in the following activities:

[1] For greater certainty, activities undertaken by an enterprise which operates on a not-for-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making.
[2] For greater certainty, measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of an enterprise.

(i) administering or providing a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof, solely for the benefit of natural persons who are contributors to such a plan and their beneficiaries; or

(ii) investing the assets of these plans;

(b) has a fiduciary duty to the natural persons referred to in subparagraph (a)(i); and

(c) is free from investment direction from the government of the Party;[3]

"market" means the geographical and commercial market for a good or service;

"monopoly" means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant;

"non-commercial assistance"[4] means assistance to a state-owned enterprise by virtue of that state-owned enterprise's government ownership or control, where:

(a) "assistance" means:

(i) direct transfers of funds or potential direct transfers of funds or liabilities, such as:

(A) grants or debt forgiveness;

(B) loans, loan guarantees, or other types of financing on terms more favourable than those commercially available to that enterprise; or

[3] Investment direction from the government of a Party: (a) does not include general guidance with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of government officials on the enterprise's board of directors or investment panel.

[4] For greater certainty, non-commercial assistance does not include: (a) intra-group transactions within a corporate group including state-owned enterprises, for example, between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal business practices require reporting the financial position of the group excluding these intra-group transactions; (b) other transactions between state-owned enterprises that are consistent with the usual practices of privately owned enterprises in arm's length transactions; or (c) a Party's transfer of funds, collected from contributors to a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof, to an independent pension fund for investment on behalf of the contributors and their beneficiaries.

(C) equity capital inconsistent with the usual investment practice, including for the provision of risk capital, of private investors; or

(ii) goods or services other than general infrastructure on terms more favourable than those commercially available to that enterprise;

(b) "by virtue of that state-owned enterprise's government ownership or control"[5] means that the Party or any of the Party's state enterprises or state-owned enterprises:

(i) explicitly limits access to the assistance to the Party's state-owned enterprises;

(ii) provides assistance which is predominately used by the Party's state-owned enterprises;

(iii) provides a disproportionately large amount of the assistance to the Party's state-owned enterprises; or

(iv) otherwise favours the Party's state-owned enterprises through the use of its discretion in the provision of assistance;

"public service mandate" means a government mandate pursuant to which a state-owned enterprise makes available a service, directly or indirectly, to the general public in its territory;[6]

"sovereign wealth fund" means an enterprise owned, or controlled through ownership interests, by a Party that:

(a) serves solely as a special purpose investment fund or arrangement[7] for asset management, investment, and related activities, using financial assets of a Party; and

(b) is a Member of the International Forum of Sovereign Wealth Funds or endorses the *Generally Accepted Principles and Practices* ("Santiago Principles") issued by the International Working Group of Sovereign Wealth Funds, October 2008, or such other principles and practices as may be agreed to by the Parties,

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[5] In determining whether the assistance is provided "by virtue of that state-owned enterprise's government ownership or control", account shall be taken of the extent of diversification of economic activities within the territory of the Party, as well as of the length of time during which the non-commercial assistance programme has been in operation.

[6] For greater certainty, a service to the general public includes: (a) the distribution of goods; and (b) the supply of general infrastructure services.

[7] For greater certainty, the Parties understand that the word "arrangement" as an alternative to "fund" allows for a flexible interpretation of the legal arrangement through which the assets can be invested.

and includes any special purpose vehicles established solely for such activities described in subparagraph (a) wholly owned by the enterprise, or wholly owned by the Party but managed by the enterprise; and

"state-owned enterprise" means an enterprise that is principally engaged in commercial activities in which a Party:

(a) directly owns more than 50 per cent of the share capital;

(b) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights; or

(c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

Article 18.2
Scope[8]

1. This Chapter applies with respect to the activities of state-owned enterprises and designated monopolies of a Party that affect trade or investment between the Parties.[9]

2. Nothing in this Chapter shall prevent a central bank or monetary authority of a Party from performing regulatory or supervisory activities or conducting monetary and related credit policy and exchange rate policy.

3. Nothing in this Chapter shall prevent a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organisation or association, from exercising regulatory or supervisory authority over financial services suppliers.

4. Nothing in this Chapter shall prevent a Party, or one of its state enterprises or state-owned enterprises from undertaking activities for the purpose of the resolution of a failing or failed established financial service supplier or any other failing or failed enterprise principally engaged in the supply of financial services.

5. This Chapter does not apply with respect to a sovereign wealth fund of a Party, except:

[8] For the purposes of this Chapter, the terms "financial service supplier", "established financial service supplier" and "financial services" have the same meaning as in Article 9.1 (Definitions – Financial Services).

[9] This Chapter also applies with respect to the activities of state-owned enterprises of a Party that cause adverse effects in the market of a non-party as provided in Article 18.7 (Adverse Effects).

(a) Paragraphs 1 and 3 of Article 18.6 (Non-commercial Assistance) apply with respect to a Party's indirect provision of non-commercial assistance through a sovereign wealth fund; and

(b) Paragraph 2 of Article 18.6 (Non-commercial Assistance) applies with respect to a sovereign wealth fund's provision of non-commercial assistance.

6. This Chapter does not apply with respect to:

(a) an independent pension fund of a Party; or

(b) an enterprise owned or controlled by an independent pension fund of a Party, except:

(i) Paragraphs 1 and 3 of Article 18.6 (Non-commercial Assistance) apply with respect to a Party's direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by an independent pension fund; and

(ii) Paragraphs 1 and 3 of Article 18.6 (Non-commercial Assistance) apply with respect to a Party's indirect provision of non-commercial assistance through an enterprise owned or controlled by an independent pension fund.

7. This Chapter does not apply to:

(a) government procurement; or

(b) audio-visual services.

8. Subparagraphs 1(a) and 1(b) of Article 18.4 (Non-discriminatory Treatment and Commercial Considerations) do not apply where a state-owned enterprise accords more favourable treatment to Indigenous persons[10] and organisations in the purchase of goods and services.

9. Nothing in this Chapter shall prevent a state-owned enterprise of a Party from providing goods or services exclusively to that Party for the purposes of carrying out that Party's governmental functions.

10. Nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing or maintaining a state enterprise or a state-owned enterprise; or

(b) designating a monopoly.

[10] For the purposes of this reservation, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.

11. Article 18.4 (Non-discriminatory Treatment and Commercial Considerations), Article 18.6 (Non-commercial Assistance) and Article 18.10 (Transparency) do not apply to any service supplied in the exercise of governmental authority.[11]

12. Subparagraphs 1(b), 1(c), 2(b) and 2(c) of Article 18.4 (Non-discriminatory Treatment and Commercial Considerations) do not apply to the extent that a Party's state-owned enterprise or designated monopoly makes purchases and sales of goods or services pursuant to:

    (a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with paragraph 1 of Article 13.13 (Non-Conforming Measures - Investment), paragraph 1 of Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) or paragraph 1(a) to (c) of Article 9.10 (Non-Conforming Measures – Financial Services), as set out in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment) or in Section A of its Schedule to Annex III (Schedules of Non-Conforming Measures for Financial Services); or

    (b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with paragraph 2 of Article 13.13 (Non-Conforming Measures – Investment), paragraph 2 of Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) or paragraph 1(d) of Article 9.10 (Non-Conforming Measures – Financial Services), as set out in its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment) or in Section B of its Schedule to Annex III (Schedules of Non-Conforming Measures for Financial Services).

Article 18.3
Delegated Authority

Each Party shall ensure that, when its state-owned enterprises, state enterprises and designated monopolies exercise any regulatory, administrative or other governmental authority that the Party has directed or delegated to such entities to carry out, those entities act in a manner that is not inconsistent with that Party's obligations under this Agreement.[12]

[11] For the purposes of this paragraph, "a service supplied in the exercise of governmental authority" has the same meaning as in GATS, including the meaning in the Financial Services Annex where applicable.

[12] Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licences, approve commercial transactions, or impose quotas, fees or other charges.

Article 18.4
Non-discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that each of its state-owned enterprises, when engaging in commercial activities:

   (a) acts in accordance with commercial considerations in its purchase or sale of a good or service, except to fulfil any terms of its public service mandate that are not inconsistent with subparagraph (c)(ii);

   (b) in its purchase of a good or service:

      (i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party or of any non-party; and

      (ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party or of any non-party; and

   (c) in its sale of a good or service:

      (i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party or of any non-party; and

      (ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party or of any non-party.[13]

2. Each Party shall ensure that each of its designated monopolies:

   (a) acts in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, except to fulfil any terms of its designation that are not inconsistent with subparagraph (b), (c) or (d);

   (b) in its purchase of the monopoly good or service:

[13] Paragraph 1 of Article 18.4 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise as a means of its equity participation in another enterprise.

(i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party or of any non-party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party or of any non-party; and

(c) in its sale of the monopoly good or service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party or of any non-party; and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party or of any non-party; and

(d) does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other entities the Party or the designated monopoly owns, anticompetitive practices in a non-monopolised market in its territory that negatively affect trade or investment between the Parties.[14]

3. Subparagraphs 1(b), 1(c), 2(b) and 2(c) do not preclude a state-owned enterprise or designated monopoly from:

(a) purchasing or selling goods or services on different terms or conditions including those relating to price; or

(b) refusing to purchase or sell goods or services,

provided that such differential treatment or refusal is undertaken in accordance with commercial considerations.

[14] For greater certainty, a Party may comply with the requirements of this subparagraph through the enforcement or implementation of its generally applicable national competition laws and regulations, its economic regulatory laws and regulations, or other appropriate measures.

Article 18.5
Courts and Administrative Bodies

1. Each Party shall provide its courts with jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign government based on a commercial activity carried on in its territory.[15] This shall not be construed to require a Party to provide jurisdiction over such claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

2. Each Party shall ensure that any administrative body that the Party establishes or maintains that regulates a state-owned enterprise exercises its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises.[16]

Article 18.6
Non-commercial Assistance

1. Neither Party shall cause[17] adverse effects to the interests of the other Party through the use of non-commercial assistance that it provides, either directly or indirectly,[18] to any of its state-owned enterprises with respect to:

   (a) the production and sale of a good by the state-owned enterprise;

   (b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of the other Party; or

   (c) the supply of a service in the territory of the other Party through an enterprise that is a covered investment in the territory of the other Party.

2. Each Party shall ensure that its state enterprises and state-owned enterprises do not cause adverse effects to the interests of the other Party through the use of non-commercial assistance that the state enterprise or state-owned enterprise provides to any of its state-owned enterprises with respect to:

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[15] This paragraph shall not be construed to preclude a Party from providing its courts with jurisdiction over claims against enterprises owned or controlled through ownership interests by a foreign government other than those claims referred to in this paragraph.

[16] For greater certainty, the impartiality with which an administrative body exercises its regulatory discretion is to be assessed by reference to a pattern or practice of that administrative body.

[17] For the purposes of paragraphs 1 and 2, it must be demonstrated that the adverse effects claimed have been caused by the non-commercial assistance. Thus, the non-commercial assistance must be examined within the context of other possible causal factors to ensure an appropriate attribution of causality.

[18] For greater certainty, indirect provision includes the situation in which a Party entrusts or directs an enterprise that is not a state-owned enterprise to provide non-commercial assistance.

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of the other Party; or

(c) the supply of a service in the territory of the other Party through an enterprise that is a covered investment in the territory of the other Party.

3. Neither Party shall cause injury to a domestic industry[19] of the other Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises that is a covered investment in the territory of the other Party in circumstances where:

(a) the non-commercial assistance is provided with respect to the production and sale of a good by the state-owned enterprise in the territory of the other Party; and

(b) a like good is produced and sold in the territory of the other Party by the domestic industry of the other Party.[20]

4. A service supplied by a state-owned enterprise of a Party within the Party's territory shall be deemed not to cause adverse effects.[21]

Article 18.7
Adverse Effects

1. For the purposes of paragraphs 1 and 2 of Article 18.6 (Non-commercial Assistance), adverse effects arise if the effect of the non-commercial assistance is:

(a) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from the Party's market imports of a like good of the other Party or sales of a like good produced by an enterprise that is a covered investment in the territory of the Party;

[19] The term "domestic industry" refers to the domestic producers as a whole of the like good, or to those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the state-owned enterprise that is a covered investment that has received the non-commercial assistance referred to in this paragraph.

[20] In situations of material retardation of the establishment of a domestic industry, it is understood that a domestic industry may not yet produce and sell the like good. However, in these situations, there must be evidence that a prospective domestic producer has made a substantial commitment to commence production and sales of the like good.

[21] For greater certainty, this paragraph shall not be construed to apply to a service that itself is a form of non-commercial assistance.

(b) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from:

(i) the market of the other Party sales of a like good produced by an enterprise that is a covered investment in the territory of that other Party; or

(ii) the market of a non-party imports of a like good of the other Party;

(c) a significant price undercutting by a good produced by a Party's state-owned enterprise that has received the non-commercial assistance and sold by the enterprise in:

(i) the market of a Party as compared with the price in the same market of imports of a like good of the other Party or a like good that is produced by an enterprise that is a covered investment in the territory of the Party, or significant price suppression, price depression, or lost sales in the same market; or

(ii) the market of a non-party as compared with the price in the same market of imports of a like good of the other Party, or significant price suppression, price depression, or lost sales in the same market;

(d) that services supplied by a Party's state-owned enterprise that has received the non-commercial assistance displace or impede from the market of the other Party a like service supplied by a service supplier of the other Party; or

(e) a significant price undercutting by a service supplied in the market of the other Party by a Party's state-owned enterprise that has received the non-commercial assistance as compared with the price in the same market of a like service supplied by a service supplier of the other Party, or significant price suppression, price depression, or lost sales in the same market.[22]

2. For the purposes of subparagraphs 1(a), 1(b) and 1(d), the displacing or impeding of a good or service includes any case in which it has been demonstrated that there has been a significant change in relative shares of the market to the disadvantage of the like good or like service. "Significant change in relative shares of the market" shall include any of the following

[22] The purchase or sale of shares, stock or other forms of equity by a state-owned enterprise that has received non-commercial assistance as a means of its equity participation in another enterprise shall not be construed to give rise to adverse effects as provided for in paragraph 1 of Article 18.7 (Adverse Effects).

situations:

(a) there is a significant increase in the market share of the good or service of the Party's state-owned enterprise;

(b) the market share of the good or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or

(c) the market share of the good or service of the Party's state-owned enterprise declines, but at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

The change must manifest itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the good or service concerned, which, in normal circumstances, shall be at least one year.

3. For the purposes of subparagraphs 1(c) and 1(e), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of the prices of the good or service of the state-owned enterprise with the prices of the like good or service.

4. Comparisons of the prices in paragraph 3 shall be made at the same level of trade and at comparable times, and due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

5. Non-commercial assistance that a Party provides:

(a) before the signing of this Agreement; or

(b) within three years of signing of this Agreement, pursuant to a law that is enacted, or contractual obligation undertaken, prior to the signing of this Agreement,

shall be deemed not to cause adverse effects.

6. For the purposes of subparagraphs 1(b) and 2(b) of Article 18.6 (Non-commercial Assistance), the initial capitalisation of a state-owned enterprise, or the acquisition by a Party of a controlling interest in an enterprise, that is principally engaged in the supply of services within the territory of the Party, shall be deemed not to cause adverse effects.

Article 18.8
Injury

1. For the purposes of paragraph 3 of Article 18.6 (Non-commercial Assistance), the term "injury" means material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of such an industry. A determination of material injury shall be based on positive evidence and involve an objective examination of the relevant factors, including the volume of production by the covered investment that has received non-commercial assistance, the effect of such production on prices for like goods produced and sold by the domestic industry, and the effect of such production on the domestic industry producing like goods.[23]

2. With regard to the volume of production by the covered investment that has received non-commercial assistance, consideration shall be given as to whether there has been a significant increase in the volume of production, either in absolute terms or relative to production or consumption in the territory of the Party in which injury is alleged to have occurred. With regard to the effect of the production by the covered investment on prices, consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the covered investment as compared with the price of like goods produced and sold by the domestic industry, or whether the effect of production by the covered investment is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry of the goods produced and sold by the covered investment that received the non-commercial assistance shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments, and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the goods produced and sold by the covered investment are, through the effects[24] of the non-commercial assistance, causing injury within the meaning of this Article. The demonstration of a causal relationship between the goods produced and sold by the covered

[23] The periods for examination of the non-commercial assistance and injury shall be reasonably established and shall end as closely as practical to the date of initiation of the proceeding before the panel.

[24] As set out in paragraphs 2 and 3.

investment and the injury to the domestic industry shall be based on an examination of all relevant evidence. Any known factors other than the goods produced by the covered investment which at the same time are injuring the domestic industry shall be examined, and the injuries caused by these other factors must not be attributed to the goods produced and sold by the covered investment that has received non-commercial assistance. Factors which may be relevant in this respect include, among other things, the volumes and prices of other like goods in the market in question, contraction in demand or changes in the patterns of consumption, and developments in technology and the export performance and productivity of the domestic industry.

5. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture, or remote possibility and shall be considered with special care. The change in circumstances which would create a situation in which non-commercial assistance to the covered investment would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, there should be consideration of relevant factors[25] and of whether the totality of the factors considered lead to the conclusion that further availability of goods produced by the covered investment is imminent and that, unless protective action is taken, material injury would occur.

Article 18.9
Application to Sub Central State-Owned Enterprises and Designated Monopolies

Article 18.4 (Non-discriminatory Treatment and Commercial Considerations), Article 18.5 (Courts and Administrative Bodies), Article 18.6 (Non-commercial Assistance) and Article 18.10 (Transparency) shall not apply with respect to a Party's state-owned enterprises or designated monopolies as set out in Annex 18-D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies).

[25] In making a determination regarding the existence of a threat of material injury, a panel pursuant to Chapter 30 (Dispute Settlement) should consider, among other things, such factors as: (a) the nature of the non-commercial assistance in question and the trade effects likely to arise therefrom; (b) a significant rate of increase in sales in the domestic market by the covered investment, indicating a likelihood of substantially increased sales; (c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the covered investment indicating the likelihood of substantially increased production of the good by that covered investment, taking into account the availability of export markets to absorb additional production; (d) whether prices of goods sold by the covered investment will have a significant depressing or suppressing effect on the price of like goods; and (e) inventories of like goods.

Article 18.10
Transparency

1. Each Party shall provide to the other Party or otherwise make publicly available on an official website a list of its state-owned enterprises no later than six months after the date of entry into force of this Agreement, and thereafter shall update the list annually.

2. Each Party shall promptly notify the other Party or otherwise make publicly available on an official website the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation.

3. On the written request of the other Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly, provided that the request includes an explanation of how the activities of the entity may be affecting trade or investment between the Parties:

   (a) the percentage of shares that the Party, its state-owned enterprises or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold, in the entity;

   (b) a description of any special shares or special voting or other rights that the Party, its state-owned enterprises or designated monopolies hold, to the extent these rights are different than the rights attached to the general common shares of the entity;

   (c) the government titles of any government official serving as an officer or member of the entity's board of directors;

   (d) the entity's annual revenue and total assets over the most recent three-year period for which information is available;

   (e) any exemptions and immunities from which the entity benefits under the Party's law; and

   (f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

4. On the written request of the other Party, a Party shall promptly provide, in writing, information regarding any policy or programme it has adopted or maintains that provides for non-commercial assistance, provided that the request includes an explanation of how the policy or programme affects or could affect trade or investment between the Parties.

5. When a Party provides a response pursuant to paragraph 4, the information it provides shall be sufficiently specific to enable the requesting Party to

understand the operation of and evaluate the policy or programme and its effects or potential effects on trade or investment between the Parties. The Party responding to a request shall ensure that the response it provides contains the following information:

(a) the form of the non-commercial assistance provided under the policy or programme, for example, grant or loan;

(b) the names of the government agencies, state-owned enterprises, or state enterprises providing the non-commercial assistance and the names of the state-owned enterprises that have received or are eligible to receive the non-commercial assistance;

(c) the legal basis and policy objective of the policy or programme providing for the non-commercial assistance;

(d) with respect to goods, the amount per unit of the non-commercial assistance or, in cases where this is not possible, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the average amount per unit in the previous year;

(e) with respect to services, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the total amount in the previous year;

(f) with respect to policies or programmes providing for non-commercial assistance in the form of loans or loan guarantees, the amount of the loan or amount of the loan guaranteed, interest rates, and fees charged;

(g) with respect to policies or programmes providing for non-commercial assistance in the form of the provision of goods or services, the prices charged, if any;

(h) with respect to policies or programmes providing for non-commercial assistance in the form of equity capital, the amount invested, the number and a description of the shares received, and any assessments that were conducted with respect to the underlying investment decision;

(i) the duration of the policy or programme or any other time-limits attached to it; and

(j) statistical data permitting an assessment of the effects of the non-commercial assistance on trade or investment between the Parties.

6. If a Party considers that it has not adopted or does not maintain any policies or programmes referred to in paragraph 4, it shall so inform the requesting

Party in writing.

7. If any relevant points in paragraph 5 have not been addressed in the written response, an explanation shall be provided in the written response itself.

8. The Parties recognise that the provision of information under paragraphs 5 and 7 does not prejudge the legal status of the assistance that was the subject of the request under paragraph 4 or the effects of that assistance under this Agreement.

9. When a Party provides written information pursuant to a request under this Article and informs the requesting Party that it considers the information to be confidential, the requesting Party shall not disclose the information without the prior consent of the Party providing the information.

Article 18.11
Cooperation

1. The Parties recognise the importance of the development of transparent, robust and effective international trade rules to ensure open and fair competition between state-owned and privately-owned enterprises in global trade. The Parties also recognise the importance of addressing trade-distorting practices by state-owned enterprises, including the provision of non-commercial assistance that impairs the proper functioning of markets. The Parties further recognise the role of relevant international standards, including the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, adopted by the OECD Council on 8 July 2015 in developing such rules.

2. Accordingly, the Parties shall, where appropriate and subject to available resources, engage in mutually agreed technical cooperation activities, including:

   (a) cooperating in international fora that deal with regulation of state-owned enterprises in global trade, including in particular the WTO and the OECD;

   (b) exchanging information regarding each Party's experiences in improving the corporate governance and operation of their state-owned enterprises;

   (c) sharing best practices on policy approaches to ensure a level playing field between state-owned and privately owned enterprises, including policies related to competitive neutrality; and

(d) organising international seminars, workshops, or any other appropriate forum for sharing technical information and expertise related to the governance and operations of state-owned enterprises.

Article 18.12
Contact Points

Each Party shall designate and notify a contact point on State-Owned Enterprises and Designated Monopolies to facilitate communications between the Parties on any matter covered by this Chapter.

Article 18.13
Exceptions

1. Nothing in Article 18.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 18.6 (Non-commercial Assistance) shall be construed to:

   (a) prevent the adoption or enforcement by a Party of measures to respond temporarily to a national or global economic emergency; or

   (b) apply to a state-owned enterprise with respect to which a Party has adopted or enforced measures on a temporary basis in response to a national or global economic emergency, for the duration of that emergency.

2. Paragraph 1 of Article 18.4 (Non-discriminatory Treatment and Commercial Considerations) does not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate if that supply of financial services:

   (a) supports exports or imports, provided that these services are:

      (i) not intended to displace commercial financing; or

      (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;[26]

[26] In circumstances where no comparable financial services are offered in the commercial market: (a) for the purposes of subparagraphs 2(a)(ii), 2(b)(ii), 3(a)(ii) and 3(b)(ii), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of subparagraphs 2(a)(i), 2(b)(i), 3(a)(i) and 3(b)(i), the supply of the financial services shall be deemed not to be intended to displace commercial financing.

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

3. The supply of financial services by a state-owned enterprise pursuant to a government mandate shall be deemed not to give rise to adverse effects under subparagraphs 1(b), 1(c), 2(b) or 2(c) of Article 18.6 (Non-commercial Assistance) where the Party in which the financial service is supplied requires a local presence in order to supply those services, if that supply of financial services:[27]

(a) supports exports and imports, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

4. Article 18.6 (Non-commercial Assistance) does not apply with respect to an enterprise located outside the territory of a Party over which a state-owned enterprise of that Party has assumed temporary ownership as a consequence of foreclosure or a similar action in connection with defaulted debt, or payment of an insurance claim by the state-owned enterprise, associated with

[27] For the purposes of this paragraph, in cases where the Party in which the financial service is supplied requires a local presence in order to supply those services, the supply of the financial services identified in this paragraph through an enterprise that is a covered investment shall be deemed to not give rise to adverse effects.

the supply of the financial services referred to in paragraphs 2 and 3, provided that any support the Party, a state enterprise or state-owned enterprise of the Party, provides to the enterprise during the period of temporary ownership is provided in order to recoup the state-owned enterprise's investment in accordance with a restructuring or liquidation plan that will result in the ultimate divestiture from the enterprise.

5. Article 18.4 (Non-discriminatory Treatment and Commercial Considerations), Article 18.6 (Non-commercial Assistance), and Article 18.10 (Transparency) do not apply with respect to a state-owned enterprise or designated monopoly if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the state-owned enterprise or designated monopoly was less than a threshold amount which shall be calculated in accordance with Annex 18-A (Threshold Calculation).[28]

Article 18.14
Further Negotiations

Within five years of the date of entry into force of this Agreement, the Parties shall conduct further negotiations on extending the application of the disciplines in this Chapter in accordance with Annex 18-C (Further Negotiations).

Article 18.15
Process for Developing Information

Annex 18-B (Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies) applies in any dispute under Chapter 30 (Dispute Settlement) regarding a Party's conformity with Article 18.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 18.6 (Non-commercial Assistance).

[28] When a Party invokes this exception during consultations under Article 30.7 (Consultations – Dispute Settlement), the consulting Parties should exchange and discuss available evidence concerning the annual revenue of the state-owned enterprise or the designated monopoly derived from the commercial activities during the three previous consecutive fiscal years in an effort to resolve during the consultations period any disagreement regarding the application of this exception.

ANNEX 18-A
THRESHOLD CALCULATION

1. On the date of entry into force of this Agreement, the threshold referred to in paragraph 5 of Article 18.13 (Exceptions) shall be 200 million Special Drawing Rights (SDRs).

2. The amount of the threshold shall be adjusted at three-year intervals with each adjustment taking effect on 1 January. The first adjustment shall take place on the first 1 January following the entry into force of this Agreement, in accordance with the formula set out in this Annex.

3. The threshold shall be adjusted for changes in general price levels using a composite SDR inflation rate, calculated as a weighted sum of cumulative per cent changes in the Gross Domestic Product (GDP) deflators of SDR component currencies over the three-year period ending 30 June of the year prior to the adjustment taking effect, and using the following formula:

$$T_1 = (1 + \Sigma\, w_i^{SDR} \,.\, \Pi_i^{SDR}))T_0$$

where:

T_0 = threshold value at base period;
T_1 = new (adjusted) threshold value;
w_i^{SDR} = respective (fixed) weights of each currency, i, in the SDR (as at 30 June of the year prior to adjustment taking effect); and
Π_i^{SDR} = cumulative per cent change in the GDP deflator of each currency, i, in the SDR over the three-year period ending 30 June of the year prior to adjustment taking effect.

4. Each Party shall convert the threshold into national currency terms where the conversion rates shall be the average of monthly values of that Party's national currency in SDR terms over the three-year period to 30 June of the year before the threshold is to take effect. Each Party shall notify the other Party of its applicable threshold in their respective national currencies.

5. For the purposes of this Chapter, all data shall be drawn from the International Monetary Fund's International Financial Statistics database.

6. The Parties shall consult if a major change in a national currency vis-à-vis the SDR were to create a significant problem with regard to the application of this Chapter.

ANNEX 18-B

PROCESS FOR DEVELOPING INFORMATION CONCERNING STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

1. If a panel has been established pursuant to Chapter 30 (Dispute Settlement) to examine a complaint arising under Article 18.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 18.6 (Non-commercial Assistance), the Parties may exchange written questions and responses, as set forth in paragraphs 2, 3 and 4, to obtain information relevant to the complaint that is not otherwise readily available.

2. A Party (questioning Party) may provide written questions to the other Party (answering Party) within 15 days of the date the panel is established. The answering Party shall provide its responses to the questions to the questioning Party within 30 days of the date it receives the questions.

3. The questioning Party may provide any follow-up written questions to the answering Party within 15 days of the date it receives the responses to the initial questions. The answering Party shall provide its responses to the follow-up questions to the questioning Party within 30 days of the date it receives the follow-up questions.

4. If the questioning Party considers that the answering Party has failed to cooperate in the information-gathering process under this Annex, the questioning Party shall inform the panel and the answering Party in writing within 30 days of the date the responses to the questioning Party's final questions are due, and provide the basis for its view. The panel shall afford the answering Party an opportunity to reply in writing.

5. A Party that provides written questions or responses to the other Party pursuant to these procedures shall, on the same day, provide the questions or answers to the panel.

6. The answering Party may designate information in its responses as confidential information in accordance with the procedures set out in the Rules of Procedure established in accordance with subparagraph 1(e) of Article 30.2 (Functions of the Joint Committee – Administrative and Institutional Provisions) or other rules of procedure agreed to by the Parties.

7. The time periods in paragraphs 2, 3 and 4 may be modified upon agreement of the Parties or approval by the panel.

8. In determining whether a Party has failed to cooperate in the information-gathering process, the panel shall take into account the reasonableness of the questions and the efforts the answering Party has made to respond to the questions in a cooperative and timely manner.

9. In making findings of fact and its initial report, the panel should draw adverse inferences from instances of non-cooperation by a Party in the information-gathering process.

10. The panel may deviate from the time period set out in Chapter 30 (Dispute Settlement) for the issuance of the initial report if necessary to accommodate the information-gathering process.

11. The panel may seek additional information from a Party that was not provided to the panel through the information-gathering process where the panel considers the information necessary to resolve the dispute. However, the panel shall not request additional information to complete the record where the information would support a Party's position and the absence of that information in the record is the result of that Party's non-cooperation in the information-gathering process.

ANNEX 18-C

FURTHER NEGOTIATIONS

Within five years of the date of entry into force of this Agreement, the Parties shall conduct further negotiations on extending the application of:

(a) the disciplines in this Chapter to the activities of state-owned enterprises that are owned or controlled by a sub-central level of government, and designated monopolies designated by a sub-central level of government, where such activities have been listed in Annex 18-D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies); and

(b) the disciplines in Article 18.6 (Non-commercial Assistance) and Article 18.7 (Adverse Effects) to address effects caused, in a market of a non-Party, by the supply of services by a state-owned enterprise.

ANNEX 18-D

APPLICATION TO SUB-CENTRAL STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Pursuant to Article 18.9 (Application to Sub Central State-Owned Enterprises and Designated Monopolies), the following obligations shall not apply with respect to a state-owned enterprise owned or controlled by a sub-central level of government and a designated monopoly designated by a sub-central level of government:[29]

(a) For Australia:

(i) paragraphs 1(a) and (b) of Article 18.4 (Non-discriminatory Treatment and Commercial Considerations);

(ii) paragraph 2 of Article 18.4 (Non-discriminatory Treatment and Commercial Considerations);

(iii) subparagraphs 1(a) and 2(a) of Article 18.6 (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Australia;

(iv) subparagraphs 1(b), 1(c), 2(b) and 2(c) of Article 18.6 (Non-commercial Assistance); and

(v) paragraph 1 of Article 18.10 (Transparency).

(b) For the UK:

(i) paragraphs 1(a) and (b) of Article 18.4 (Non-discriminatory Treatment and Commercial Considerations);

(ii) paragraph 2 of Article 18.4 (Non-discriminatory Treatment and Commercial Considerations);

(iii) subparagraphs 1(a) and 2(a) of Article 18.6 (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of the UK;

(iv) subparagraphs 1(b), 1(c), 2(b) and 2(c) of Article 18.6 (Non-commercial Assistance); and

[29] For the purposes of this Annex, "sub-central level of government" means the regional level of government and the local level of government of a Party.

(v) paragraph 1 of Article 18.10 (Transparency).

CHAPTER 19

SMALL AND MEDIUM-SIZED ENTERPRISES

Article 19.1
General Provisions

1. The Parties recognise the importance of:

   (a) SMEs in their bilateral trade and investment relations; and

   (b) provisions in this Agreement that are of particular benefit to SMEs.

2. The Parties affirm their commitment to promoting an environment that:

   (a) facilitates and supports the development, growth, and competitiveness of SMEs;

   (b) promotes job creation in SMEs; and

   (c) enhances SMEs' ability to benefit from this Agreement.

3. The Parties recognise the importance of current initiatives, efforts and work on SMEs developed in relevant international fora, and in taking into account their findings and recommendations, where appropriate.

4. The Parties recognise the importance of the participation of SMEs owned or led by under-represented groups, such as women, youth, indigenous peoples, persons with a disability and minority groups in international trade.

5. The Parties also recognise the relevance of:

   (a) working cooperatively to identify and address barriers to SMEs' access to international markets;

   (b) considering the needs of SMEs when formulating new legislation, regulation and product standards; and

   (c) assessing the effects of globalisation on SMEs and, in particular, examining issues related to SMEs' access to financing and to support for innovation.

Article 19.2
Information Sharing

1. Each Party shall establish or maintain its own publicly accessible website containing information regarding this Agreement, including:

   (a) the full text of this Agreement;

   (b) a summary of this Agreement; and

   (c) information designed for SMEs that contains:

      (i) a description of the provisions in this Agreement that the Party considers to be relevant to SMEs; and

      (ii) any additional information that the Party considers useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include in its website referred to in paragraph 1 links to:

   (a) the equivalent website of the other Party; and

   (b) the websites of its own government agencies or authorities and other appropriate entities that provide information the Party considers useful to any person interested in trading, investing or doing business in that Party's territory.

3. Subject to each Party's laws and regulations, the information described in subparagraph 2(b) may include:

   (a) customs regulations and procedures;[1]

   (b) enquiry points;

   (c) regulations and procedures concerning intellectual property rights;

   (d) technical regulations, standards, and sanitary and phytosanitary measures relating to importation and exportation;

   (e) foreign investment regulations;

[1] This may include links to information on customs or other fees, including product-specific fees, imposed or in connection with importation and exportation; and duty drawback, deferral or other types of relief that reduce, refund or exempt customs duties.

(f) business registration procedures;

(g) employment regulations;

(h) taxation information;

(i) trade promotion programmes;

(j) information related to the temporary entry of business persons as defined in Chapter 11 (Temporary Entry for Business Persons); and

(k) rules on government procurement.

4. Each Party shall include in the website referred to in paragraphs 1 and 2 a link to a database that is electronically searchable including where possible by HS code, and that may include, if the Party considers applicable, the following information with respect to access to its market:

(a) rates of customs duty to be applied by the Party to the originating goods of the other Party;

(b) the most-favoured-nation applied rates of customs duty;

(c) tariff rate quotas established by the Party;

(d) rules of origin; and

(e) other relevant measures as agreed by the Parties.

5. Each Party shall regularly, or on request of the other Party, review the information and links on the website referred to in paragraphs 1 and 2 to ensure that such information and links are up to date and accurate.

6. Each Party may recommend additional information that the other Party may consider including on its website referred to in paragraphs 1 and 2.

Article 19.3
Contact Points on SMEs

1. Each Party shall designate and notify a contact point on SMEs.

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

3. The contact points shall:

(a) facilitate communications between the Parties on any matter the Party considers relevant to SMEs;

(b) exchange information to assist in monitoring the implementation of this Agreement as it relates to SMEs; and

(c) where appropriate, facilitate coordination between the Parties and any committee, working group or other subsidiary body established by this Agreement, on any matter covered by this Chapter.

Article 19.4
Cooperation to Increase Trade and Investment Opportunities for SMEs

1. The Parties acknowledge the importance of cooperating to achieve progress in reducing barriers to SMEs' access to international markets.

2. The Parties may undertake activities to strengthen cooperation under this Chapter including:

(a) identifying ways to assist SMEs of the Parties to take advantage of the commercial opportunities under this Agreement;

(b) exchanging and discussing each Party's experiences and best practices in supporting and assisting SMEs with respect to, among other things:

(i) training programmes;

(ii) trade education;

(iii) trade finance;

(iv) identifying commercial partners in the other Party;

(v) establishing good business credentials; and

(vi) payment practices in the other Party's market.

(c) facilitating the development of programmes to assist SMEs to participate in and integrate effectively into global markets and supply chains;

(d) identifying non-tariff barriers that adversely affect trade outcomes for SMEs and considering ways to minimise these barriers;

(e) exchanging information relating to the participation of SMEs in digital trade and e-commerce, with a view to assisting SMEs to take advantage of opportunities resulting from this Agreement; and

(f) considering any other matter pertaining to SMEs, including any issues raised by SMEs regarding their ability to benefit from this Agreement.

3. In carrying out any activities or programmes pursuant to paragraph 2, the Parties may seek to collaborate with experts, international organisations, or the private sector, as appropriate.

Article 19.5
Other Provisions that Benefit SMEs

The Parties recognise that, in addition to the provisions in this Chapter, there are provisions in this Agreement that seek to enhance cooperation between the Parties on SME issues, or that may be of benefit to SMEs.

Article 19.6
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 20

INNOVATION

Article 20.1
Definitions

For the purposes of this Chapter:

"innovation" means the development or implementation of a new or improved product, process, or organisational method, or combination thereof.

Article 20.2
Objective

The objective of this Chapter is to support trade and economic growth between the Parties through collaboration on innovation, consistent with the laws, regulations and policies of each Party.

Article 20.3
General Provisions

1. The Parties recognise the important role that innovation plays in their economies, including by stimulating competitiveness, increasing productivity, encouraging investment and promoting international trade.

2. The Parties confirm that their intention is for this Agreement to support innovation in their respective economies, including by fostering opportunities in innovation-intensive industries and encouraging trade in innovative goods and services.

3. The Parties acknowledge the existing collaboration on innovation between their governments, industries, universities, publicly funded research agencies and other non-governmental bodies, and confirm their commitment to further strengthening this collaboration.

Article 20.4
Artificial Intelligence and Emerging Technologies

1. The Parties recognise that emerging technologies, including artificial intelligence and other digital technologies, are becoming increasingly important within the global economy, and offer significant social and economic benefits.

2. The Parties shall cooperate, where appropriate through the Strategic Innovation Dialogue established pursuant to paragraph 1 of Article 20.5 (Strategic Innovation Dialogue), in activities aimed at encouraging the development and adoption of emerging technologies, and facilitating trade in related products and services. Those activities may include:

   (a) sharing research and industry practices related to emerging technologies and their governance;

   (b) promoting and sustaining the responsible use and adoption of emerging technologies by businesses and across the community;

   (c) encouraging commercialisation opportunities and collaboration between research institutions, industries and businesses related to emerging technologies;

   (d) playing an active role in the development of international standards, regulations and conformity assessment procedures that provide clear expectations for businesses and support the growth of emerging technologies;

   (e) facilitating and promoting investment in research and development related to emerging technologies; and

   (f) facilitating and promoting trade in emerging technologies, including by exchanging views on effective trade policy approaches.

3. The Parties also recognise the importance of developing governance frameworks for the trusted, safe, and responsible use of emerging technologies that will help realise the benefits of these technologies. The Parties further acknowledge the benefits of ensuring that those frameworks are internationally aligned as far as possible. To this end, the Parties shall endeavour to:

   (a) collaborate on, and promote the development and adoption of, governance frameworks that support the trusted, safe, and responsible use of emerging technologies, through relevant international fora, in particular the Global Partnership on Artificial Intelligence; and

   (b) take into consideration internationally recognised principles or guidelines, in particular the Organisation for Economic Cooperation and Development's Principles on Artificial Intelligence adopted by its Council on 22 May 2019, when developing those frameworks.

Article 20.5
Strategic Innovation Dialogue

1. The Parties hereby establish a Strategic Innovation Dialogue for the purposes of facilitating an open business environment that supports and stimulates innovation in their territories, promoting and strengthening trade-facilitative innovation policy, identifying unnecessary barriers to trade in innovative goods and services, and identifying other opportunities to further the objective of this Chapter.

2. Through the Strategic Innovation Dialogue, the Parties shall mutually identify areas of cooperation to promote and facilitate innovation in their territories. Examples of areas of cooperation may include:

   (a) regulatory approaches that facilitate innovation, including the uptake and implementation of international innovation best practice standards;

   (b) emerging and transformative technologies, including clean and low emissions technologies, artificial intelligence, and other digital technologies;

   (c) the commercial application of new technologies, including in economic sectors such as agriculture, health, energy, mineral resources, space, and manufacturing;

   (d) value chain matters, including supply chain resilience; and

   (e) global innovation networks and cross-border trade in intangible assets, including through higher education and research collaboration.

3. Through the Strategic Innovation Dialogue, the Parties shall:

   (a) share best practice principles and explore opportunities in innovation policy across government, academia, research organisations, industry and business;

   (b) review existing relationships for opportunities to strengthen bilateral engagement on the impacts of innovation on trade and investment;

   (c) explore ways in which innovation can further promote trade and investment; and

   (d) consider any other matter that the Parties deem appropriate which furthers the objective of this Chapter.

4. Consistent with the objective of this Chapter, the Strategic Innovation Dialogue may develop a cooperative activity between the Parties in an area of mutual interest.

5. The Parties may consult with or seek advice from a qualified non-governmental expert or stakeholder in relation to furthering the objective of this Chapter, including by inviting them to participate in the Strategic Innovation Dialogue.

6. The Strategic Innovation Dialogue shall be co-chaired by a representative from each Party.

7. The Strategic Innovation Dialogue shall convene within 12 months of the date of entry into force of this Agreement and thereafter at least once every two years, unless the Parties agree otherwise.

8 Each Party shall, on entry into force of this Agreement, designate a contact point for the Strategic Innovation Dialogue and notify the other Party of that contact point. Each Party shall promptly notify the other Party of any change to those contact details.

9. The Strategic Innovation Dialogue may engage with any committee, working group, or other subsidiary body established under this Agreement to further the objective of this Chapter.[1]

10. The Joint Committee may refer a matter to the Strategic Innovation Dialogue for its consideration.

Article 20.6
Review of this Agreement

1. The Parties recognise the importance of ensuring that the disciplines contained in this Agreement remain relevant to the trade and investment issues and challenges confronting them, including those arising from innovation.

2. Where a review is conducted pursuant to paragraph 1 and in accordance with subparagraph 3(a) of Article 32.6 (General Review – Final Provisions), the Parties shall take into account developments in innovation, including as discussed through the Strategic Innovation Dialogue.

1 The Strategic Innovation Dialogue shall not be considered a committee, working group, or other subsidiary body established under this Agreement for the purposes of Chapter 29 (Administrative and Institutional Arrangements).

Article 20.7
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 21
LABOUR

Article 21.1
Definitions

For the purposes of this Chapter:

"ILO Declaration" means the International Labour Organization ("ILO") *Declaration on Fundamental Principles and Rights at Work and its Follow-up* done at Geneva on 18 June 1998;

"labour laws" means laws and regulations,[1] or provisions of laws and regulations, of a Party that are directly related to the following internationally recognised labour rights:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour, a prohibition on the worst forms of child labour and other labour for children and minors;

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

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; and

"modern slavery" means human trafficking, slavery and slavery-like practices, including servitude, and forced or compulsory labour, as defined in the laws and regulations of each Party.

Article 21.2
Right to Regulate and Levels of Protection

1. Each Party recognises the sovereign right of the other Party to establish its own levels of domestic labour protection and its own priorities on labour, and to establish, adopt or modify its labour laws and policies accordingly, in a

[1] For Australia, "laws and regulations" or "laws or regulations" means an Act of the Commonwealth Parliament, or a regulation made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament, that is enforceable at the central level of government.

manner consistent with its international labour commitments referred to in this Chapter.

2. Each Party shall strive to ensure that its labour laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve such laws and policies with the goal of providing high levels of labour protection.

Article 21.3
Statement of Shared Commitment

1. The Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration, regarding labour rights within their territories.

2. The Parties recognise that, as stated in paragraph 5 of the ILO Declaration, labour standards should not be used for protectionist trade purposes.

Article 21.4
Labour Rights

1. Each Party shall adopt and maintain in its laws and regulations, and practices thereunder, the following rights as stated in the ILO Declaration[2,3]:

   (a) freedom of association and the effective recognition of the right to collective bargaining;

   (b) the elimination of all forms of forced or compulsory labour;

   (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and

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

[2] The obligations set out in Article 21.4 (Labour Rights), as they relate to the ILO, refer only to the ILO Declaration.
[3] To establish a violation of an obligation under paragraph 1 of Article 21.4 (Labour Rights) a Party shall demonstrate that the other Party has failed to adopt or maintain a law, regulation or practice to encourage trade or investment.

2. Each Party shall adopt and maintain laws and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.[4]

Article 21.5
Non Derogation

The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws. Accordingly, neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its laws or regulations:

(a) implementing paragraph 1 of Article 21.4 (Labour Rights), if the waiver or derogation would be inconsistent with a right set out in that paragraph; or

(b) implementing paragraph 1 or 2 of Article 21.4 (Labour Rights), if the waiver or derogation would weaken or reduce adherence to a right set out in paragraph 1 of Article 21.4 (Labour Rights), or to a condition of work referred to in paragraph 2 of Article 21.4 (Labour Rights), in a special trade or customs area, such as an export processing zone or foreign trade zone, in the Party's territory,

in a manner affecting trade or investment between the Parties.

Article 21.6
Enforcement of Labour Laws

1. Neither Party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement.

2. If a Party fails to comply with an obligation under this Chapter, a decision made by that Party on the provision of enforcement resources shall not excuse that failure. Each Party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources between labour enforcement activities among the fundamental labour rights and acceptable conditions of work enumerated in Article 21.4 (Labour Rights), provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

[4] For greater certainty, this obligation relates to the establishment by a Party in its laws, regulations and practices thereunder, of acceptable conditions of work as determined by that Party.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party.

Article 21.7
Modern Slavery

1. The Parties affirm their endorsement of the *Call to Action to End Forced Labour, Modern Slavery and Human Trafficking* launched at the UN General Assembly in New York City on 19 September 2017, their commitment to advancing the *Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains* and the *United Nations Guiding Principles on Business and Human Rights.* The Parties underline the importance of ratification of the *Protocol of 2014 to the ILO Forced Labour Convention, 1930,* done at Geneva on 11 June 2014.

2. Each Party shall, subject to its laws and regulations, strive to ensure that private and public sector entities operating in its territory take appropriate steps to prevent modern slavery in their supply chains. To this end, each Party shall, to the extent it considers appropriate, adopt or maintain measures:

   (a) to facilitate private sector entities to identify and address modern slavery in their global and domestic supply chains, including by publishing relevant guidance to raise awareness, to promote responsible business conduct, and to foster collaboration across sectors and with civil society;

   (b) to require responsible business conduct and supply chain transparency in respect of private sector entities operating in its territory, including regular public reporting on steps taken;

   (c) to facilitate public sector entities to identify and address modern slavery in their global and domestic supply chains. To this end, each Party shall also strive towards transparency and regular public communication of the actions public sector entities have taken in this respect;

   (d) to facilitate the improvement of the capability of staff in public sector entities working on government procurement and commercial matters to identify and address modern slavery in supply chains; and

   (e) to deter the use of fees for work-finding services sought from or charged to workers in sectors considered appropriate by the Party.

3. To assist in the implementation of paragraph 2, the Parties shall endeavour to cooperate, share information and best practice, and, as appropriate, identify areas of alignment to tackle modern slavery.

Article 21.8
Non-Discrimination and Gender Equality in the Workplace

1. The Parties acknowledge the importance of gender equality and non-discrimination in employment and income opportunities for sustainable, equitable, and inclusive economic growth. Accordingly, each Party affirms its commitments to non-discrimination in employment, occupations, and places of work, and to take measures to advance anti-discrimination practices and address discriminatory practices, including those related to workplace sexual harassment, gender-based violence, gender pay gaps, and flexible working arrangements, as well as improve women's access to decent work.

2. The Parties agree to share information on their respective domestic approaches and cooperate, as appropriate, on activities to address discriminatory practices, promote equality of opportunity in employment, and improve women's access to decent work and the benefits of trade or investment. The Parties recognise the importance of carrying out cooperation activities with the inclusive participation of women.

Article 21.9
Corporate Social Responsibility

Each Party shall endeavour to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party.

Article 21.10
Public Awareness and Procedural Guarantees

1. Each Party shall promote public awareness of its labour laws, including by ensuring that information related to its labour laws and enforcement and compliance procedures is publicly available.

2. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to impartial and independent tribunals for the enforcement of the Party's labour laws. These tribunals may

include administrative tribunals, quasi-judicial tribunals, judicial tribunals, or labour tribunals, as provided for in each Party's law.

3. Each Party shall ensure that proceedings before these tribunals for the enforcement of its labour laws:

   (a) are fair, equitable, and transparent;

   (b) comply with due process of law; and

   (c) do not entail unreasonable fees or time limits or unwarranted delays.

4. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable law.

5. Each Party shall ensure that:

   (a) the parties to these proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and

   (b) final decisions on the merits of the case:

      (i) are based on information or evidence in respect of which the parties were offered the opportunity to be heard;

      (ii) state the reasons on which they are based; and

      (iii) are available in writing without undue delay to the parties to the proceedings and, consistent with its law, to the public.

6. Each Party shall provide that parties to these proceedings have the right to seek review or appeal, as appropriate under its law.

7. Each Party shall ensure that the parties to these proceedings have access to remedies under its law for the effective enforcement of their rights under the Party's labour laws and that these remedies are executed in a timely manner.

8. Each Party shall provide procedures to effectively enforce the final decisions of its tribunals in these proceedings.

9. For greater certainty, and without prejudice to whether a tribunal's decision is inconsistent with a Party's obligations under this Chapter, nothing in this Chapter shall be construed to require a tribunal of a Party to reopen a decision that it has made in a particular matter.

Article 21.11
Public Submissions

1. Each Party, through its contact point designated under Article 21.14 (Contact Points), shall provide for the receipt and consideration of written submissions from persons of a Party on matters related to this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions.

2. A Party may provide in its procedures that, to be eligible for consideration, a submission should, at a minimum:

   (a) raise an issue directly relevant to this Chapter;

   (b) clearly identify the person or organisation making the submission; and

   (c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.

3. Each Party shall:

   (a) consider matters raised by the submission and provide a timely response to the person or organisation that made the submission, including in writing as appropriate; and

   (b) make the submission and the results of its consideration available to the other Party and the public, as appropriate, in a timely manner.

4. A Party may request from the person or organisation that made the submission additional information that is necessary to consider the substance of the submission.

Article 21.12
Cooperation

1. The Parties recognise the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labour standards and to further advance common commitments regarding labour matters, including workers' wellbeing and quality of life and the principles and rights stated in the ILO Declaration.

2. In undertaking cooperative activities, the Parties shall be guided by the following principles:

(a) consideration of each Party's priorities, level of development and available resources;

(b) broad involvement of, and mutual benefit to, the Parties;

(c) relevance of capacity and capability-building activities, including technical assistance between the Parties to address labour protection issues and activities to promote innovative workplace practices;

(d) generation of measurable, positive, and meaningful labour outcomes;

(e) resource efficiency, including through the use of technology, as appropriate, to optimise resources used in cooperative activities;

(f) complementarity with existing regional and multilateral initiatives to address labour issues; and

(g) transparency and public participation.

3. Each Party shall invite the views and, as appropriate, participation of its stakeholders, including worker and employer representatives, in identifying potential areas for cooperation and undertaking cooperative activities. Subject to the agreement of each Party, cooperative activities may take place bilaterally and in international fora such as the ILO.

4. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the Parties. The Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

5. In addition to the cooperative activities outlined in this Article, the Parties shall, as appropriate, caucus and leverage their respective membership in regional and multilateral fora to further their common interests in addressing labour issues.

6. Areas of cooperation may include:

(a) promotion of the awareness of and respect for principles and rights as stated in the ILO Declaration and for the concept of Decent Work as defined by the ILO;

(b) labour laws and practices, including the effective implementation of the principles and rights as stated in the ILO Declaration;

(c) sharing best practice and the promotion and protection of equality and elimination of discrimination in respect of employment and occupation for migrant workers, or in the areas of age, disability, gender, pregnancy, race, sexual orientation, and other characteristics

of a diverse, multigenerational workforce that are not related to merit or the requirements of employment;

(d) collection and use of statistics; and

(e) any other areas as agreed by the Parties.

7. The Parties may undertake activities in the areas of cooperation in paragraph 6 through:

(a) workshops, seminars, dialogues, and other fora to share knowledge, experiences and best practices, including online fora and other knowledge-sharing platforms;

(b) study trips, visits, and research studies to document and study policies and practices;

(c) collaborative research and development related to best practices in subjects of mutual interest;

(d) specific exchanges of technical expertise and assistance, as appropriate; and

(e) other forms as the Parties may decide.

Article 21.13
Committee on Cooperation

The Committee on Cooperation established under Article 27.4 (Committee on Cooperation - Cooperation) shall consider any matter under this Chapter related to cooperation and support any cooperation activities.

Article 21.14
Contact Points

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 the date 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, or other document provided in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

Article 21.15
Public Engagement

1. The Parties shall provide a means for receiving and considering the views of interested persons on matters related to this Chapter.

2. Each Party shall establish or maintain, and consult, a labour consultative or advisory body or similar mechanism, for members of its public, including representatives of its labour and business organisations, to provide views on matters regarding this Chapter.

Article 21.16
Labour Consultations and Dispute Settlement

1. The Parties shall make every effort to resolve any matter arising under this Chapter through cooperation and consultation based on the principle of mutual respect.

2. A Party ("the requesting Party") may, at any time request labour consultations with the other Party ("the responding Party") regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request. The requesting Party shall circulate the request to the responding Party through their respective contact points.

3. The responding Party, shall unless agreed otherwise with the requesting Party, reply to the request in writing no later than seven days after the date of its receipt. The responding Party shall enter into labour consultations in good faith.

4. The Parties shall begin labour consultations no later than 30 days after the date of receipt by the responding Party of the request.

5. In labour consultations:

   (a) each Party shall provide sufficient information to enable a full examination of the matter; and

   (b) each Party shall treat any confidential information exchanged in the course of the consultations on the same basis as the Party providing the information.

6. Labour consultations may be held in person or by any technological means available to the Parties. If labour consultations are held in person, they shall

be held in the capital of the responding Party, unless the Parties agree otherwise.

7. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through labour consultations under this Article, taking into account opportunities for cooperation related to the matter. The Parties may request advice from an independent expert or experts chosen by consulting Parties to assist them. The Parties may have recourse to such procedures as good offices, conciliation, or mediation.

8. In labour consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies with expertise in the matter that is the subject of the labour consultations.

9. If the Parties are unable to resolve the matter, either Party may request the Joint Committee to convene to consider the matter by delivering a written request to the other Party through its contact point. The Joint Committee shall convene no later than 30 days after the day of the receipt of the request, unless the Parties agree otherwise, and shall seek to resolve the matter, including, if appropriate, by consulting independent experts and having recourse to such procedures as good offices, conciliation, or mediation.

10. If the Parties are able to resolve the matter, they shall document any outcome including, if appropriate, specific steps and timelines agreed upon. The Parties shall make the outcome document available to the public, unless they agree otherwise.

11. If the Parties have failed to resolve the matter no later than 60 days after the day of the receipt of a request under paragraph 2, or any other period as the Parties may agree, the requesting Party may request the establishment of a panel under Article 30.8 (Request for Establishment of a Panel – Dispute Settlement) and, as provided in Chapter 30 (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

12. In addition to the requirements set out in paragraph 1(a) of Article 30.10 (Qualification of Panellists – Dispute Settlement), for a dispute arising under this Chapter panellists other than the chair shall have sufficient expertise or experience in labour law or practice.

13. Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

14. Labour consultations shall be confidential and without prejudice to the rights of a Party in any other proceedings.

CHAPTER 22

ENVIRONMENT

Article 22.1
Definitions

For the purposes of this Chapter:

"environmental law" means a law or regulation of a Party, or provision thereof, including any that implements the Party's obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

(a) the prevention, abatement or control of: the release, discharge or emission of pollutants or environmental contaminants including greenhouse gases;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials or wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas,[1, 2]

but does not include a law or regulation, or provision thereof, directly related to worker safety or health, nor any law or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources;

For Australia, "law or regulation" means an Act of the Commonwealth Parliament, or a regulation made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament, that is enforceable at the central level of government; and

[1] For the purposes of this Chapter, the term "specially protected natural areas" means those areas as defined by the Party in its laws and regulations.

[2] The Parties recognise that such protection or conservation may include the protection or conservation of biological diversity.

Article 22.2
Objectives

1. The objectives of this Chapter are to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.

2. Taking account of their respective domestic priorities and circumstances, the Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance, and complement the objectives of this Agreement.

3. The Parties further recognise that it is inappropriate to establish or use their environmental laws or other environmental measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

Article 22.3
General Commitments

1. The Parties recognise the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in the furtherance of sustainable development.

2. The Parties recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own priorities relating to the environment, including climate change, and to establish, adopt or modify its environmental laws and policies accordingly.

3. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection.

4. Neither Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement.

5. The Parties recognise that each Party retains the right to exercise discretion and to make decisions regarding:

   (a) investigatory, prosecutorial, regulatory, and compliance matters; and

(b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have a higher priority.

Accordingly, the Parties understand that with respect to the enforcement of environmental laws, a Party is in compliance with paragraph 4 if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

6. Without prejudice to paragraph 2, the Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

7. Where a Party has defined environmental law under Article 22.1 (Definitions) to include only laws and regulations at the central level of government (first Party) and where the other Party (second Party) considers that an environmental law at the sub-central level of government of the first Party is not being effectively enforced by the relevant sub-central level of government through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, the second Party may request a dialogue with the first Party. The request shall contain information that is specific and sufficient to enable the first Party to evaluate the matter at issue, and an indication of how the matter is negatively affecting trade or investment of the second Party.

8. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 22.4
Multilateral Environmental Agreements

1. The Parties recognise that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protecting the environment, and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.

2. The Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly

with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.

Article 22.5
Climate Change

1. Each Party affirms its commitment to address climate change, including under the *United Nations Framework Convention on Climate Change* done at New York on 9 May 1992 and the *Paris Agreement* done at Paris on 12 December 2015 ("Paris Agreement"), to which both Parties are party, and recognises the importance of achieving their goals.

2. The Parties emphasise that efforts to address climate change require collective and urgent action, and acknowledge the role of global trade and investment in these efforts.

3. The Parties recognise the important role that cooperation can play in addressing climate change. Consistent with Article 22.20 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest which may include:

   (a) emission reduction opportunities across all sectors and greenhouse gases;

   (b) exchange on policies, laws, and measures that can contribute to a reduction in greenhouse gas emissions;

   (c) development and acceleration of cost-effective, low, and zero emissions technologies;

   (d) clean and renewable energy sources and supporting infrastructure and enabling technologies;

   (e) energy efficiency;

   (f) sustainable transport and sustainable urban infrastructure development;

   (g) addressing deforestation and forest degradation;

   (h) emissions measurement, reporting, and verification;

   (i) climate change adaptation and resilience;

   (j) nature-based solutions to mitigate and adapt to the impacts of climate change; and

(k) capacity building and development assistance for climate vulnerable countries.

Article 22.6
Environmental Goods and Services

1. The Parties recognise the importance of trade and investment in environmental goods and services as a means of improving environmental and economic performance, contributing to clean growth, and addressing global environmental challenges.

2. Accordingly, each Party shall facilitate and promote, as appropriate, trade and investment in environmental goods and services, including environmental and low emissions technologies, clean and renewable energy and enabling infrastructure, and energy efficient goods and services.

3. The Environment Working Group shall consider issues identified by a Party or the Parties related to trade in environmental goods and services, including issues identified as potential non-tariff barriers to that trade. The Parties shall endeavour to address any potential barrier to trade in environmental goods and services that may be identified by a Party, including by working through the Environment Working Group and in conjunction with other relevant committees established under this Agreement, as appropriate.

4. The Parties shall cooperate bilaterally and in international fora, as appropriate, on ways to enhance trade and investment in environmental goods and services.

Article 22.7
Circular Economy

1. The Parties recognise the importance of a transition towards a circular economy and the role that waste avoidance and greater resource efficiency can play in reducing pressure on the natural environment, improving resource security, and reducing other associated negative environmental effects arising from the use of materials throughout their lifecycle. The Parties further recognise the role that trade can play in achieving these goals through trade in second-hand goods, end-of-life products, secondary materials, processed waste, as well as trade in related services.

2. The Parties recognise the importance of avoiding the generation of waste and encouraging the reuse of products and resource efficient product design, including the designing of products to be easier to reuse, dismantle, or recycle at end of life. The Parties also recognise the importance of encouraging environmental labelling, including eco-labelling, to make it easier for consumers to make more sustainable choices.

3. Consistent with Article 22.20 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest related to the transition towards a circular economy. Areas of cooperation may include:

(a) barriers to trade in relation to the circular economy;

(b) environmental labelling, including eco-labelling;

(c) sustainable supply chain management, including enhanced reverse logistics;

(d) investment in, and financing of, circular economy projects;

(e) reuse, repair, remanufacture, and recycling;

(f) resource efficient product design that makes products more durable and easier to repair, recycle, and reuse;

(g) extended producer responsibility;

(h) technological innovation related to the circular economy including innovative approaches to recycling and litter reduction, processing waste, waste tracking mechanisms, data collection, sustainable plastic packaging, and alternative materials;

(i) best practice in resource efficiency in key fields such as industrial symbiosis, sustainable use of chemicals and plastics, and new business models such as product service systems;

(j) approaches to reducing the amount of waste sent to landfill and accelerating the movement of waste further up the waste hierarchy; and

(k) best practice on sustainable management of hazardous wastes.

Article 22.8
Ozone Depleting Substances and Hydrofluorocarbons

1. The Parties recognise that emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment, and that the reduction of certain substances can address global environmental challenges, including climate change. Accordingly, each Party shall take measures to

control the production and consumption of, and trade in, substances controlled by the Montreal Protocol.[3, 4, 5]

2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the protection of the ozone layer. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to ozone depleting substances and hydrofluorocarbons.

3. Consistent with 22.20 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest related to ozone-depleting substances and hydrofluorocarbons. Cooperation may include exchanging information and experiences in areas related to:

   (a) environmentally friendly alternatives to ozone-depleting substances and hydrofluorocarbons, as well as emerging technologies for sustainable cooling and refrigeration;

   (b) refrigerant management practices, policies, and programmes including lifecycle management of coolants and refrigerants;

   (c) methodologies for stratospheric ozone measurements;

   (d) combating illegal trade in ozone-depleting substances and hydrofluorocarbons; and

   (e) barriers to trade in, and uptake of, sustainable cooling and refrigeration technologies.

[3] For greater certainty, this provision pertains to substances controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal on 16 September 1987 ("Montreal Protocol"), and any existing amendments or adjustments to the Montreal Protocol, including the *Kigali Amendment* done at Kigali on 15 October 2016, and any future amendments or adjustments to which the Parties are parties.

[4] A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 22A, implementing its obligations under the Montreal Protocol, or any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

[5] If compliance with this provision is not established pursuant to footnote 4, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to control the production and consumption of, and trade in, substances controlled by the Montreal Protocol in a manner that is likely to result in adverse effects on human health and the environment, in a manner affecting trade or investment between the Parties.

Article 22.9
Air Quality

1. The Parties acknowledge that trade involving production, consumption, and transportation of goods across air, sea and land can cause air pollution and that air pollution can travel long distances and recognise the importance of reducing domestic and transboundary air pollution, and that cooperation can be beneficial in achieving these objectives.

2. The Parties recognise the importance of public participation and consultation in accordance with their respective law or policy in the development and implementation of measures to reduce domestic and transboundary air pollution and in ensuring access to air quality data.

3. Consistent with Article 22.20 (Cooperation Frameworks) the Parties shall cooperate to address matters of mutual interest with respect to air quality, which may include:

   (a) ambient air quality planning;

   (b) modelling and monitoring, including spatial distribution of main sources and their emissions;

   (c) measurement and inventory methodologies for air quality and emissions measurements; and

   (d) reduction, control, and prevention technologies and practices.

Article 22.10
Protection of the Marine Environment from Ship Pollution

1. The Parties recognise the importance of protecting and preserving the marine environment. To that end, each Party shall take measures to prevent the pollution of the marine environment from ships.[6,7,8]

[6] For greater certainty, this provision pertains to pollution regulated by the *International Convention for the Prevention of Pollution from Ships*, done at London on 2 November 1973, as modified by the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships*, done at London on 17 February 1978, and the *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships 1973,* as Modified by the *Protocol of 1978 relating thereto*, done at London on 26 September 1997 ("MARPOL Convention"), and any existing and future amendments to the MARPOL Convention to which the Parties are parties.

[7] A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 22B implementing its obligations under MARPOL, or any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

[8] If compliance with this provision is not established pursuant to footnote 7, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to prevent

2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures to prevent the pollution of the marine environment from ships. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to the prevention of pollution of the marine environment from ships.

3. Consistent with Article 22.20 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest with respect to pollution of the marine environment from ships. Areas of cooperation may include:

   (a) accidental pollution from ships;

   (b) pollution from routine operations of ships;

   (c) deliberate pollution from ships;

   (d) development of technologies to minimise ship-generated waste;

   (e) emissions from ships;

   (f) adequacy of port waste reception facilities;

   (g) increased protection in special geographic areas; and

   (h) enforcement measures including notifications to flag States and, as appropriate, by port States.

Article 22.11
Marine Litter

1. The Parties acknowledge that trade is a source of marine litter and the importance of taking action to prevent and reduce marine litter, including plastics and microplastics, in order to preserve marine and coastal ecosystems, prevent the loss of biodiversity, and mitigate marine litter's costs and impacts.

2. Recognising the global nature of the challenge of marine litter, the Parties acknowledge the importance of maintaining measures under their environmental laws and policies to prevent and reduce marine litter and taking action to address marine litter in other fora.

3. Accordingly, the Parties shall cooperate to address matters of mutual interest with respect to combatting marine litter, which may include:

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the pollution of the marine environment from ships, in a manner affecting trade or investment between the Parties.

(a) addressing land and sea based pollution;

(b) promoting waste management infrastructure;

(c) advancing efforts related to abandoned, lost, or otherwise discarded fishing gear; and

(d) circular economy and waste management hierarchy measures relevant to addressing marine litter.

Article 22.12
Marine Wild Capture Fisheries[9]

1. The Parties acknowledge their role as major consumers, producers and traders of fisheries products, and the importance of the marine fisheries sector to their development and to the livelihoods of their fishing communities, including artisanal or small-scale fisheries. The Parties also acknowledge that the fate of marine capture fisheries is an urgent resource problem facing the international community. Accordingly, the Parties recognise the importance of taking measures aimed at the conservation and the sustainable management of fisheries.

2. In this regard, the Parties acknowledge that inadequate fisheries management, fisheries subsidies that contribute to overfishing and overcapacity, and illegal, unreported, and unregulated ("IUU") fishing[10] can have significant negative impacts on trade, development and the environment, and recognise the need for individual and collective action to address the problems of overfishing and unsustainable utilisation of fisheries resources, with appropriate consideration of the rights of coastal States to fisheries resources and the obligations of coastal States, flag States and port States in managing fishing activity.

3. Accordingly, each Party shall operate a fisheries management system that regulates marine wild capture fishing and that is designed to:

   (a) prevent overfishing and overcapacity;

   (b) reduce bycatch of non-target species and juveniles, including through the regulation of fishing gear that results in bycatch and the regulation of fishing in areas where bycatch is likely to occur; and

[9] For greater certainty, this Article does not apply with respect to aquaculture.
[10] The term "illegal, unreported and unregulated fishing" is to be understood to have the same meaning as paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* ("2001 IUU Fishing Plan of Action") of the UN Food and Agricultural Organisation ("FAO"), adopted at Rome in 2001.

(c) promote the recovery of overfished stocks for all marine fisheries in which that Party's persons conduct fishing activities.

Such a management system shall be based on the best scientific evidence available and on internationally recognised best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species.[11]

4. Each Party shall promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals, through the implementation and effective enforcement of conservation and management measures. Those measures should include, as appropriate:

(a) for sharks, the collection of species-specific data, fisheries bycatch mitigation measures, catch limits, and finning prohibitions; and

(b) for marine turtles, seabirds, and marine mammals: fisheries bycatch mitigation measures, conservation and relevant management measures, prohibitions, and other measures in accordance with relevant international agreements to which the Party is party.

5. The Parties recognise that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity and to promote the recovery of overfished stocks must include the control, reduction, and eventual elimination of all subsidies that contribute to overfishing and overcapacity. To that end, neither Party shall grant or maintain any of the following subsidies[12] within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement:

[11] These instruments include, among others, and as they may apply, *United Nations Convention on the Law of the Sea* done at Montego Bay on 10 December 1982 ("UNCLOS"), the *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, done at New York on 4 December 1995 ("UN Fish Stocks Agreement"), the FAO *Code of Conduct for Responsible Fisheries*, the 1993 FAO *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* done at Rome on 24 November 1993 ("Compliance Agreement") and the 2001 IUU Fishing Plan of Action.

[12] For the purposes of this Article, a subsidy shall be attributable to the Party conferring it, regardless of the flag of the vessel involved or the application of rules of origin to the fish involved.

(a) subsidies for fishing[13] that negatively affect[14] fish stocks that are in an overfished[15] condition; and

(b) subsidies provided to any fishing vessel[16] while listed by the flag State or a relevant Regional Fisheries Management Organisation or Arrangement for IUU fishing in accordance with the rules and procedures of that organisation or arrangement and in conformity with international law.

6. Subsidy programmes that are established by a Party before the date of entry into force of this Agreement for that Party and which are inconsistent with paragraph 5(a) shall be brought into conformity with that paragraph as soon as possible and no later than three years of the date of entry into force of this Agreement for that Party.

7. In relation to subsidies that are not prohibited by paragraph 5(a) or 5(b), and taking into consideration a Party's social and developmental priorities, including food security concerns, each Party shall make best efforts to refrain from introducing new, or extending, or enhancing existing subsidies within the meaning of Article 1.1 of the SCM Agreement, to the extent they are specific within the meaning of Article 2 of the SCM Agreement, that contribute to overfishing or overcapacity.

8. With a view to achieving the objective of eliminating subsidies that contribute to overfishing and overcapacity, the Parties shall review the disciplines in paragraph 5 through existing channels, as appropriate.

9. Each Party shall also provide, to the extent possible, information in relation to other fisheries subsidies that the Party grants or maintains that are not covered by paragraph 5, in particular fuel subsidies.

10. A Party may request information from the other Party regarding fisheries subsidies notifications provided in accordance with WTO data reporting requirements. The notifying Party shall respond to that request as quickly as possible and in a comprehensive manner.

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[13] For the purposes of this paragraph, "fishing" means searching for, attracting, locating, catching, taking, or harvesting fish, or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.

[14] The negative effect of those subsidies shall be determined based on the best scientific evidence available.

[15] For the purposes of this Article, a fish stock is overfished if the stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available. Fish stocks that are recognised as overfished by the domestic jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation shall also be considered overfished for the purposes of this paragraph.

[16] The term "fishing vessels" refers to any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.

11. The Parties recognise the importance of concerted international action to address IUU fishing as reflected in regional and international instruments[17] and shall endeavour to improve cooperation internationally in this regard, including with and through competent international organisations.

12. In support of efforts to combat IUU fishing practices and to help deter trade in products from species harvested from those practices, each Party shall:

(a) cooperate with the other Party to identify needs and to build capacity to support the implementation of this Article;

(b) support monitoring, control, surveillance, compliance, and enforcement systems, including by adopting, reviewing, or revising, as appropriate, measures to:

(i) deter vessels that are flying its flag[18] and its nationals from engaging in IUU fishing activities; and

(ii) address the transhipment at sea of fish or fish products caught through IUU fishing activities; and

(c) implement port State measures, including through actions consistent with the Port State Measures Agreement;[19]

(d) strive to act consistently with relevant conservation and management measures adopted by Regional Fisheries Management Organisations of which it is not a member so as not to undermine those measures; and

(e) endeavour not to undermine catch or trade documentation schemes operated by Regional Fisheries Management Organisations or Arrangements or an intergovernmental organisation whose scope includes the management of shared fisheries resources, including straddling and highly migratory species, where that Party is not a member of those organisations or arrangements.

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[17] Regional and international instruments include, among others, and as they may apply, the 2001 IUU Fishing Plan of Action, the *2005 Rome Declaration on IUU Fishing* adopted in Rome on 12 March 2005, the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* done at Rome on 22 November 2009, as well as instruments establishing and adopted by Regional Fisheries Management Organisations, which are defined as intergovernmental fisheries organisations or arrangements, as appropriate, that have the competence to establish conservation and management measures.

[18] For the purposes of this paragraph, for the United Kingdom, "vessels that are flying its flag" is to be understood to mean vessels that are both flying the United Kingdom flag and registered on the United Kingdom register of British ships.

[19] *Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing* done at the Food and Agriculture Organization of the United Nations at Rome on 22 November 2009 ("Port State Measures Agreement").

13. Consistent with Article 28.2 (Publication – Transparency and Anti-Corruption), a Party shall, to the extent possible, provide the other Party with the opportunity to comment on proposed measures that are designed to prevent trade in fisheries products that result from IUU fishing.

Article 22.13
Sustainable Forest Management and Trade

1. The Parties recognise the importance of conservation and sustainable forest management, including in relation to addressing climate change and reducing biodiversity loss, and the role of trade in pursuing this objective. The Parties acknowledge their role as major consumers, producers, and traders of forest products and the importance of the forest sector to the development and livelihood of communities and indigenous peoples.

2. The Parties recognise the importance of:

   (a) the sustainable management of forests for providing environmental, economic, and social benefits for present and future generations;

   (b) halting deforestation and forest degradation, including with respect to trade in commodities related to those activities;

   (c) trade in forest products harvested from sustainably managed forests and in accordance with the law of the country of harvest; and

   (d) taking measures that contribute to combatting illegal logging and related trade and to promoting trade in legally harvested forest products.

3. Accordingly, each Party shall take measures to combat illegal logging and related trade.

4. The Parties recognise that some forest products, when sourced from sustainably managed forests and used appropriately, can store carbon and avoid greenhouse gas emissions in other sectors and thus contribute toward achieving global environmental objectives.

5. Each Party shall:

   (a) cooperate and exchange information, as appropriate, on the implementation of measures that contribute to combatting illegal logging and related trade, including with respect to third countries; and

(b) cooperate bilaterally and in multilateral fora, as appropriate, on opportunities to halt deforestation and forest degradation, and the trade in commodities related to those activities, to reduce biodiversity loss, and to address other sustainable forest management and trade matters.

Article 22.14
Trade and Biodiversity

1. The Parties recognise the importance of conservation and sustainable use of biodiversity, including marine biodiversity, and their key role in achieving sustainable development.

2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law and policy.

3. The Parties recognise the importance of respecting, preserving, and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.

4. The Parties recognise the importance of facilitating access to genetic resources within their respective domestic jurisdictions, consistent with each Party's international obligations. The Parties further recognise that each Party may require, through domestic measures, prior informed consent to access those genetic resources in accordance with domestic measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of those genetic resources, between users and providers.

5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law and policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity. Each Party shall make publicly available information, about its programmes and activities, including cooperative programmes, related to the conservation and sustainable use of biological diversity.

6. Consistent with Article 22.20 (Cooperation Frameworks), the Parties shall cooperate on matters of mutual interest. Cooperation may include exchanging information and experiences in areas related to:

   (a) the conservation and sustainable use of biodiversity;

   (b) the protection and maintenance of ecosystems and ecosystem services, including marine ecosystems;

(c) access to genetic resources and the sharing of benefits arising from their utilisation;

(d) embedding biodiversity considerations into policies, strategies, and practices of public and private actors in relevant sectors; and

(e) safeguarding wild and managed pollinators, and promoting the sustainable use of pollination services.

Article 22.15
Invasive Alien Species

1. The Parties recognise that the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways can adversely affect the environment, economic activities and development, and plant, animal, and human health. The Parties also recognise that the prevention, surveillance, detection, control, and, when possible, eradication, of invasive alien species are critical strategies for managing those adverse impacts.

2. Accordingly, the Parties shall identify cooperative opportunities to share information and management experiences on the movement, prevention, detection, control, and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species.

Article 22.16
Conservation and Illegal Wildlife Trade

1. The Parties affirm the importance of combating the illegal take[20] of, and illegal trade in, wild fauna and flora, and acknowledge that this trade undermines efforts to conserve and sustainably manage those natural resources, has social consequences, distorts legal trade in wild fauna and flora, and reduces the economic and environmental value of these natural resources.

2. Accordingly, the Parties affirm their commitment to implement the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* done at Washington D.C. on 3 March 1973 ("CITES").[21]

3. The Parties commit to promote conservation and to combat the illegal take of, and illegal trade in, wild fauna and flora. To that end, the Parties shall:

[20] The term "take" here means captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged or removed.

[21] For the purposes of this Article, a Party's CITES obligations include existing and future amendments to which it is a Party and any existing and future reservations, exemptions, and exceptions applicable to it.

(a) exchange information and experiences on issues of mutual interest related to combating the illegal take of, and illegal trade in, wild fauna and flora, including combating illegal logging and associated illegal trade, and promoting the legal trade in associated products;

(b) undertake, as appropriate, joint activities on conservation issues of mutual interest, including through relevant regional and international fora; and

(c) endeavour to implement, as appropriate, CITES resolutions that aim to protect and conserve species whose survival is threatened by international trade.

4. Each Party further commits to:

(a) take appropriate measures to protect and conserve wild fauna and flora that it has identified to be at risk within its territory, including measures to conserve the ecological integrity of specially protected natural areas, for example wetlands;

(b) maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management and wild fauna and flora conservation, and endeavour to enhance public participation and transparency in these institutional frameworks; and

(c) endeavour to develop and strengthen cooperation and consultation with interested non-governmental entities in order to enhance implementation of measures to combat the illegal take of, and illegal trade in, wild fauna and flora.

5. In a further effort to address the illegal take of, and illegal trade in, wild fauna and flora, including parts and products thereof, each Party shall take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence[22], were taken or traded in violation of that Party's laws and regulations, the primary purpose of which is to conserve, protect, or manage wild fauna or flora. Such measures shall include sanctions, penalties, or other effective measures, including administrative measures, that can act as a deterrent to such trade. In addition, each Party shall endeavour to take measures to combat the trade of wild fauna and flora transhipped through its territory that, based on credible evidence, were illegally taken or traded.

6. The Parties recognise that each Party retains the right to exercise administrative, investigatory, and enforcement discretion in its implementation of paragraph 5, including by taking into account in relation to each situation the strength of the available evidence and the seriousness of

[22] For the purposes of this paragraph, each Party retains the right to determine what constitutes "credible evidence".

the suspected violation. In addition, the Parties recognise that in implementing paragraph 5, each Party retains the right to make decisions regarding the allocation of administrative, investigatory, and enforcement resources.

7. In order to promote the widest measure of law enforcement cooperation and information sharing between the Parties to combat the illegal take of, and illegal trade in, wild fauna and flora, the Parties shall endeavour to identify opportunities, consistent with their respective laws and regulations, and in accordance with applicable international agreements, to enhance law enforcement cooperation and information sharing, for example by creating and participating in law enforcement networks.

8. The Parties recognise the importance of continuing efforts to combat the illegal trade in wildlife, including ivory, and the importance of appropriate regulation of domestic wildlife markets worldwide, including markets for ivory and goods containing ivory, that are contributing to poaching or illegal trade. Accordingly, the Parties shall cooperate as appropriate to support non-party efforts to introduce and implement domestic controls on the take and trade in wildlife, and on markets for ivory and goods containing ivory, that are contributing to poaching or illegal trade.

Article 22.17
Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory or jurisdiction, to adopt voluntarily, into their policies and practices, principles of corporate social responsibility that are related to the environment, consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Party.

Article 22.18
Opportunities for Public Participation

1. Each Party shall seek to accommodate requests for information regarding the Party's implementation of this Chapter.

2. Each Party shall make use of existing, or establish new, consultative mechanisms, for example domestic advisory committees, to seek views on matters related to the implementation of this Chapter. These mechanisms may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.

Article 22.19
Public Submissions

1. Each Party shall provide for the receipt and consideration of written submissions from persons of that Party regarding its implementation of this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures for the receipt and consideration of written submissions.

2. A Party may provide in its procedures that a submission should:

   (a) raise an issue directly relevant to this Chapter;

   (b) clearly identify the person or organisation making the submission; and

   (c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.

3. Each Party shall consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate.

Article 22.20
Cooperation Frameworks

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development and clean growth as they strengthen their trade and investment relations.

2. Accordingly, the Parties shall cooperate as appropriate on the matters identified in this Chapter. Such cooperation may take place bilaterally and in international fora.

3. Each Party may:

   (a) share its priorities for cooperation with the other Party, including the objectives of that cooperation;

   (b) propose cooperation activities related to the implementation of this Chapter; and

   (c) develop and participate in cooperation activities and programmes as agreed by the Parties.

4. Cooperation may be undertaken through various means including: dialogue, workshops, seminars, conferences, collaborative programmes, and projects; technical assistance to promote and facilitate cooperation and training, the sharing of information, data, and evidence based practices on policies and procedures; and the exchange of experts.

5. Each Party may promote public participation in the development and implementation of cooperative activities, as appropriate.

6. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the Parties. The Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

Article 22.21
Environment Working Group

1. The Parties hereby establish an Environment Working Group ("the Working Group") composed of official level representatives, as designated by each Party.

2. The Working Group shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Working Group shall meet at least every two years, unless the Parties decide otherwise.

3. The purpose of the Working Group is to oversee the implementation of this Chapter and its functions shall be to:

   (a) review and monitor the implementation and operation of the provisions of this Chapter;

   (b) provide a forum to seek solutions to resolve differences between the Parties as to the interpretation or application of this Chapter;

   (d) coordinate with other committees, working groups, and any other subsidiary bodies established under this Agreement as appropriate;

   (e) perform any other functions as the Parties may decide.

4. The Working Group shall be jointly chaired and shall produce an agreed record of its meetings, including decisions and next steps and, as appropriate, report to the Joint Committee.

Article 22.22
Environment Contact Points

Each Party shall designate and notify a contact point from its relevant authorities within 90 days of the date of entry into force of this Agreement in order to facilitate communication between the Parties in the implementation of this Chapter. Each Party shall promptly notify the other Party in the event of any change to its contact point.

Article 22.23
Environment Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through dialogue, consultation, exchange of information and, if appropriate, cooperation to address any matter that might affect the operation of this Chapter.

2. A Party (the requesting Party) may request consultations with the other Party (the responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis for the request.

3. Before a Party requests consultations under this Article for a matter arising under paragraph 4 or paragraph 6 of Article 22.3 (General Commitments), that Party shall consider whether it maintains environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute and shall identify and notify those laws to the responding Party. The Parties shall take this issue into account during the consultations.

4. Unless the Parties agree otherwise, they shall enter into consultations promptly, and no later than 30 days after the date of receipt by the responding Party of the request.

5. The Parties shall make every effort to arrive at a mutually agreed solution to the matter, which may include appropriate cooperative activities. The Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

6. Consultations pursuant to this Article, Article 22.24 (Joint Committee Consultations) and Article 22.25 (Ministerial Consultations) may be held in person or by any technological means available as agreed by the Parties.

7. Consultations pursuant to this Article, Article 22.24 (Joint Committee Consultations) and Article 22.25 (Ministerial Consultations), and in particular, positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

Article 22.24
Joint Committee Consultations

1. If the Parties have failed to resolve the matter under Article 22.23 (Environment Consultations), either Party may request that the Joint Committee convene to consider the matter by delivering a written request to the contact point of the other Party.

2. The Joint Committee shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant scientific and technical information from governmental or non-governmental experts.

Article 22.25
Ministerial Consultations

If the Parties have failed to resolve the matter under Article 22.24 (Joint Committee Consultations), either Party may refer the matter to the relevant Ministers of the Parties by delivering a written request to the contact point of the other Party. The relevant Ministers shall seek to resolve the matter.

Article 22.26
Dispute Resolution

1. If the Parties have failed to resolve the matter under Article 22.23 (Environment Consultations), Article 22.24 (Joint Committee Consultations) and Article 22.25 (Ministerial Consultations), within 120 days after the date of receipt of a request under Article 22.23 (Environment Consultations), or any other period as the Parties may agree, the requesting Party may request consultations under Article 30.7 (Consultations – Dispute Settlement) or request the establishment of a panel under Article 30.8 (Request for Establishment of a Panel – Dispute Settlement).

2. In addition to the requirements set out in subparagraph 1(a) of Article 30.10 (Qualification of Panellists), for a dispute arising under this Chapter

panellists other than the chair shall have sufficient expertise or experience in environmental law or practice.

ANNEX 22.A

For Australia, the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989.

For the United Kingdom, Regulation (EC) 1005/2009 as it applies in Great Britain as retained EU law and as it applies in Northern Ireland directly, and Regulation (EU) 517/2014 as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly. As amended by The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment Act) (EU Exit) Regulations 2019 and 2020.

ANNEX 22.B

For Australia, the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the Navigation Act 2012.

For the United Kingdom, the Merchant Shipping Act 1995 and regulations made under the Act.

CHAPTER 23

DEVELOPMENT

Article 23.1
General Provisions

1. The Parties acknowledge the importance of development in promoting inclusive economic growth, as well as the instrumental role that trade and investment can play in contributing to economic development and prosperity. Inclusive economic growth includes a more broad-based distribution of the benefits of economic growth through the expansion of business and industry, the creation of jobs, and the alleviation of poverty.

2. The Parties acknowledge that effective domestic coordination of trade, investment, and development policies can contribute to inclusive economic growth for developing countries.

3. The Parties affirm the importance of increased participation of developing countries in the global economy and recognise the vital contribution of the World Trade Organization to trade and development.

Article 23.2
Joint Development Activities

1. The Parties recognise the value in undertaking joint development activities relating to trade and investment, which may include:

   (a) an exchange of information between the Parties, relating to experience, cooperation, best practice, technical assistance, or capacity building;

   (b) mutually agreed cooperation, technical assistance, or capacity building on issues such as customs procedures, trade facilitation, technical barriers to trade, trade in services, or digital trade;

   (c) mutually agreed cooperation in international fora;

   (d) inviting, as appropriate, the assistance of relevant international institutions, private sector entities, non-governmental organisations, or other institutions; or

   (e) an exchange of views on methodologies for monitoring the implementation and operation of this Chapter.

2. Each Party may monitor and assess the role this Agreement plays in relation to development, subject to its laws, regulations, policies, and practices.

Article 23.3
Committee on Cooperation

The Committee on Cooperation established under Article 27.4 (Committee on Cooperation - Cooperation) shall consider any matter under this Chapter related to cooperation and support any activities pursuant to Article 23.2 (Joint Development Activities).

Article 23.4
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 24

TRADE AND GENDER EQUALITY

Article 24.1
Objectives

1. The Parties acknowledge the importance of advancing gender equality for inclusive economic growth and that gender-responsive policies are important for ensuring equitable participation in domestic, regional and global economies.

2. Accordingly, the Parties recognise the importance of advancing gender equality and women's economic empowerment across this Agreement and agree to incorporate gender perspectives in their trade and investment relationship.

3. The Parties affirm their commitment to the *WTO Joint Ministerial Declaration on Trade and Women's Economic Empowerment* made at the 11th WTO Ministerial Conference in Buenos Aires in December 2017 and acknowledge the work of other multilateral fora, such as the Organisation for Economic Co-operation and Development, in advancing the evidence base on women's economic empowerment and trade.

4. The Parties acknowledge that, in addition to the provisions in this Chapter, there are provisions in other Chapters of this Agreement that seek to advance gender equality and women's economic empowerment in the context of trade and investment including in relation to services, SMEs, financial services, procurement, labour, and digital trade.

5. The Parties recognise the importance of evidence-based interventions and measures that facilitate women's full access to and ability to benefit from this Agreement.

6. The Parties further recognise the benefits of sharing their experiences in designing, implementing, resourcing and strengthening policies, programmes and other initiatives to advance gender equality and address the systemic and other barriers which prevent women, including as workers, business owners and entrepreneurs, from participating equitably in all aspects of trade.

Article 24.2
Trade and Gender Equality Cooperation Activities

1. The Parties shall undertake cooperation activities, as appropriate, that support women workers, business owners and entrepreneurs to access the full benefits and opportunities created by this Agreement.

2. The Parties recognise the importance of carrying out the cooperation activities with the inclusive participation of women.

3. Cooperation activities that may be undertaken by the Parties include, but are not limited to, exchanging information, experiences and evidence relating to:

   (a) programmes and initiatives aimed at improving the access of women to markets, technology and financing;

   (b) promoting equal opportunities for women in the workplace, including workplace flexibility;

   (c) the development and strengthening of women's leadership and business networks;

   (d) improving the access of women and girls to leadership opportunities and education, including in fields in which they are under-represented, such as science, technology, engineering, and mathematics, insofar as those activities are related to trade;

   (e) trade missions for businesswomen and women entrepreneurs;

   (f) collaborating, including with developing countries and in multilateral fora, to promote equitable participation of women in supply chains; and

   (g) enabling women’s access to online business tools and opportunities to strengthen digital skills, and identifying and addressing barriers to women accessing digital trade.

4. To support achievement of the objectives of this Chapter, the Parties shall cooperate and exchange information on the integration of gender in approaches to data collection, analysis and monitoring, as agreed by the Parties, which may include:

   (a) methods and procedures for the collection of sex-disaggregated data, the use of indicators, monitoring and evaluation methodologies, and the analysis of gender statistics related to trade;

   (b) conducting gender analyses of trade policies, incorporating both quantitative and qualitative data and information, and for the

monitoring of their effects on women as workers, entrepreneurs and business-owners; or

(c) undertaking research on trade and gender equality where appropriate.

Article 24.3
Dialogue on Trade and Gender Equality

1. The Parties agree to establish a Dialogue on Trade and Gender Equality (the Dialogue) composed of government representatives from each Party. Meetings of the Dialogue shall take place by agreement of the Parties.

2. The Dialogue may consider any matter that the Parties consider appropriate to advance gender equality and women's economic empowerment in the Parties' trade and investment relationship. The Committee on Cooperation shall consider any matter under this Chapter related to cooperation and support any cooperation activities.

3. The Dialogue may engage and facilitate communication with relevant stakeholders which may include women workers, business owners and entrepreneurs, in its consideration of matters relevant to this Chapter.

4. The Dialogue shall report on the progress of its work to the Committee on Cooperation established under paragraph 1 of Article 27.4 (Committee on Cooperation – Cooperation), while seeking to avoid duplication of its work.

5. The Dialogue may work with other bodies and subsidiary bodies established under this Agreement to advance the objectives of this Chapter and support the delivery of the cooperative activities described in Article 24.2 (Trade and Gender Equality Cooperation Activities), which may include providing advice or recommendations to the Joint Committee as appropriate.

Article 24.4
Non-application of Dispute Settlement

Neither party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 25

ANIMAL WELFARE AND ANTIMICROBIAL RESISTANCE

Article 25.1
Animal Welfare

1. The Parties recognise that animals are sentient beings. They also recognise the connection between improved welfare of farmed animals and sustainable food production systems.

2. The Parties affirm the right of each Party to establish its own policies and priorities for the protection of animal welfare and to adopt or modify its laws, regulations and policies in this area.

3. Each Party recognises that it is inappropriate to encourage bilateral trade or investment by weakening or reducing its levels of protection for animal welfare. Accordingly, each Party shall endeavour to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its laws, regulations and policies in a manner that weakens or reduces its level of animal welfare protection as an encouragement for trade or investment between the Parties.

4. Each Party shall endeavour to ensure that its laws, regulations and policies provide for and encourage high levels of animal welfare protection and shall endeavour to continue to improve their respective levels of animal welfare protection, including through their laws, regulations and policies.

5. The Parties shall exchange information, expertise and experiences in areas of mutual interest in the field of animal welfare, with the aim of improving understanding of each other's approaches and regulatory systems and improving animal welfare standards.

6. The Parties shall continue to strengthen and build on their existing cooperation in the field of animal welfare, including on issues relating to the treatment of farmed animals, including by:

   (a) encouraging cooperation on research in the field of animal welfare; and

   (b) working together in relevant international fora on areas of mutual interest, including to promote the development of the best possible animal welfare standards and practices for animals farmed for food production.

7. The Parties encourage non-governmental bodies and persons of the Parties to exchange views, experiences and information as part of wider collaboration in the field of animal welfare.

8. The Parties hereby establish a Joint Working Group on Animal Welfare drawn from government representatives of the Parties responsible for animal welfare matters.

9. The Joint Working Group will, among other things, provide a forum for:

   (a) cooperation on initiatives of mutual interest;

   (b) reviewing developments in animal welfare;

   (c) promoting high animal welfare practices; and

   (d) information sharing, under this Chapter.

10. The Joint Working Group shall have its first meeting within one year of the entry into force of this Agreement, and thereafter at regular intervals as agreed by the Parties.

Article 25.2
Antimicrobial Resistance

1. The Parties recognise that antimicrobial resistance (AMR) is a serious global threat to human and animal health.

2. The Parties recognise that the nature of the threat requires a transnational and One Health approach, in line with the Global Action Plan, acknowledging the interdependencies between animal health, human health, and the environment, and the implications for food safety and food security.

3. Each Party shall explore initiatives to promote the reduced need for and appropriate use of antimicrobial agents in animal production and health, and in crop production, including promoting guidance on the prudent and responsible use of antimicrobial agents in good husbandry and veterinary practices, and biosecurity.

4. The Parties shall cooperate, on areas of mutual interest in relevant international organisations, including the World Organisation for Animal Health, the United Nations Food and Agriculture Organization, and the Codex Alimentarius Commission, on the further development of international codes, guidelines, standards, recommendations and other international initiatives aiming to promote the prudent and responsible use of antimicrobial agents, including those which are critically important for human medicine. Each Party shall support the implementation of such agreed

international codes, guidelines, standards, recommendations and international initiatives.

5. The Parties recognise and support efforts made towards global harmonisation of surveillance and data collection. Each Party shall promote strengthened AMR surveillance and monitoring of antimicrobial use under a One Health approach and may exchange its experience in doing so with the other Party.

6. The Parties shall facilitate the exchange of information, expertise, and experiences in the field of combatting antimicrobial resistance, and identify common views, interests, priorities, and policies in this area.

7. The Committee on Cooperation established under Article 27.4 (Committee on Cooperation - Cooperation) shall consider any matter under this Article related to cooperation and support any cooperation activities.

Article 25.3
Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 26

GOOD REGULATORY PRACTICES

Article 26.1
Definitions

For the purposes of this Chapter:

"regulatory authority" means:

(a) for Australia, Australian Government departments at the central level of government listed under relevant administrative arrangements orders, excluding where those departments are regulating human health;

(b) for the United Kingdom, a ministerial department of the central level of government; and

"regulatory measure" means:

(a) for Australia: Acts and legislative instruments made under an Act of the Commonwealth Parliament related to any matter covered by this Agreement and for which a regulatory impact statement is required under relevant rules and procedures;

(b) for the United Kingdom:

(i) an Act of the UK Parliament; or

(ii) a statutory instrument made, by a Minister of the Crown, under an Act of the UK Parliament;

related to any matter covered by this Agreement and in relation to a business activity, excluding:

(A) any measure imposing, abolishing or varying any tax, duty, levy or other charge (or any measure in connection with that measure);

(B) any measure in connection with public sector procurement;

(C) any measure in connection with the giving of grants or other financial assistance by or on behalf of a public authority; or

(D) any measure which is to have effect for a period of less than 12 months.

Article 26.2
General Provisions

1. The purpose of this Chapter is to promote good regulatory practices in the process of planning, designing, issuing, implementing, and reviewing regulatory measures to facilitate achievement of domestic policy objectives and regulatory cooperation between the Parties with the aim of enhancing bilateral trade and investment, as well as economic growth and employment, by promoting:

   (a) an effective, transparent, and predictable regulatory environment;

   (b) compatible regulatory approaches and reducing unnecessarily burdensome, duplicative, or divergent regulatory requirements;

   (c) the exchange of information on regulatory measures, practices, or approaches of the Parties, including how to enhance their efficient application; and

   (d) bilateral cooperation between the Parties in international fora.

2. Each Party shall be free to determine its approach to good regulatory practices and regulatory cooperation under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles underlying its regulatory system.

3. Provisions of this Chapter shall not be construed so as to require a Party to:

   (a) deviate from domestic procedures for identifying its regulatory priorities and preparing and adopting regulatory measures ensuring the levels of protection that the Party considers appropriate to achieve its public policy objectives (including health, safety, and environmental goals);

   (b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives or prevent a party from implementing regulatory measures in urgent or unforeseen circumstances; or

   (c) achieve any particular regulatory outcome.

Article 26.3
Internal Coordination and Review Processes or Mechanisms

Each Party shall endeavour to ensure that it has processes or mechanisms to facilitate effective internal coordination and review with respect to regulatory measures its regulatory authorities are preparing.

Article 26.4
Descriptions of Regulatory Processes and Mechanisms

Each Party shall ensure that descriptions of the processes and mechanisms employed by its regulatory authorities in undertaking regulatory impact assessments, and other relevant good regulatory practices it deems appropriate, are freely and publicly available online.

Article 26.5
Impact Assessment

1. Each Party shall endeavour to systematically carry out, in accordance with its relevant rules and procedures, a regulatory impact assessment of major regulatory measures[1] under preparation. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.

2. Each Party shall endeavour to ensure that regulatory impact assessments it conducts:

   (a) assess the need for the major regulatory measure, including the nature and the significance of the problem or issue that the regulatory measure intends to address;

   (b) examine feasible and appropriate regulatory or non-regulatory alternatives, including the option of not regulating, if available, that would achieve the Party's public policy objectives; and

   (c) rely on reasonably obtainable existing information including relevant scientific, technical, economic or other information, within the boundaries of the authorities, mandates and resources of the particular regulatory authority.

3. When carrying out a regulatory impact assessment in accordance with

[1] The regulatory authority of each Party may determine what constitutes a "major" regulatory measure for the purposes of its obligations under this Chapter.

paragraph 1, each Party should consider, to the extent possible and relevant, the potential impact of the proposed major regulatory measure on SMEs.[2]

4. Each Party shall, where possible and in accordance with its relevant rules and procedures, publish the findings of its regulatory impact assessments in a timely manner. Each Party is encouraged to explain the grounds for concluding that the selected option achieves its public policy objectives in an efficient manner, including, if appropriate, reference to the costs and benefits, and the potential for managing risks.

Article 26.6
Public Consultation

1. When preparing a proposed major regulatory measure, each Party shall endeavour to, in accordance with its relevant rules and procedures:

   (a) publish sufficient information concerning the proposed regulatory measure to allow interested persons to assess their interests in connection to the measure;

   (b) allow interested persons[3] a reasonable opportunity, including adequate time, to consider the proposed regulatory measure and to provide comments;[4] and

   (c) consider the comments received.

2. Each Party is encouraged to make use of electronic means of communication and to make information related to public consultation freely and publicly available online, including information on how to provide comments.

3. Each Party is encouraged to publicly explain how the comments received have informed the proposed regulatory measure.

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[2] For the United Kingdom, for the purposes of this Chapter, "SMEs" means small and micro businesses.

[3] For greater certainty, this subparagraph does not prevent a Party from undertaking targeted consultations with interested parties under the conditions defined by its relevant rules and procedures.

[4] For greater certainty, this paragraph should be implemented consistently with each Party's obligations under other international agreements concerning human health, such as the *WHO Framework Convention on Tobacco Control* done at Geneva on 16 June 2003 to 22 June 2003 and at New York on 30 June 2003 to 29 June 2004.

Article 26.7
Use of Plain Language

Each Party shall endeavour to ensure that new regulatory measures are plainly written and are clear, concise, well organised, and easy to understand, recognising that some measures address technical issues and that relevant expertise may be needed to understand and apply them.

Article 26.8
Regulatory Register

In accordance with its laws and regulations, each Party shall ensure that regulatory measures that are in effect are freely and publicly available online. The website should allow searches for regulatory measures by citation or by word and be periodically updated.

Article 26.9
Retrospective Review

1. The Parties recognise the importance of maintaining processes or mechanisms to promote periodic retrospective reviews of major regulatory measures at intervals each Party deems appropriate.

2. When conducting a retrospective review, each Party shall consider whether there are opportunities to achieve its public policy objectives more effectively and reduce unnecessary regulatory burdens, including on SMEs.

Article 26.10
Regulatory Cooperation

1. The Parties shall cooperate to facilitate the implementation of this Chapter and to maximise the benefits arising from it, including those envisioned in paragraph 1 of Article 26.2 (General Provisions).

2. Each Party may propose a regulatory cooperation activity to the other Party through the contact points designated in accordance with Article 26.11 (Contact Points) or through direct contact between the regulatory authorities.

3. Regulatory cooperation activities may include:

   (a) information exchange, dialogue, or meetings with the other Party, including in particular:

      (i) exchanging experiences with regulatory tools and instruments, including regulatory impact assessments, risk

assessments, retrospective reviews, and compliance with regulatory practices;

(ii) exchanging information on planned or existing regulatory measures to maximise the opportunity for common approaches;

(b) information exchanges, dialogues, or meetings with interested persons, including with SMEs, of the other Party;

(c) training programmes, seminars, and other relevant assistance;

(d) strengthening cooperation and other relevant activities between regulatory agencies; or

(e) seeking to collaborate in relevant international fora.

4. In accordance with its laws and regulations, each Party shall endeavour to encourage its relevant regulatory authorities to consider, where appropriate, regulatory measures in the other Party, as well as relevant developments in international, regional, and other fora when planning regulatory measures.

Article 26.11
Contact Points

1. Each Party shall designate and notify a contact point on good regulatory practices to facilitate communication and cooperation between the Parties on any matter covered by this Chapter.

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

3. The contact points may assist any other committee, working group, subsidiary body, or contact point established by this Agreement in considering matters of relevance to this Chapter.

Article 26.12
Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

Article 26.13
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 27

COOPERATION

Article 27.1
General Provisions

1. The Parties acknowledge the importance of cooperation in implementing this Agreement and enhancing its benefits.

2. 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.

3. The Parties also recognise the importance of involving the private sector and non-governmental organisations in cooperation activities, where appropriate to do so.

Article 27.2
Areas of Cooperation

1. The Parties shall, consistent with this Agreement, undertake and strengthen cooperation activities to assist in:

   (a) implementing this Agreement;

   (b) enhancing each Party's ability to take advantage of the economic opportunities created by this Agreement; and

   (c) promoting and facilitating trade and investment between the Parties.

2. Cooperation activities may include the following areas:

   (a) environment;

   (b) trade and gender equality;

   (c) development;

   (d) labour;

   (e) anti-corruption; and

   (f) antimicrobial resistance.

3. The Parties may undertake cooperation activities through, *inter alia*:

   (a) dialogue, workshops, seminars, conferences, collaborative programs and projects;

   (b) the sharing of best practices on policies and procedures; and

   (c) the exchange of experts and information.

Article 27.3
Contact Points

Each Party shall designate and notify a contact point on matters relating to the coordination of cooperation activities in accordance with Article 29.5 (Contact Points - Administrative and Institutional Provisions).

Article 27.4
Committee on Cooperation

1. The Parties hereby establish a Committee on Cooperation, composed of government representatives of each Party.

2. The Committee shall:

   (a) review and monitor the implementation and operation of cooperation provisions in other Chapters of this Agreement related to areas of cooperation listed in Article 27.2 (Areas of Cooperation);

   (b) facilitate the exchange of information between the Parties including on experiences and lessons learned through cooperation activities undertaken between the Parties;

   (c) discuss and consider issues or proposals for future cooperation activities including, as appropriate, on analytical topics relating to monitoring, measurement, information gathering, and interpretation and analysis of information relevant to cooperation activities under this Agreement;

   (d) invite, as appropriate, private sector entities, non-governmental organisations, civil society, relevant experts, stakeholders or other relevant institutions, to assist in the development and implementation of cooperation activities;

   (e) consider any matter, or matters raised by any standing working group or other subsidiary body including dialogues, related to areas of cooperation pursuant to Article 27.2 (Areas of Cooperation);

   (f) coordinate with other committees, working groups and any other subsidiary body, including dialogues, established under this Agreement as appropriate, in support of the development and implementation of cooperation activities;

   (g) consider any matter related to cooperation and support any cooperation activities referred to it under any Chapter of this Agreement;

   (h) supervise the work of any committees, working groups or other subsidiary bodies including dialogues established under this Agreement, where the Agreement so provides; and

   (i) seek to resolve differences that may arise concerning the interpretation or application of this Agreement in relation to areas of cooperation pursuant to Article 27.2 (Areas of Cooperation).

3. The Committee may:

   (a) make recommendations, or refer matters, to the Joint Committee;

   (b) facilitate public-private partnerships in cooperation activities;

(c) establish ad hoc working groups, as appropriate, which may include government representatives, non-government representatives or both;

(d) refer matters to any ad hoc or standing working group or any other subsidiary body including dialogues related to areas of cooperation pursuant to Article 27.2 (Areas of Cooperation); and

(e) engage in other activities as the Parties may decide.

4. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as agreed by the Parties.

5. The Committee shall produce an agreed record of its meetings, including decisions and next steps and, as appropriate, report to the Joint Committee.

Article 27.5
Resources

1. Cooperation activities undertaken under this Chapter are subject to the availability of resources and the applicable laws and regulations of each Party, and on request, and on terms and conditions agreed between the Parties.

2. The Parties shall bear the costs of cooperation activities under this Chapter in an equitable manner to be agreed by the Parties.

Article 27.6
Non-Application of Dispute Settlement

Without prejudice to matters arising under other Chapters of this Agreement, neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 28

TRANSPARENCY AND ANTI-CORRUPTION

Article 28.1
Definitions

For the purposes of this Chapter:

"act or refrain from acting in relation to the performance of or the exercise of their official duties" includes any use of the public official's or foreign public official's position, whether or not within the official's authorised competence;

"administrative rulings of general application" means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct, 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;

"Anti-Bribery Convention" means the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* done at Paris on 17 December 1997;

"confiscation" means the permanent deprivation of property by order of a court or other competent authority, and includes forfeiture, where applicable;

"foreign public official" means any natural person holding a legislative, executive, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that natural person's seniority; and any natural person exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

"freezing" or "seizing" means temporarily prohibiting the transfer, conversion, disposition, or movement of property, or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

"official of a public international organisation" means an international civil servant or any person who is authorised by a public international organisation to act on its behalf;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

"public official" means:

(a) any natural person holding a legislative, executive, administrative, or judicial office of a Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, and irrespective of that natural person's seniority;

(b) any other natural person who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service, as defined under that Party's law and as applied in the pertinent area of law in that Party; or

(c) any other natural person defined as a public official under a Party's law; and

"UNCAC" means the *United Nations Convention against Corruption* done at New York on 31 October 2003.

Section A
Transparency

Article 28.2
Publication

1. 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, including on the internet where feasible, or otherwise made available in a manner that enables interested persons and the other Party to become acquainted with them.

2. With respect to any measure referred to in paragraph 1 that a Party proposes to adopt, each Party shall, to the extent it considers appropriate:

(a) publish in advance the proposed measure or information concerning the nature of the proposed measure; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment on the proposed measure or information.

3. To the extent possible, when introducing or changing the laws, regulations, or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations, or procedures, proposed or final, in accordance with its legal system, are made publicly available and the date when they enter into force.

4. Each Party shall, with respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1:

   (a) promptly publish the regulation on a single official website or in an official journal of national circulation; and

   (b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

Article 28.3
Administrative Proceedings

1. 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 administered in a consistent, impartial, and reasonable manner.

2. With a view to administering in a consistent, impartial, and reasonable manner the measures referred to in paragraph 1 with respect to any matter covered by this Agreement, each Party shall ensure in its administrative proceedings applying these measures to a particular person, good, or service of the other Party in specific cases, that:

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

   (b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

   (c) it follows its domestic procedures in accordance with its laws.

Article 28.4
Review and Appeal[1]

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those 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, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:

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

   (b) a decision based on the evidence and submissions of record or, where required by its laws and regulations, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic laws and regulations, that the decision referred to in paragraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 28.5
Provision of Information

1. If a Party considers that any proposed or actual measure may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, it shall, to the extent possible, inform the other Party of the proposed or actual measure.

2. On request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.

3. A Party may convey any request or provide information under this Article to the other Party through their contact points.

[1] For greater certainty, review need not include merits (*de novo*) review, and may take the form of common law judicial review. The correction of final administrative actions may include a referral back to the body that took that action.

4. Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

Article 28.6
Accessible and Open Government

To the extent possible, each Party shall endeavour to ensure that information published by its central level of government with respect to any matter covered by this Agreement is accessible in open, machine-readable formats.

Section B
Anti-Corruption

Article 28.7
Scope

This Section applies to measures to prevent and combat bribery and corruption relating to any matter covered by the Agreement.

Article 28.8
General Provisions

1. Each Party affirms its resolve to prevent and combat bribery and corruption in matters affecting international trade or investment.

2. Each Party recognises the important role that both the public and private sectors have in preventing and combatting bribery and corruption.

3. Each Party recognises the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in matters affecting international trade or investment, including the United Nations, the Organisation for Economic Co-operation and Development, the World Trade Organization, the Financial Action Task Force, and the G20, and recognises the importance of working jointly with the other Party to encourage and support appropriate initiatives to prevent and combat such bribery and corruption.

4. The Parties recognise that their respective competent anti-corruption authorities have established working relationships in many bilateral and multilateral forums and that cooperation under this Agreement can enhance the Parties' joint efforts in those forums and help produce outcomes that prevent and combat bribery and corruption in matters affecting international trade or investment.

5. Each Party affirms its adherence to the Anti-Bribery Convention and the UNCAC.

6. The Parties recognise that the description of offences adopted or maintained in accordance with this Section, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law.

Article 28.9
Measures to Prevent and Combat Bribery and Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters affecting international trade or investment, when committed intentionally, by any person subject to its jurisdiction:

   (a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties;

   (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties;

   (c) the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage,[2] for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

   (d) the aiding or abetting, or conspiracy in, the commission of any of the offences described in subparagraphs (a) through (c).

2. Each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 1:

[2] For greater certainty, a Party may provide in its law that it is not an offence if the advantage was permitted or required by the written laws or regulations of a foreign public official's country, including case law. The Parties confirm that they are not endorsing those written laws or regulations.

(a) the establishment of off-the-books accounts;

(b) the making of off-the-books or inadequately identified transactions;

(c) the recording of non-existent expenditure;

(d) the entry of liabilities with incorrect identification of their objects;

(e) the use of false documents; and

(f) the intentional destruction of bookkeeping documents earlier than foreseen by the law.

3. Each Party shall make the commission of an offence described in paragraphs 1 or 2 liable to sanctions that take into account the gravity of that offence.

4. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraphs 1 or 2. In particular, each Party shall ensure that legal persons held liable for offences described in paragraphs 1 or 2 are subject to effective, proportionate, and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.

5. Each Party shall disallow the tax deductibility of bribes and other expenses considered illegal by the Party incurred in furtherance of the commission of an offence described in paragraph 1.

6. Each Party shall adopt or maintain measures in accordance with its law that permit it to impose visa restrictions, such as refusal, cancellation or curtailment, or other immigration controls, on any foreign public official who engaged in the commission of an offence described in paragraph 1.[3] A Party may also adopt or maintain such measures in respect of:

(a) the spouses, civil partners, unmarried partners, children, and dependent household members of the foreign public official; and

(b) any person that assisted or encouraged such offences, or any person that attempted to engage in such activities.

7. The Parties recognise the harmful effects of facilitation payments. Each Party shall, in accordance with its laws and regulations:

(a) encourage enterprises to prohibit or discourage the use of facilitation payments;

[3] For greater certainty, a Party may seek to impose visa restrictions or other immigration controls even absent a conviction that a foreign public official engaged in the commission of an offence described in paragraph 1, where there is sufficient other information to make such a determination.

(b) to the extent facilitation payments may be permitted, ensure the solicitation, payment, or acceptance of such payments are not used to secure a material advantage in matters affecting international trade or investment; and

(c) take any steps considered appropriate by the Party to raise global awareness of the harmful effects of facilitation payments, including through regional and multilateral initiatives, with a view to stopping the solicitation, payment, and acceptance of such payments.

8. Each Party shall ensure that any statute of limitations applicable to any criminal offences described in this Section shall allow an adequate period of time for the investigation and prosecution of the offence.

Article 28.10
Persons that Report Bribery or Corruption Offences

1. Each Party shall, as it considers appropriate, adopt or maintain measures to ensure that its competent authorities that are responsible for the measures described in Article 28.9 (Measures to Prevent and Combat Bribery and Corruption), or the enforcement of those measures, are known to the public.

2. Each Party shall adopt or maintain publicly available procedures for a person to report to its competent authorities, including anonymously, any incident that may be considered to constitute an offence described in paragraph 1 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 2 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption).

3. Each Party shall adopt or maintain appropriate measures, in accordance with its laws and regulations, to protect against or provide remedy for discriminatory or disciplinary treatment of any person considered appropriate by the Party who, on reasonable belief, reports to the competent authorities any suspected incident that may be considered to constitute an offence described in paragraph 1 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 2 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption).[4]

[4] For greater certainty, this paragraph is without prejudice to each Party's right to adopt or maintain additional requirements for the making of such a report provided these requirements do not have the effect of unjustifiably limiting a person's access to protection or remedy.

Article 28.11
Promoting Integrity among Public Officials

1. To prevent and combat bribery and corruption in matters affecting international trade or investment, each Party affirms its resolve to promote, among other things, integrity, honesty, and responsibility among its public officials. To this end, each Party shall endeavour, in accordance with the fundamental principles of its legal system, to adopt or maintain:

   (a) measures to provide adequate procedures for the selection and training of individuals for public positions considered by the Party to be especially vulnerable to corruption, and the rotation, if appropriate, of those individuals to other positions;

   (b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;

   (c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;

   (d) measures that require senior and other appropriate public officials to make declarations to appropriate authorities regarding, among other things, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and

   (e) measures to facilitate reporting by public officials of acts of bribery and corruption to competent authorities, if those acts come to their notice in the performance of their functions.

2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable and proper performance of public functions, and measures providing for disciplinary or other procedures, if warranted, against a public official who violates the codes or standards established in accordance with this paragraph.

3. Each Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused or convicted of an offence described in paragraph 1 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption) may, if appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters affecting international trade or

investment. These measures may include rules with respect to the conduct of members of the judiciary.

Article 28.12
Participation of Private Sector and Civil Society

1. Each Party shall take appropriate measures in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations and community-based organisations, in preventing and combatting bribery and corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes, and gravity of, and the threat posed by such bribery and corruption. To this end, a Party may:

   (a) undertake public information activities and public education programmes that contribute to non-tolerance of bribery and corruption;

   (b) adopt or maintain measures to encourage professional associations and other non-governmental organisations, if appropriate, in their efforts to encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programmes, codes and standards of conduct for preventing and detecting bribery and corruption;

   (c) adopt or maintain measures to encourage enterprise management to make statements in the enterprise's annual reports or otherwise publicly disclose the enterprise's internal controls, ethics and compliance programmes, including those that contribute to preventing and detecting bribery and corruption; and

   (d) adopt or maintain measures that respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning bribery and corruption,

   in matters affecting international trade or investment.

2. Each Party shall endeavour to encourage private enterprises, taking into account their size and legal structure, to:

   (a) adopt or maintain sufficient internal auditing controls and compliance programmes to assist in preventing and detecting acts of bribery and corruption in matters affecting international trade or investment; and

   (b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

Article 28.13

Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption

1. In accordance with the fundamental principles of its legal system, neither Party shall fail to effectively enforce its measures adopted or maintained to comply with Articles 28.9 (Measures to Prevent and Combat Bribery and Corruption) through 28.11 (Promoting Integrity among Public Officials) through a sustained or recurring course of action or inaction after the date of entry into force of this Agreement, as an encouragement for trade and investment.[5]

2. Each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise their discretion with respect to the enforcement of its measures to prevent and combat bribery and corruption. Each Party retains the right to take bona fide decisions with regard to the allocation of its resources with respect to such enforcement.

3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the offences described in paragraph 1 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption) or the acts described in paragraph 2 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption).

4. Recognising that the Parties have existing working relationships and can benefit by sharing their diverse experience and best practices in developing, implementing, and enforcing their anticorruption laws and policies, the Parties shall endeavour to continue to cooperate:

   (a) in investigating and prosecuting any person subject to their respective jurisdictions that commit offences of bribery and corruption, including embezzlement, misappropriation, or other diversion of property by a public official, and the laundering of proceeds of crime; and

   (b) in identifying, tracing, freezing, seizing, and confiscating the proceeds of crime or such property, equipment, or other instrumentalities in connection with its bribery and corruption offences, using both conviction and non-conviction based confiscation powers.

[5] For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's own domestic laws and legal procedures.

Article 28.14
Relation to Other Agreements

Nothing in this Agreement affects the rights and obligations of the Parties under the Anti-Bribery Convention, the UNCAC, or the *United Nations Convention against Transnational Organized Crime* done at New York on 15 November 2000.

Article 28.15
Cooperation, Consultation, and Dispute Settlement

1. The Parties shall endeavour to make every effort through dialogue, exchange of information, and cooperation to address any matter that might affect the operation or application of this Section.

2. Chapter 30 (Dispute Settlement), as modified by this Article, applies to this Section.

3. A Party may only have recourse to the procedures set out in this Article and Chapter 30 (Dispute Settlement) if it considers that a measure of the other Party is inconsistent with its obligations under this Section, or that the other Party has otherwise failed to carry out its obligations under this Section, in a manner affecting international trade or investment between the Parties.

4. No Party shall have recourse to dispute settlement under this Article or Chapter 30 (Dispute Settlement) for any matter arising under Article 28.13 (Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption).

5. Further to Article 30.7 (Consultations – Dispute Settlement) each Party shall endeavour to ensure that consultations include personnel of their competent governmental authorities or other regulatory bodies who have responsibility for, or expertise in, the anti-corruption issue under dispute.

6. Further to the requirements set out in Article 30.10 (Qualifications of Panellists – Dispute Settlement), the Parties are encouraged to appoint panellists, in disputes arising under this Section, who have expertise or experience relevant to the anti-corruption issue under dispute.

CHAPTER 29

ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Article 29.1
Establishment of the Joint Committee

The Parties hereby establish a Joint Committee, composed of government representatives of the Parties at the level of Ministers or senior officials. Each Party shall be responsible for the composition of its delegation.

Article 29.2
Functions of the Joint Committee

1. The Joint Committee shall:

   (a) consider any matter relating to the implementation or operation of this Agreement;

   (b) consider any proposal to amend or modify this Agreement;

   (c) supervise the work of all committees, working groups and any other subsidiary bodies established under this Agreement;

   (d) consider ways to further enhance trade and investment between the Parties; and

   (e) adopt, by any means it considers appropriate on the date of entry into force of this Agreement, the Rules of Procedure and Code of Conduct referred to in Article 30.13 (Rules of Procedure and Code of Conduct – Dispute Settlement) and, as it considers appropriate, amend those Rules of Procedure or that Code of Conduct.

2. The Joint Committee may:

   (a) establish, refer matters to, or consider matters raised by any committee, working group, or other subsidiary body;

   (b) merge or dissolve any committee, working group, or other subsidiary body established in accordance with subparagraph (a) or under this Agreement;

   (c) develop arrangements for implementing this Agreement;

(d) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(e) issue interpretations of this Agreement;[1]

(f) seek the advice of non-governmental persons or groups on any matter falling within the Joint Committee's functions;

(g) adopt, subject to completion of any applicable procedures of a Party, decisions to modify this Agreement in the instances referred to in paragraph 3. Notwithstanding Article 32.2 (Amendments – Final Provisions), those modifications shall be adopted and enter into force by the exchange of diplomatic notes between the Parties; and

(h) take any other action as the Parties may agree.

3. Paragraph 2(g) shall apply to:

(a) the Schedules to Annex 2A (Tariff Commitments), by accelerating tariff elimination;

(b) the rules of origin established in Annex 4B (Product-Specific Rules); and

(c) modifications to the Schedules to Annex 16A (Government Procurement) pursuant to Article 16.20 (Modifications and Rectifications to Annex – Government Procurement).

Article 29.3
Decision-Making

The Joint Committee and all subsidiary bodies established under this Agreement shall take all decisions by mutual agreement.

Article 29.4
Rules of Procedure of the Joint Committee

1. The Joint Committee shall meet within one year of the date of entry into force of this Agreement and thereafter as the Parties may decide, including as necessary to fulfil its functions under Article 29.2 (Functions of the Committee). Meetings of the Joint Committee shall

[1] For greater certainty, interpretations issued by the Joint Committee are binding for panels established under Chapter 30 (Dispute Settlement).

be chaired on a rotating basis by representatives of the Parties at the level of Ministers or senior officials.

2. The Party chairing a session of the Joint Committee shall provide any necessary administrative support for such session.

3. Except as otherwise provided in this Agreement, the Joint Committee and any subsidiary body established under this Agreement shall carry out its work through whatever means are appropriate, which may include electronic mail or videoconferencing.

4. Unless otherwise decided, the Joint Committee shall adopt rules of procedure at its first meeting, and any subsidiary body established under this Agreement may also establish rules of procedure for the conduct of its work.

Article 29.5
Contact Points

1. Each Party shall designate an overall contact point to facilitate communications between the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.

2. Unless otherwise provided in this Agreement, each Party shall notify the other Party in writing of its designated contact points no later than 60 days after the date of entry into force of this Agreement.

3. Each Party shall promptly notify the other Party, in writing, of any changes to its overall contact point or any other contact point.

4. On the request of a Party, the overall contact point of the other Party shall identify the office or official responsible for a matter and assist, as necessary, in facilitating communication with the requesting Party.

CHAPTER 30
DISPUTE SETTLEMENT

Article 30.1
Definitions

For the purposes of this Chapter:

"cases of urgency" means those cases which concern goods that rapidly lose their quality, current condition, or commercial value in a short period of time;

"Code of Conduct" means the code of conduct referred to in Article 30.13 (Rules of Procedure and Code of Conduct) and annexed to the Rules of Procedure;

"complaining Party" means the Party that requests the consultations under Article 30.7 (Consultations);

"panel" means a panel established under Article 30.8 (Request for Establishment of a Panel) or reconvened under Articles 30.15 (Compliance Review), 30.16 (Temporary Remedies for Non-Compliance), or 30.17 (Compliance Review after the Adoption of Temporary Remedies);

"responding Party" means the Party to which a request for consultations is made under Article 30.7 (Consultations); and

"Rules of Procedure" means the rules of procedure referred to in Article 30.13 (Rules of Procedure and Code of Conduct) and established in accordance with Article 29.2.1(e) (Functions of the Joint Committee – Administrative and Institutional Provisions).

Article 30.2
Objective

The objective of this Chapter is to provide an effective, efficient, and transparent process for the avoidance and settlement of any disputes arising between the Parties under this Agreement.

Article 30.3
Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually agreed solution with respect to any matter that might affect its operation or application.

Article 30.4
Scope

1. Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement when a Party considers that:

   (a) an actual or proposed measure of the other Party is or would be inconsistent with its obligations under this Agreement; or

   (b) the other Party has otherwise failed to carry out its obligations under this Agreement.

2. This Chapter applies subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

3. Subject to Article 30.5 (Choice of Forum), this Chapter shall be without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under any other international agreement to which the Parties are party, including the WTO Agreement.

Article 30.5
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], unless that forum fails to make findings on the merits of the claim for jurisdictional or procedural reasons.

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 30.8 (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 30.6
Good Offices, Conciliation, and Mediation

1. The Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation.

2. Procedures undertaken pursuant to paragraph 1 and, in particular, positions taken by the Parties during these procedures shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.

3. A Party may suspend or terminate the procedures undertaken pursuant to paragraph 1 at any time.

4. If the Parties agree, procedures undertaken pursuant to paragraph 1 may continue while the dispute proceeds for resolution before a panel.

Article 30.7
Consultations

1. A Party may request consultations with the other Party with respect to any matter described in Article 30.4 (Scope). The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure[2] or other matter at issue and an indication of the legal basis for the complaint.

2. The responding Party shall reply in writing to the request no later than 10 days after receipt of the request and enter into consultations in good faith.

3. Unless the Parties agree otherwise, they shall enter into consultations no later than 30 days after receipt of the request.

4. Consultations may be held in person or by any technological means available to the Parties. If the consultations are held in person, they shall be held in the capital of the responding Party, unless the Parties agree otherwise.

5. The Parties shall make every attempt to reach a mutually agreed solution through consultations under this Article. To this end, each Party shall:

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

[2] The Parties shall, in the case of a proposed measure, make every effort to make the request for consultation under this provision within 60 days of publication of the proposed measure, without prejudice to the right to make such request at any time.

(b) treat as confidential any information or material exchanged in the course of the consultations that is designated as confidential by the Party providing the information or material; and

(c) endeavour to ensure the participation of personnel of their competent governmental authorities or other regulatory bodies who have responsibility for or expertise in the matter subject to the consultations.

6. In consultations under this Article, a Party may request that the other Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

7. Consultations and, in particular, positions taken by the Parties during consultations shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.

Article 30.8
Request for Establishment of a Panel

1. The complaining Party may request the establishment of a panel if:

(a) the other Party does not reply to a request for, or enter into, consultations within the time period specified in paragraph 3 of Article 30.7 (Consultations);

(b) the Parties agree not to enter into consultations; or

(c) the Parties fail to resolve the matter through consultations within 60 days of receipt of the request for consultations under paragraph 1 of Article 30.7 (Consultations).

2. The request for establishment of a panel shall be made in writing to the responding Party. In the request the complaining Party shall set out the reasons for the request, including identification of the specific measure or other matter at issue and the legal basis for the complaint, including the provisions of this Agreement alleged to have been breached and to be addressed by the panel, sufficient to present the problem clearly.

3. A panel shall not be established to review a proposed measure.

Article 30.9
Establishment and Reconvening of Panels

1. Where a Party makes a request for the establishment of a panel pursuant to paragraph 1 of Article 30.8 (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 panellists. All nominations and appointments of panellists under this Article shall conform fully with the requirements in Article 30.10 (Qualifications of Panellists).

3. Within five days of receipt by the responding Party of a request under Article 30.8 (Request for Establishment of a Panel), the Parties shall enter into consultations with a view to reaching agreement on the composition of the panel, taking into account the factual, technical, and legal circumstances of the dispute.

4. If the Parties are unable to reach agreement on the composition of the panel within 10 days of receipt of the request referred to in paragraph 3, a Party may, at any time thereafter, notify the other Party that it wishes to use the procedures set forth in paragraphs 5 through 7. If such a notification is made, the panel shall be composed in accordance with paragraphs 5 through 7.

5. Each Party shall appoint one panellist within 20 days of receipt of the notification referred to in paragraph 4. For greater certainty, a national of a Party may be appointed. If the complaining Party fails to appoint its panellist, the dispute settlement proceedings shall lapse.

6. The Parties shall, within 35 days of receipt of the notification referred to in paragraph 4, agree on the appointment of the third panellist who shall serve as the chair of the panel. To assist in reaching this agreement, each Party shall provide to the other Party a list of up to three nominees for appointment as the chair of the panel.

7. If any of the three panellists have not been appointed within 35 days of the receipt of the notification referred to in paragraph 4, a Party may request the Director-General of the WTO to appoint the remaining panellists within a further period of 15 days. Any list of nominees which was provided under paragraph 6 shall also be provided to the Director-General of the WTO and may be used in making the required appointment. In the event that the Director-General of the WTO is a national of a Party, a Deputy Director-General of the WTO or the officer next in seniority who is not a national of a Party shall be requested to make the required appointment.

8. If the Director-General of the WTO notifies the Parties to the dispute that he or she is unavailable, or does not appoint the remaining panellists within 15 days of the request made pursuant to paragraph 7, a Party may request the

Secretary-General of the Permanent Court of Arbitration to appoint the remaining panellists within a further period of 15 days. Any list of nominees which was provided under paragraph 6 shall also be provided to the Secretary-General of the Permanent Court of Arbitration, and may be used in making the required appointments.

9. The date of establishment of the panel shall be the date on which the final panellist is appointed.

10. If a panellist appointed under this Article resigns or becomes unable to act, the panellist shall notify the Parties and a successor panellist shall be appointed in accordance with this Article and shall have all the powers and duties of the original panellist. The work of the panel, including any applicable time periods, shall be suspended until the successor panellist has been appointed.

11. If a panel is reconvened under Articles 30.15 (Compliance Review), 30.16 (Temporary Remedies for Non-Compliance), or 30.17 (Compliance Review after the Adoption of Temporary Remedies), the reconvened panel shall, if possible, have the same panellists as the original panel. If this is not possible, any successor panellist shall be appointed in accordance with this Article and shall have all the powers and duties of the original panellist.

Article 30.10
Qualifications of Panellists

1. All panellists appointed pursuant to Article 30.9 (Establishment and Reconvening of Panels) shall:

   (a) have demonstrated 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 on the basis of objectivity, reliability, and sound judgement;

   (c) be independent of, and not affiliated with or take instructions from, a Party;

   (d) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

   (e) 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 30.6 (Good Offices, Conciliation and Mediation).

3. Unless the Parties agree otherwise, the chair of the panel shall not:

   (a) be a national of a Party;

   (b) have his or her usual place of residence in the territory of a Party; or

   (c) be employed by a Party.

Article 30.11
Functions of a Panel[3]

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 provisions of this Agreement; and

   (c) whether:

      (i) a measure of the responding Party is inconsistent with its obligations under this Agreement; or

      (ii) the responding Party has otherwise failed to carry out its obligations under this Agreement.

Terms of Reference

3. A panel shall have the following terms of reference unless the Parties agree otherwise within 20 days of the establishment of a panel:

   "To examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of a panel made pursuant to Article 30.8 (Request for

[3] For greater certainty, paragraphs 2, 3, and 6 shall not apply to a panel reconvened under Article 30.15 (Compliance Review), Article 30.16 (Temporary Remedies for Non-Compliance), or Article 30.17 (Compliance Review after the Adoption of Temporary Remedies).

Establishment of a Panel), to make such findings as provided for in this Agreement, together with the reasons therefor, and to issue a written report in accordance with Article 30.11.6 (Functions of a Panel)."

4. The panel shall address the relevant provisions in the Agreement cited by the Parties.

5. The panel may rule on its own jurisdiction.

Panel Reports and Findings

6. The panel shall set out in its reports:

   (a) a descriptive section summarising the submissions and arguments of the Parties;

   (b) its findings on the facts of the case and the applicability of the provisions of this Agreement;

   (c) its findings on whether:

      (i) a measure of the responding Party is inconsistent with its obligations under this Agreement;

      (ii) the responding Party has otherwise failed to carry out its obligations under this Agreement;

   (d) any other findings jointly requested by the Parties; and

   (e) its reasons for the findings in subparagraphs (b) through (d).

7. In its report, the panel may suggest ways in which the responding Party could implement the findings in the report.

8. The panel shall base its reports on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and any information or advice put before it in accordance with the Rules of Procedure.

9. The findings of the panel cannot add to or diminish the rights and obligations provided in this Agreement.

10. A panel shall make its findings by consensus. If a panel is unable to reach consensus, it may make its findings by majority vote.

11. A panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international law, including as reflected in the Vienna Convention on the Law of Treaties. The panel shall also consider

relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body.

Article 30.12
Reports of a 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.

Interim Report

2. The panel shall issue its interim report to the Parties within 150 days of establishment of the panel or, in cases of urgency, within 90 days of establishment of the panel. In exceptional cases, if the panel considers that it cannot release its interim 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 issue its report. The panel shall not exceed an additional period of 30 days and in cases of urgency shall make every effort to not exceed 15 days.

3. A Party may submit to the panel written comments within 20 days of receipt of the interim report. After considering any written comments by the Parties on the interim report, the panel may modify its report and make any further examination it considers appropriate.

Final Report

4. The panel shall issue its final report to the Parties within 30 days, and in cases of urgency the panel shall make every effort to issue its final report within 15 days, of issuance of the interim report. The panel shall include a discussion in its final report of any comments made by the Parties on the interim report.

5. The final report of the panel shall be binding on the Parties.

Article 30.13
Rules of Procedure and Code of Conduct

1. The proceedings provided for in this Chapter shall be conducted in accordance with this Chapter, the Rules of Procedure, and the Code of Conduct, unless the Parties agree otherwise. On request of a Party, or on its own initiative, a panel may, after consulting the Parties, adopt additional rules

of procedure which do not conflict with this Chapter or the Rules of Procedure.

2. The Rules of Procedure, established in accordance with Article 29.2.1(e) (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 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) subject to subparagraph (i), a hearing before the panel shall be open for the public to observe, 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 (i), the request for consultations, the request for establishment of a panel, written submissions, written versions of oral statements, any written responses to requests or questions from the panel, and the final report shall be released to the public;

(g) the panel shall have the authority to accept and consider submissions from interested persons and non-governmental entities, unless the Parties agree otherwise;

(h) subject to consultations with the Parties, the panel may seek information or technical advice from any expert that it deems appropriate; and

(i) confidential information is protected.

Article 30.14
Compliance with the Final Report

1. If the panel finds pursuant to subparagraph 6(c) of Article 30.11 (Functions of a Panel) that a measure of the responding Party is inconsistent with its obligations under this Agreement, or that the responding Party has failed to carry out its obligations under this Agreement, the responding Party shall

comply promptly with the final panel report issued pursuant to Article 30.12 (Reports of a Panel).

2. No later than 30 days in all cases, including cases of urgency, after the issuance of the final panel report, the responding Party shall notify the complaining Party:

   (a) of its intentions with respect to implementation, including an indication of possible steps it may take to comply with the final panel report;

   (b) whether implementation can take place immediately; and

   (c) if it is impracticable for implementation to take place immediately, the reasonable period of time the responding Party considers it would need to comply.

3. If the responding Party makes a notification under subparagraph 2(c) that it is impracticable to comply immediately with the final panel report, it shall have a reasonable period of time to do so.

4. If a reasonable period of time is required, the Parties shall endeavour to agree on the length of the reasonable period of time. If the Parties are unable to agree on the reasonable period of time within 46 days of the date the final panel report is issued to the Parties, a Party may request in writing the chair of the panel to determine the length of the reasonable period of time. Such request shall be made no later than 120 days in all cases, including cases of urgency, after the issuance of the final panel report. The chair shall present the Parties with a decision in writing, together with reasons, no later than 46 days after the request.

5. As a guideline, the reasonable period of time, where determined by the chair of the panel, shall not exceed 15 months in all cases, including cases of urgency, from the date of issuance of the final panel report to the Parties. The length of the reasonable period of time may be extended at any time by mutual agreement of the Parties.

6. If the responding Party considers that it has complied with the final panel report, it shall, no later than the date of the expiry of the reasonable period of time, provide the complaining Party with a description of the steps that it has taken to comply with the final panel report.

Article 30.15
Compliance Review

1. If the Parties disagree on the existence or consistency with this Agreement of any steps taken to comply with the final panel report, a Party may request that the panel reconvene to decide the matter.

2. A request made pursuant to paragraph 1 may only be made after the earlier of either:

   (a) the expiry of the reasonable period of time established in accordance with Article 30.14 (Compliance with the Final Report); or

   (b) a notification by the responding Party, pursuant to paragraph 6 of Article 30.14 (Compliance with the Final Report), that it has complied with the final panel report.

3. The request referred to in paragraph 1 shall be made in writing and identify the issues with any steps taken to comply and the legal basis for the complaint, including the provisions of this Agreement alleged to have been breached and to be addressed by the panel, sufficient to present the problem clearly.

4. The panel shall make an objective assessment of the matter before it and shall set out in its compliance report:

   (a) a descriptive section summarising the submissions and arguments of the Parties;

   (b) its findings on the facts of the matter;

   (c) its findings on the existence or consistency with this Agreement of any steps taken by the responding Party to comply with the final panel report; and

   (d) its reasons for its findings.

5. The panel shall reconvene within 14 days of a request made pursuant to paragraph 1. The panel shall issue its final compliance report to the Parties no later than 120 days or, in cases of urgency, no later than 68 days after receipt of the request.

6. The panel shall issue its interim compliance report to the Parties within 74 days of receipt of the request under paragraph 1. In exceptional cases, if the 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 issue its report. The panel

shall not exceed an additional period of 30 days and in cases of urgency shall make every effort to not exceed 15 days.

7. The panel shall issue its final compliance report within 16 days in all cases, including cases of urgency, of issuance of the interim compliance report. The panel shall accord adequate opportunity to the Parties to submit written comments on the interim compliance report. 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 30.16
Temporary Remedies for Non-Compliance

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the responding Party does not comply with the final panel report. However, neither compensation nor the suspension of concessions or other obligations is preferred to full compliance with the final panel report. Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. The responding Party shall, on request of the complaining Party, enter into negotiations with a view to agreeing on mutually acceptable compensation if:

   (a) the responding Party fails to provide a notification in accordance with paragraph 2 of Article 30.14 (Compliance with the Final Report);

   (b) the responding Party has notified the complaining Party that it does not intend to comply with the final panel report;

   (c) the responding Party fails to notify, pursuant to paragraph 6 of Article 30.14 (Compliance with the Final Report), any steps taken to comply with the final panel report; or

   (d) the panel finds, pursuant to Article 30.15 (Compliance Review), that the responding Party has failed to comply with the final panel report.

3. If one of the conditions in paragraph 2 is met and the complaining Party decides not to make a request pursuant to paragraph 2 or the Parties have been unable to agree on compensation within 30 days in all cases, including cases of urgency, of receipt of the request made under paragraph 2, the complaining Party may at any time thereafter notify the responding Party in writing that it intends to suspend the application to the responding Party of concessions or other obligations under this Agreement.

4. A notification made under paragraph 3 shall specify:

   (a) the level of concessions or other obligations that the complaining Party proposes to suspend;

   (b) the relevant sector(s) to which the concessions or other obligations relate; and

   (c) where subparagraph 5(b) applies, the reasons on which the complaining Party's decision to suspend concessions or other obligations in a different sector is based.

5. Subject to paragraph 4 of Article 9.23 (Dispute Settlement – Financial Services), in considering what concessions or other obligations to suspend under paragraph 3, the complaining Party shall apply the following principles:

   (a) the general principle is that the complaining Party should first seek to suspend concessions or other obligations in the same sector(s) as that in which the panel has found an inconsistency with this Agreement; and

   (b) if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s) as that in which the panel has found an inconsistency with this Agreement, the complaining Party may suspend concessions or other obligations in other sectors that are subject to dispute settlement in accordance with Article 30.4 (Scope).

6. The level of suspension of concessions or other obligations shall not exceed a level equivalent to the level of nullification or impairment.

7. The complaining Party shall have the right to implement the suspension of concessions or other obligations 30 days after the date of receipt of the complaining Party's notification by the responding Party.

8. The right to suspend concessions or other obligations arising under paragraph 3 shall not be exercised if:

   (a) a review is being undertaken pursuant to paragraphs 9 and 10; or

   (b) the Parties have decided, pursuant to a mutually agreed solution reached in accordance with Article 30.20 (Mutually Agreed Solution), that the complaining Party shall not exercise its right to suspend concessions or other obligations pursuant to paragraph 3.

9. If the responding Party:

(a) objects to the proposed level of suspension of concessions or other obligations on the basis that it exceeds a level equivalent to the level of nullification or impairment;

(b) considers that it has complied with the terms and conditions of any compensation agreed pursuant to paragraph 2; or

(c) claims that the complaining Party has failed to follow the principles set out in paragraph 5,

it may request in writing, no later than 30 days after receipt of the notification referred to in paragraph 3, the panel to reconvene to make findings on the matter.

10. If a panel is requested to reconvene pursuant to paragraph 9, it shall reconvene within 15 days of receipt of the request. The panel shall present its decision to the Parties no later than 90 days after the receipt of the request. In exceptional cases, if the 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 cases of urgency shall make every effort to not exceed 15 days.

11. Concessions or other obligations shall not be suspended until the panel has presented its decision. Any suspension of concessions or other obligations shall be consistent with the panel's decision.

Article 30.17
Compliance Review after the Adoption of Temporary Remedies

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 the final panel report or the Parties have reached a mutually agreed solution.

2. If the right to suspend concessions or other obligations has been exercised pursuant to paragraph 7 of Article 30.16 (Temporary Remedies for Non-Compliance), or mutually acceptable compensation has been agreed pursuant to paragraph 2 of Article 30.16 (Temporary Remedies for Non-Compliance), and the responding Party considers that it has complied with the final panel 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 in writing the panel to reconvene to examine the matter.[4]

5. Paragraphs 4 through 7 of Article 30.15 (Compliance Review) apply if the panel reconvenes pursuant to paragraph 4.

6. If the panel decides that the steps notified in accordance with paragraph 2 achieve compliance with the final panel report, the suspension of concessions or other obligations or the application of the compensation, shall be terminated no later than 30 days after the date of the decision.

7. If the panel decides that the steps notified in accordance with paragraph 2 do not achieve compliance with the final panel report, the suspension of concessions or other obligations, or the application of the compensation, may continue. Where relevant, the level of suspension of concessions or other obligations or of the compensation, shall be adapted in light of the decision of the panel.

Article 30.18
Suspension or Termination of Proceedings

1. On the request of the Parties, the panel shall suspend its work at any time for a period agreed by the Parties not to exceed 12 consecutive months.

2. The panel shall resume its work at any time on the request of the Parties or at the end of the agreed suspension period on the request of a Party. The request shall be made in writing and notified to the panel, as well as to the other Party, where applicable.

3. In the event of a suspension, the timeframes set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the panel's work was suspended.

4. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse, unless the Parties agree otherwise.

5. The panel shall terminate its proceedings if the Parties request it to do so.

[4] 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 30.19
Time Periods and Cases of Urgency

1. Any time period referred to in this Chapter, the Rules of Procedure, or the Code of Conduct may be modified for a dispute by agreement of the Parties.

2. The panel may at any time propose to the Parties to modify any time period, stating the reasons for the proposal.

3. In cases of urgency, the applicable time periods in this Chapter shall not exceed half the time prescribed therein, except:

   (a) for the time periods specified in Article 30.9 (Establishment and Reconvening of Panels), Article 30.17 (Compliance Review after the Adoption of Temporary Remedies), and Article 30.18 (Suspension or Termination of Proceedings);

   (b) where expressed otherwise in this Chapter; or

   (c) where the Parties agree otherwise.

4. On the request of a Party, the panel shall decide, within 15 days of the request, whether a dispute concerns a case of urgency.

Article 30.20
Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 30.4 (Scope).

2. If a mutually agreed solution is reached during panel proceedings, the Parties shall jointly notify the agreed solution to the panel.

Article 30.21
Administration of the Dispute Settlement Procedure

1. The Parties may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

2. The expenses of the external body shall be borne by the Parties in equal share, unless the Parties agree otherwise.

Article 30.22
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 31

GENERAL PROVISIONS AND EXCEPTIONS

Article 31.1
General Exceptions

1. For the purposes of Chapter 2 (Goods), Chapter 4 (Rules of Origin and Origin Procedures), Chapter 5 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Technical Barriers to Trade), Chapter 13 (Investment), Chapter 14 (Digital Trade), and Chapter 18 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.[1]

2. The Parties understand that the measures referred to in paragraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that paragraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of Chapter 8 (Cross-Border Trade in Services), Chapter 9 (Financial Services), Chapter 10 (Professional Services and Recognition of Professional Qualifications), Chapter 11 (Temporary Entry for Business Persons), Chapter 12 (Telecommunications), Chapter 13 (Investment), Chapter 14 (Digital Trade), and Chapter 18 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.[2] The Parties understand that the measures referred to in paragraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

4. Nothing in this Agreement shall be construed to prevent a Party from implementing the suspension of obligations, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO or is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which both Parties are party.

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[1] For the purposes of Chapter 18 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase, production or sale of goods, or affecting activities the end result of which is the production of goods.

[2] For the purposes of Chapter 18 (State-Owned Enterprises and Designated Monopolies), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

Article 31.2
Security Exceptions

Nothing in this Agreement shall be construed to:

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

(b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 31.3
Temporary Safeguard Measures

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital:

   (a) in the event of serious balance of payments and external financial difficulties or threats thereof; or

   (b) if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

3. Any measure adopted or maintained under paragraph 1 or 2 shall:

   (a) not be inconsistent with Article 8.3 (National Treatment – Cross-Border Trade in Services), Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services), Article 9.5 (National Treatment – Financial Services), Article 9.8 (Most-Favoured-Nation Treatment – Financial Services), Article 13.5 (National Treatment – Investment), and Article 13.6 (Most-Favoured-Nation Treatment – Investment);[3]

[3] Without prejudice to the general interpretation of Article 8.3 (National Treatment – Cross Border Trade in Services), Article 8.4 (Most-Favoured-Nation Treatment – Cross Border Trade in Services),

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

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

(d) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;

(e) be temporary and be phased out progressively as the situations specified in paragraph 1 or 2 improve;

(f) not be inconsistent with Article 13.9 (Expropriation and Compensation – Investment);[4] and

(g) not be used to avoid necessary macroeconomic adjustment.

4. A Party adopting or maintaining measures under paragraph 1 or 2 shall:

(a) promptly notify, in writing, the other Party of the measures, including any changes therein; and

(b) on request of the other Party, promptly commence consultations with the other Party to review the measures adopted or maintained under paragraph 1 or 2, provided that:

(i) in the case of capital movements, such consultations are not otherwise taking place outside of this Agreement; or

(ii) in the case of current account restrictions, such consultations are not otherwise taking place under the framework of the WTO Agreement.

5. Any consultations pursuant to paragraph 4 shall take into account all relevant findings of a statistical nature and other facts presented by the IMF relating to foreign exchange, monetary reserves, balance-of-payments, and their

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Article 9.5 (National Treatment – Financial Services), Article 9.8 (Most-Favoured-Nation Treatment – Financial Services), Article 13.5 (National Treatment – Investment), and Article 13.6 (Most-Favoured-Nation Treatment – Investment), the fact that a measure adopted or maintained pursuant to paragraph 1 or 2 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with Article 8.3 (National Treatment – Cross Border Trade in Services), Article 8.4 (Most-Favoured-Nation Treatment – Cross Border Trade in Services), Article 9.5 (National Treatment – Financial Services), Article 9.8 (Most-Favoured-Nation Treatment – Financial Services), Article 13.5 (National Treatment – Investment), and Article 13.6 (Most-Favoured-Nation Treatment - Investment).

[4] For greater certainty, measures referred to in paragraph 1 or 2 may be non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives as referred to in subparagraph 3(b) of Annex 13B (Expropriation – Investment).

conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

Article 31.4
Taxation Measures

1. For the purposes of this Article:

"competent authority" means:

(a) for Australia, the Secretary to the Treasury or a successor or an authorised representative; and

(b) for the United Kingdom, the Commissioners for Revenue and Customs or a successor or an authorised representative;

"listed taxes" means taxes on income, on capital gains, on the taxable capital of corporations, on the value of an investment or property[5] (other than the transfer of that investment or property), on estates, on inheritances, on gifts, or on generation-skipping transfers;

"tax convention" means a convention for the avoidance of double taxation, or any other international taxation agreement or arrangement; and

"taxes" and "taxation measures" include excise duties, but do not include:

(a) a "customs duty" as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions);

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

(c) an antidumping or countervailing duty.

2. Except as provided in this Article, nothing in this Agreement applies to taxation measures.

3. The following provisions apply to taxation measures:

(a) Article 2.3 (National Treatment – Trade in Goods), and such other provisions of this Agreement as are necessary to give effect to that Article, to the same extent as does Article III of GATT 1994;

[5] This is without prejudice to the methodology used to determine the value of such investment or property under the respective law of the Parties.

(b) Article 2.12 (Export Duties, Taxes or other Charges – Trade in Goods);

(c) Article 13.9 (Expropriation and Compensation – Investment); and

(d) Article 13.11 (Performance Requirements – Investment).

4. The following provisions apply to taxation measures other than listed taxes:

(a) Article 8.3 (National Treatment – Cross-Border Trade in Services);

(b) Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services);

(c) Article 9.5 (National Treatment – Financial Services);

(d) Article 9.8 (Most-Favoured-Nation Treatment – Financial Services);

(e) Article 13.5 (National Treatment – Investment); and

(f) Article 13.6 (Most-Favoured-Nation Treatment – Investment).

5. The following provisions also apply, in relation to the purchase or consumption of particular services, to taxation measures on income, on capital gains, on the taxable capital of corporations, or on the value of an investment or property[5] other than the transfer of that investment or property):

(a) Article 8.3 (National Treatment – Cross-Border Trade in Services; and

(b) Article 9.5 (National Treatment – Financial Services),

except that nothing in this paragraph prevents a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory.

6. Nothing in the provisions referred to in paragraph 4 or 5 applies to:

(a) a non-conforming provision of any existing taxation measure;

(b) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(c) an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(d) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including any taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties[6];

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

(f) any taxation measure of a Party with respect to the acquisition of an interest in residential property, where that measure is directed at facilitating home ownership for that Party's residents.

7. Nothing in this Agreement affects the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention prevails to the extent of the inconsistency.

8. In the case of a tax convention between the Parties, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred by the Parties to the competent authorities. The competent authorities shall have 12 months beginning with the date of that referral to make a determination as to the existence and extent of any inconsistency. If the competent authorities agree, that period may be extended by no more than a further 12 months. No procedures concerning the measure giving rise to the issue may be initiated under this Agreement before the expiry of that 12 month period or any extension of that period of no more than a further 12 months as may have been agreed by the competent authorities. Any panel established under this Agreement to consider a dispute related to a taxation measure shall accept as binding a determination made by the competent authorities under this paragraph.

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

[6] The Parties understand that this subparagraph must be interpreted by reference to the footnote to paragraph (d) of Article XIV of GATS as if the Article was not restricted to services or direct taxes.

Article 31.5
Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information, the disclosure of which would be contrary to its law or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 31.6
Confidentiality of Information

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.

Article 31.7
The National Health Service and Australia's health system

The Parties recall the exclusions and exceptions in this Agreement that are applicable to the National Health Service of the United Kingdom[7] and to Australia's health system, including as set out in the relevant provisions of this Chapter, of Chapter 8 (Cross-Border Trade in Services), Chapter 13 (Investment), Chapter 15 (Intellectual Property), Chapter 16 (Government Procurement), and of Annex I (Schedules of Non-Conforming Measures for Services and Investment) and Annex II (Schedules of Non-Conforming Measures for Services and Investment).

[7] For greater certainty, the National Health Service of the United Kingdom includes the National Health Service in England, Scotland, Wales, and Health and Social Care in Northern Ireland.

CHAPTER 32

FINAL PROVISIONS

Article 32.1
Annexes, Appendices and Footnotes

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

Article 32.2
Amendments

The Parties may agree, in writing, to amend this Agreement. Such amendments shall enter into force 30 days after the date on which the Parties exchange written notifications confirming that they have completed their respective domestic requirements necessary for the entry into force of the amendments, or on such other date as the Parties may agree.

Article 32.3
Amendment of 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 each other on whether to amend this Agreement, unless this Agreement otherwise provides.

Article 32.4
Territorial Extension

1. This Agreement, or specified provisions of it, may be extended to any such territories for whose international relations the United Kingdom is responsible as may be agreed between Australia and the United Kingdom. Upon delivery of a written request by the United Kingdom, the Parties shall hold consultations promptly to consider and agree the extension. Any amendment to this Agreement required to accommodate an extension shall be made in accordance with Article 32.2 (Amendments).

2. For greater certainty, an extension in accordance with paragraph 1 may include extension of further provisions of this Agreement to the Bailiwicks of Guernsey and Jersey and the Isle of Man, as well as any extension to any other territories for whose international relations the United Kingdom is responsible, including, but not limited to, Gibraltar.

Article 32.5
Territorial Disapplication

The United Kingdom may at any time give notice in writing to Australia that this Agreement is, or specified provisions of it are, no longer to apply to a territory for whose international relations the United Kingdom is responsible. If the United Kingdom gives notice in writing pursuant to this Article, the Parties shall hold consultations promptly to agree a mutually satisfactory solution. Notwithstanding such consultations, if notice in writing is given that this Agreement as a whole is no longer to apply to a territory for whose international relations the United Kingdom is responsible, the notification shall take effect 12 months after the date on which the United Kingdom has provided written notice to Australia, or on such other date as the Parties may agree. Any amendment to this Agreement required as a result of the Agreement, or specified provisions of it, no longer applying to a territory for whose international relations the United Kingdom is responsible shall be made in accordance with Article 32.2 (Amendments).

Article 32.6
General Review

1. The Parties shall undertake a general review of this Agreement in the seventh year following the date of entry into force of this Agreement, or at such times as may be agreed by the Parties.

2. A review pursuant to paragraph 1 shall be undertaken with a view to updating and enhancing this Agreement, to ensure that the disciplines contained in this Agreement remain relevant to the trade and investment issues and challenges confronting the Parties.

3. A review pursuant to paragraph 1 shall take into account:

   (a) developments in innovation;

   (b) the work of all committees, working groups, dialogues and any other subsidiary bodies established under this Agreement; and

   (c) relevant developments in international fora.

Article 32.7
Entry into Force

This Agreement shall enter into force 30 days after the date on which the Parties exchange written notifications confirming that they have

completed their respective domestic requirements necessary for the entry into force of this Agreement, or on such other date as the Parties may agree.

Article 32.8
Termination

1. A Party may terminate this Agreement by giving the other Party notice in writing. Such termination shall take effect six months after the date of the notification, or on such date as the Parties may agree.

2. Within 30 days of the date of a notification issued under paragraph 1, either Party may request consultations regarding whether the termination of any provision of this Agreement should take effect on a date later than that provided in paragraph 1. Such consultations shall commence within 30 days of the date of the request, or on such date as the Parties may agree.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at , in duplicate, this day of .

For the United Kingdom of Great Britain and Northern Ireland:

For Australia:

ANNEX I

EXPLANATORY NOTES

1. The Schedule of a Party to this Annex sets out, pursuant to Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 13.13 (Non-Conforming Measures – Investment), a Party's existing measures that are not subject to some or all of the obligations imposed by:

   (a) Article 8.3 (National Treatment – Cross-Border Trade in Services) or Article 13.5 (National Treatment – Investment);

   (b) Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services) or Article 13.6 (Most-Favoured-Nation Treatment – Investment);

   (c) Article 8.5 (Market Access – Cross-Border Trade in Services) or Article 13.4 (Market Access – Investment);

   (d) Article 8.6 (Local Presence – Cross-Border Trade in Services);

   (e) Article 13.11 (Performance Requirements – Investment); or

   (f) Article 13.12 (Senior Management and Boards of Directors – Investment).

2. Each Schedule entry sets out the following elements:

   (a) "Sector" refers to the sector for which the entry is made;

   (b) "Sub-Sector", where referenced, refers to the specific sub-sector for which the entry is made;

   (c) "Industry Classification", where referenced, refers to the activity covered by the entry, according to the CPC, ISIC Rev. 3.1, or as expressly otherwise described in that entry;

      "ISIC Rev. 3.1" means the *International Standard Industrial Classification of All Economic Activities* as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No.4, ISIC Rev. 3.1, 2002; and

      "CPC" means the *Provisional Central Product Classification* (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

(d) "Obligations concerned" specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 13.13 (Non-Conforming Measures – Investment), do not apply to the listed measure(s) as indicated in the introductory note for each Party's Schedule;

(e) "Level of government" indicates the level of government maintaining the listed measures;

(f) "Measures" identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) "Description", as indicated in the introductory note for each Party's Schedule, either sets out the non-conforming measure or provides a general non-binding description of the measure for which the entry is made.

3. For greater certainty, if a Party adopts a new measure at a level of government different to the level of government originally specified in an entry, and this new measure effectively replaces (within the territory to which it applies) the non-conforming aspect of the original measure cited in the "Measures"' element, the new measure is understood to constitute "amendment" to the original measure within the meaning of subparagraph (1)(c) of Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) and subparagraph (1)(c) of Article 13.13 (Non-Conforming Measures – Investment).

4. The list of entries below does not include measures relating to qualification requirements and procedures, technical standards, authorisation requirements and licensing requirements and procedures where they do not constitute a limitation within the meaning of Articles 8.3 (National Treatment – Cross-Border Trade in Services), Article 13.5 (National Treatment – Investment), Article 8.5 (Market Access – Cross-Border Trade in Services), Article 13.4 (Market Access – Investment), or Article 8.6 (Local Presence – Cross-Border Trade in Services). These measures may include, in particular, the need to obtain a licence, to satisfy universal service obligations, to have recognised qualifications in regulated sectors, to have completed a recognised period of training, to pass specific examinations, including language examinations, to fulfil a membership requirement of a particular profession, such as membership in a professional organisation, to have a local agent for service, or to maintain a local address, or any non-discriminatory requirements that

certain activities may not be carried out in protected zones or areas. While not listed, those measures continue to apply.

5. Non-discriminatory measures do not constitute a market access limitation within the meaning of Article 8.5 (Market Access – Cross-Border Trade in Services) or Article 13.4 (Market Access – Investment) of this Agreement for any measure:

   (a) concerning zoning and planning regulations affecting the development or use of land, or another analogous measure;

   (b) requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation, and telecommunications;

   (c) restricting the concentration of ownership to ensure fair competition;

   (d) seeking to ensure the conservation and protection of natural resources and the environment, including a limitation on the availability, number, and scope of concessions granted, and the imposition of a moratorium or ban;

   (e) limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectra and frequencies; or

   (f) requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practice a certain profession such as lawyers or accountants.

6. For the purposes of the Schedules of Australia and the United Kingdom, an entry for a requirement to have a local presence in the territory of Australia or the United Kingdom is made against Article 8.6 (Local Presence – Cross-Border Trade in Services), and not against Article 8.3 (National Treatment – Cross-Border Trade in Services) or Article 8.5 (Market Access – Cross-Border Trade in Services).

ANNEX I

SCHEDULE OF AUSTRALIA

INTRODUCTORY NOTES

1. "Description" sets out the non-conforming measure for which the entry is made.

2. In accordance with Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 13.13 (Non-Conforming Measures – Investment), the articles of this Agreement specified in the "Obligations concerned" element of an entry do not apply to the non-conforming measures identified in the "Description" element of that entry.

3. Australia reserves the right to maintain and to add to this Schedule any non-conforming measure at the regional level of government that existed at 1 January 2005, but was not listed in this Schedule at the date of entry into force of this Agreement against the following obligations:

   (a) Articles 8.3 (National Treatment – Cross-Border Trade in Services) and 13.5 (National Treatment – Investment);

   (b) Articles 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services) and 13.6 (Most-Favoured-Nation Treatment – Investment);

   (c) Articles 8.5 (Market Access – Cross-Border Trade in Services) and 13.4 (Market Access – Investment);

   (d) Article 8.6 (Local Presence – Cross-Border Trade in Services);

   (e) Article 13.11 (Performance Requirements – Investment); and

   (f) Article 13.12 (Senior Management and Boards of Directors – Investment).

4. Any existing non-conforming measure that is maintained and added to this Schedule pursuant to paragraph 3 shall include any amendment to that non-conforming measure since 1 January 2005, to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment.

5. All dollar figures are in Australian dollars unless specified otherwise.

1	Sector	All
	Obligations concerned	National Treatment (Investment) Market Access (Investment) Performance Requirements Senior Management and Boards of Directors
	Level of government	Central
	Measures	Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, *Foreign Acquisitions and Takeovers Act 1975* (Cth), *Foreign Acquisitions and Takeovers Regulation 2015* (Cth), *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth), *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2020* (Cth), *Financial Sector (Shareholdings) Act 1998* (Cth), and Ministerial Statements.
	Description	A. The following investments[1,2] are subject to approval by the Australian Government and may also require notification[3] to the Australian Government: (a) a proposed investment by a foreign person[4] in an entity or Australian business valued above $1,216 million;[5] (b) a proposed investment by a foreign person in an entity or Australian business valued above $281 million[6] relating to a sensitive business[7] or its assets;

[1] The terms in this entry shall be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of this Agreement.

[2] "Investment" means activities covered by Part II of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or, where applicable, Ministerial Statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

[3] The *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth) and the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2020* (Cth) set the fees for foreign investment applications and notices. Fees are indexed annually on 1 July.

[4] For the purposes of this entry, the term "foreign person" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

[5] This is the figure as at 1 January 2021. To be indexed annually on 1 January.

[6] This is the figure as at 1 January 2021. To be indexed annually on 1 January.

[7] The term "sensitive business" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

		(c) a proposed direct investment by a foreign government investor[8] of any interest regardless of value; (d) a proposed investment by a foreign person of five per cent or more in the media sector, regardless of the value of the investment; (e) a proposed acquisition by a foreign person of an interest in developed commercial land[9] where the value of the interest is more than $1,216 million.[10] Investments may be refused, subject to orders or approved subject to conditions. Foreign persons that do not comply with the Foreign Investment Framework may be subject to civil and criminal penalties. For greater certainty, where an investment could qualify for the application of one or more of the above screening thresholds, approval or notification requirements apply from the lowest applicable threshold. Separate or additional requirements may apply to measures subject to other Annex I entries and to sectors, subsectors or activities subject to Annex II. B. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control[11] of an existing financial sector company, may be refused or be subject to certain conditions.[12]

[8] The term "foreign government investor" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).
[9] The term "developed commercial land" means commercial land that is not vacant within the meaning of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).
[10] This is the figure as at 1 January 2021. To be indexed annually on 1 January.
[11] "Unacceptable shareholding situation" and "practical control" as defined in the *Financial Sector (Shareholdings) Act 1998* (Cth).
[12] Ministerial Statements on Foreign Investment Policy including the Treasurer's Press Release No.28 of 9 April 1997.

2	Sector	All
	Obligations concerned	National Treatment (Investment) Senior Management and Boards of Directors
	Level of government	Central
	Measures	*Corporations Act 2001* (Cth) *Corporations Regulations 2001* (Cth)
	Description	At least one director of a private company must be ordinarily resident in Australia. At least two directors of a public company must be ordinarily resident in Australia. At least one secretary of a private company (if such a private company appoints one or more secretaries) must be ordinarily resident in Australia. At least one secretary of a public company must be ordinarily resident in Australia.

3	Sector	Professional services
	Obligations concerned	National Treatment (Cross-Border Trade in Services) Most-Favoured-Nation Treatment (Cross-Border Trade in Services)
	Level of government	Central
	Measures	*Patents Act 1990* (Cth) *Patents Regulations 1991* (Cth)
	Description	In order to register to practise in Australia, a patent attorney must have been employed for at least two continuous years, or a total of two years within five continuous years, in Australia or New Zealand, or in both countries, in a position or positions that provided the applicant with required experience in Australia's and New Zealand's patent attorney regime.

4	Sector	Professional services
	Obligations concerned	National Treatment (Cross-Border Trade in Services) Most-Favoured-Nation Treatment (Cross-Border Trade in Services)
	Level of government	Central
	Measures	*Migration Act 1958* (Cth)
	Description	To practise as a migration agent in Australia, a person must be an Australian citizen or permanent resident or a citizen of New Zealand with a special category visa.

5	Sector	Professional services
	Obligations concerned	Local Presence
	Level of government	Central
	Measures	*Customs Act 1901* (Cth)
	Description	To act as a customs broker in Australia, a service supplier must supply the service in and from Australia.

6	Sector	Telecommunications
	Obligations concerned	National Treatment (Investment) Market Access (Investment) Performance Requirements Senior Management and Boards of Directors
	Level of government	Central
	Measures	*Telstra Corporation Act 1991* (Cth)
	Description	Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than five per cent of shares. The chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations, and place of incorporation in Australia.

7	Sector	Health Services
	Obligations concerned	National Treatment (Investment) Market Access (Investment) Performance Requirements Senior Management and Boards of Directors
	Level of government	Central
	Measures	*Commonwealth Serum Laboratories Act 1961* (Cth)
	Description	The votes attached to significant foreign shareholdings[13] may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time. The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia. Two-thirds of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

[13] For the purposes of this entry, "significant foreign shareholding" means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least five per cent of the voting shares in CSL.

8	Sector	Transport services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Local Presence
	Level of government	Central
	Measures	*Competition and Consumer Act 2010* (Cth)
	Description	Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia. Only a person[14] affected by a registered conference agreement or by a registered non-conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable. For greater certainty, matters which are relevant to the determination of 'reasonable' include Australia's national interest and the interests of Australian shippers.

[14] Sections 10.48 and 10.58 of Part X of the *Competition and Consumer Act 2010* (Cth) list the categories of persons to whom this reservation will apply.

9	Sector	Maritime transport
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Local Presence Senior Management and Boards of Directors
	Level of government	Central
	Measures	*Shipping Registration Act 1981* (Cth) *Shipping Registration Regulations 1981* (Cth)
	Description	For a ship to be registered on the Australian Shipping Register it must be majority Australian-owned or on demise charter to Australian-based operators. In the case of small craft, a ship must be wholly owned by or solely operated by Australian residents, Australian nationals, or both. For a trading ship to be registered on the International Shipping Register it must be: (a) majority owned by Australian nationals; (b) wholly owned by Australian residents, or by Australian residents and Australian nationals; (c) operated solely by Australian residents, Australian nationals, or both; or (d) on demise charter to Australian based operators. The master or chief mate, and chief engineer or first engineer, of the trading ship must be an Australian national or Australian resident. A ship on demise charter to an Australian-based operator is a ship on demise charter: (a) to an Australian national or Australian nationals; or (b) in circumstances where there are two or more persons who include an Australian national, where the Australian national is in a position to control the exercise of the rights and powers of the charterers under the charter party.

		For the purposes of this entry, an Australian national is an Australian citizen who is ordinarily resident in Australia or a body corporate that has its principal place of business in Australia.

10	Sector	Transport services
	Obligations concerned	National Treatment (Investment) Market Access (Investment) Performance Requirements Senior Management and Boards of Directors
	Level of government	Central
	Measures	*Air Navigation Act 1920* (Cth) Ministerial Statements
	Description	Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent. Furthermore, it is required that: (a) at least two-thirds of the board members must be Australian citizens; (b) the chairperson of the board must be an Australian citizen; (c) the airline's head office must be in Australia; and (d) the airline's operational base must be in Australia.

11	Sector	Transport services
	Obligations concerned	National Treatment (Investment) Market Access (Investment) Performance Requirements Senior Management and Boards of Directors
	Level of government	Central
	Measures	*Qantas Sale Act 1992* (Cth)
	Description	Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent. In addition: (a) the head office of Qantas must always be located in Australia; (b) the majority of Qantas' operational facilities must be located in Australia; (c) at all times, at least two thirds of the directors of Qantas must be Australian citizens; (d) at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and (e) Qantas is prohibited from taking any action to become incorporated outside Australia.

12	Sector	Professional services
	Obligations concerned	Local Presence Senior Management and Boards of Directors
	Level of government	Central and Regional
	Measures	*Corporations Act 2001* (Cth) *Co-operative Housing and Starr-Bowkett Societies Act 1998* (NSW) *Estate Agents Act 1980* (Vic)
	Description	Commonwealth A person who is not ordinarily resident in Australia may be refused registration as a company auditor or liquidator. At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia. New South Wales A person must be ordinarily resident in New South Wales in order to be an auditor of specified kinds of societies and associations. Victoria A firm of auditors cannot audit an estate agent's accounts unless at least one member of the firm of auditors is an Australian resident.

13	Sector	Fishing; services incidental to fishing
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Senior Management and Boards of Directors
	Level of government	Central and Regional
	Measures	*Fisheries Management Act 1991* (Cth) *Foreign Fishing Licences Levy Act 1991* (Cth) *Fisheries Management Act 1994* (NSW) *Fisheries (General) Regulation 2019* (Qld) *Fisheries Act 1995* (Vic) *Fish Resources Management Act 1994* (WA) *Pearling Act 1990* (WA) Ministerial Policy Guideline No.17 of August 2001 (WA)
	Description	Commonwealth Foreign fishing vessels[15] seeking to undertake fishing activity, including any activity in support of or in preparation for any fishing activity or the processing, carrying or transhipment of fish, in the Australian Fishing Zone must be authorised. Where foreign fishing vessels are authorised, they may be subject to a levy.[16] New South Wales A foreign person or a foreign-owned body is not permitted to hold shares in a share management fishery.

[15] For the purposes of this entry, a "foreign fishing vessel" is one that does not meet the definition of an Australian boat under the *Fisheries Management Act 1991* (Cth), that is, an Australian-flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based, in Australia.

[16] The levy charged will be in accordance with the *Foreign Fishing Licences Levy Act 1991* (Cth) or any amendments thereto.

		Queensland A primary commercial fishing licence that identifies a primary commercial fishing boat may only be issued if the boat is a domestic commercial vessel. Victoria A fishery access licence or aquaculture licence can only be issued to: (a) an individual who is an Australian resident; (b) a single corporation that has a registered office in Australia; or (c) a co-operative that has a registered office in a jurisdiction that administers the Co-operatives National Law (currently New South Wales, Queensland, Victoria, South Australia, the Northern Territory, Tasmania, Western Australia and the Australian Capital Territory). Western Australia Only an individual who is an Australian citizen or permanent resident may be a licensee within the Western Australian pearling industry. In the case of corporations, partnerships or trusts holding licences, these must be Australian owned or controlled (at least 51 per cent of the issued share capital, partnership interest or trust property must be owned by Australian citizens or permanent residents; the chairman, majority of the board of directors and all the company officers must be Australian citizens or permanent residents and must be nominated by, and represent, Australian interests). A person must not construct any place, or establish any plant or facilities in or on any place, for the purpose of processing fish for a commercial purpose, unless the person is authorised to do so by a permit. In deciding whether to grant such a permit, the CEO will consider factors including whether it is in the better interests of the fishing industry to grant the permit having regard to:

		(a) the number of establishments in respect of which permits or fish processor's licences have already been granted or sought; and (b) the size and nature of those establishments. A person must not process fish for a commercial purpose unless the person is authorised to do so by a fish processor's licence. In deciding whether to grant such a permit, the CEO will consider factors including whether it is in the better interests of the fishing industry to grant the licence.

14	Sector	Real estate services and distribution services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Agents Act 2003* (ACT) *Community Land Management Act 1989* (NSW) S*trata Schemes Management Act 1996* (NSW) *Property, Stock and Business Agents Act 2002* (NSW) *Agents Licensing Act 2017* (NT) *Property Agents and Motor Dealers Act 2000* (Qld) *Estate Agents Act 1980* (Vic) *Conveyancers Act 2006* (Vic) *Real Estate and Business Agents Act 1978* (WA) *Real Estate and Business Agents (General) Regulations 1979* (WA) *Settlement Agents Act 1981* (WA) *Settlement Agents Regulations 1982* (WA)
	Description	<u>Australian Capital Territory</u> An estate agent must have their principal place of business in the Australian Capital Territory. <u>New South Wales</u> A person cannot be appointed as an agent (for a proprietor of a development lot, neighbourhood lot or strata lot) if they are not an Australian resident. A person cannot be appointed as an agent (for an owner of a lot, for dealings with the owner's corporation) if they are not an Australian resident. To be licensed as a property, stock, business, strata managing or community managing agent in New South Wales, licensees must have a registered office in New South Wales.

		Northern Territory A licensed agent[17] must maintain an office in Australia at or from which the conduct of business under the licence is to occur. Queensland In order to obtain a licence to operate in Queensland as a real estate agent, auctioneer, motor dealer or commercial agent, a person must have a business address in Queensland. Victoria A person cannot be licensed as an estate agent unless they have a registered office in Victoria and they must maintain a principal office in Victoria. An agent's representative must have a registered address in Victoria to which documents can be sent. A person cannot be licensed as a conveyancer or carry on a conveyancing business in Victoria unless they maintain a principal place of business in Victoria. Western Australia A person seeking to carry on business as a real estate or business agent in Western Australia must establish and maintain a registered office in the state. A person seeking to carry on business as a settlement agent (conveyancer) in Western Australia must ordinarily reside in the state. In the case of a firm or body corporate seeking to carry on business as a settlement agent, the person in bona fide control of the business must be ordinarily resident in the state. A licensed settlement agent must establish and maintain a registered office in the state.

[17] A "licensed agent" includes a real estate agent, business agent or conveyancing agent.

15	Sector	All
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Local Presence Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Associations Act 2017* (NT) *Associations Incorporation Act 1991* (ACT) *Associations Incorporation Act 1981* (Qld) *Associations Incorporation Act 1985* (SA) *Associations Incorporation Act 1964* (Tas) *Associations Incorporation Reform Act 2012* (Vic)
	Description	<u>Australian Capital Territory</u> An application for incorporation of an association[18] must be made by a person who is a resident of the Australian Capital Territory. The public officer of an incorporated association must be a person who is a resident of the Australian Capital Territory. <u>Queensland</u> The office of secretary shall become vacant if the person holding that office ceases to be a resident in Queensland, or in another state but not more than 65 kilometres from the Queensland border. The management committee of an incorporated association must ensure that the secretary is an individual residing in Queensland, or in another state but not more than 65 kilometres from the Queensland border. The members of the management committee of an incorporated association must ensure that the association has an address nominated for the service of documents on the association. The nominated address must be a place in the state where a document can be served personally on a person. A post office box is not a place that can be shown as a nominated address.

[18] "Association" includes a trading association.

		Northern Territory An application for the incorporation of an association must be made by a person who is a resident of the Northern Territory. The public officer of an incorporated association must be a person who is a resident of the Northern Territory. South Australia The public officer of an incorporated association must be a person who is a resident of South Australia. Tasmania A person is not eligible to be appointed as a public officer of an incorporated association unless the person is resident in Tasmania. Victoria A person applying for the incorporation of an association must be an Australian resident. The first secretary and secretary of an incorporated association must be Australian residents.

16	Sector	All
	Obligations concerned	National Treatment (Investment) Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Co-operatives National Law (ACT) Act 2017* (ACT) *Co-operatives (Adoption of National Law) Act 2012* (NSW) *Co-operatives (National Uniform Legislation) Act 2015* (NT) *Co-operatives National Law Act 2020* (Qld) *Co-operatives National Law (South Australia) Act 2013* (SA) *Co-operatives National Law (Tasmania) Act 2015* (Tas) *Co-operatives National Law Application Act 2013* (Vic) *Co-operatives Act 2009* (WA)
	Description	<u>All Australian states and territories</u> The secretary of a co-operative must be a person ordinarily resident in Australia. At least two of the directors of a co-operative must be ordinarily resident in Australia. A co-operative registered under the Co-operatives National Law (CNL) must have a registered office in the jurisdiction in which it was first incorporated as a co-operative. It does not need to have a registered office in any other jurisdiction that has applied the CNL.

17	Sector	All
	Obligations concerned	National Treatment (Investment)
	Level of government	Regional
	Measures	*Partnership Act 1963* (ACT) *Partnership Act 1892* (NSW) *Partnership Act 1997* (NT) *Partnership Act 1891* (Qld) *Partnership Act 1891* (SA) *Partnership Act 1891* (Tas) *Partnership Act 1958* (Vic)
	Description	Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Victoria A limited partnership or an incorporated limited partnership established in a state or territory must have an office, principal office or registered office in that state or territory.

18	Sector	All
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Local Presence
	Level of government	Regional
	Measures	*Consumer Affairs and Fair Trading Act 2017* (NT) *Consumer Affairs and Fair Trading (Trading Stamps) Regulations 2002* (NT)
	Description	Northern Territory A promoter of a third party trading scheme[19] must maintain an office in Australia.

[19] "Third party trading scheme" means a scheme or arrangement under which the acquisition of goods or services by a consumer from a supplier is a condition which gives rise, or apparently gives rise, to an entitlement to a benefit from a third party in the form of goods or services or some discount, concession, or advantage in connection with the acquisition of goods or services.

19	Sector	Professional services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Trustee Companies Act 1947* (ACT) *Trustee Companies Act 1964* (NSW) *Companies (Trustees and Personal Representatives) Act 1981* (NT) *Trustee Companies Act 1968* (Qld) *Trustee Companies Act 1988* (SA) *Trustee Companies Act 1953* (Tas) *Trustee Companies Act 1984* (Vic) *Trustee Companies Act 1987* (WA)
	Description	Northern Territory A body corporate may not obtain a grant of probate or act as an executor of a will, or trustee of an estate of a deceased person, unless it is a "licensed trustee company" as defined in Section 601RAA of the *Corporations Act 2001* (Cth), or a body corporate authorised by a law of the Northern Territory to obtain a grant of probate and so act. Western Australia A company can only act as a trustee company in Western Australia if it is a "licensed trustee company" as defined in Section 601RAA of the *Corporations Act 2001* (Cth). All other Australian states and territories A body corporate may not obtain a grant of probate or act as an executor of a will and any codicil unless it is a "licensed trustee company" within the meaning of Chapter 5D of the *Corporations Act 2001* (Cth).

20	Sector	Professional services
	Obligations concerned	Local Presence
	Level of government	Regional
	Measures	*Architects Act 1963* (NT)
	Description	Northern Territory To qualify for registration as an architectural partnership or company, the partnership or company must have a place of business or be carrying on business within the Northern Territory.

21	Sector	Research and development services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services)
	Level of government	Regional
	Measures	*Biodiscovery Act 2004* (Qld)
	Description	Queensland A biodiscovery entity seeking to collect or use native biological material from Queensland for biodiscovery purposes must be authorised under a collection authority, have an approved biodiscovery plan, and an individually negotiated Benefit Sharing Agreement. An application for a collection authority, or a biodiscovery plan, may be granted with or without conditions, or refused. Under the Benefit Sharing Agreement a biodiscovery entity must among other conditions, provide certain benefits of biodiscovery (as defined in the Act) to Queensland.

22	Sector	Mining and related services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Performance Requirements Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Mount Isa Mines Limited Agreement Act 1985* (Qld)
	Description	<u>Queensland</u> The operator of Mount Isa Mines shall, so far as is reasonably and economically practicable: (a) use the services of professional consultants resident and available within Queensland; (b) use labour available within Queensland; (c) when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies, ensure that Queensland suppliers, manufacturers and contractors are given reasonable opportunity to tender or quote; and (d) give proper consideration and where possible preference to Queensland suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere.

23	Sector	Distribution services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Local Presence
	Level of government	Regional
	Measures	*Firearms Act 2017* (NT)
	Description	Northern Territory Grant of a firearms licence[20] requires residency in the Northern Territory. Licences and permits expire three months after the holder ceases to reside permanently in the Northern Territory.

[20] "Firearms licences" include firearms dealer licences, firearms armourer licences, firearms museum licences, firearms collector licences, firearms employee licences, and paintball operator licences.

24	Sector	Distribution services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Local Presence Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Liquor Act 2018* (NT) and policy and practice *Kava Management Act 2016* (NT) *Tobacco Control Act 2016* (NT) and policy and practice
	Description	<u>Northern Territory</u> The Northern Territory Licensing Commission may require: (a) a liquor licensee, if the licensee is an individual; or (b) at least one of the licensees, if the licence is held by a partnership; or (c) the licence nominee, if the licence is held by a corporation to ordinarily reside within the general locality of the premises to which the licence relates. An applicant for a retail licence for kava must ordinarily reside or carry on business in the relevant licence area in the Northern Territory. The holder of a tobacco retail licence may only sell tobacco products from the premises specified in the licence. A tobacco retail licence in relation to liquor licensed premises may only be granted to the liquor licensee of those premises.

25	Sector	Distribution services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Performance Requirements
	Level of government	Regional
	Measures	*Wine Industry Act 1994* (Qld)
	Description	Queensland In order to obtain a wine merchant's licence to sell wine, the business conducted by a person under the licence must contribute to the Queensland wine industry in a substantial way. In order to obtain a wine producer's licence to sell wine, a person must be selling wine made from fruit grown by the person on the premises to which the licence relates, or selling wine made by the person on the premises to which the licence relates.

26	Sector	Recreational, cultural and sporting services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Local presence Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Nature Conservation Act 1992* (Qld) *Nature Conservation (Wildlife Management) Regulation 2006* (Qld) *Nature Conservation (Administration) Regulation 2006* (Qld)
	Description	<u>Queensland</u> The Chief Executive of the Queensland Department of Environment and Heritage Protection may grant a wildlife authority,[21] other than a wildlife movement permit, to a corporation only if the corporation has an office in Queensland. The Chief Executive may approve a person to be an authorised cultivator or propagator for protected plants only if: (a) in the case of a natural person, the person is a resident of Queensland; or (b) if the person is a corporation, the corporation has premises in Queensland at which the plants are to be cultivated or propagated. An individual or corporation is only taken to be a "person aggrieved" by a decision, failure to make a decision, or conduct under the Act if the individual is an Australian citizen or ordinarily resident in Australia or, if a corporation, established in Australia.

[21] The term "wildlife authority" is defined in Schedule 7 of the *Nature Conservation (Administration) Regulation 2006* (Qld).

27	Sector	Transport services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Road Transport (Public Passenger Services) Act 2001* (ACT) *Road Transport (Public Passenger Services) Regulation 2002* (ACT) *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) *Commercial Passenger (Road Transport) Act 2014* (NT) *Passenger Transport Act 1994* (SA) *Transport (Road Passenger Services) Act 2018* (WA) *Transport Coordination Act 1996* (WA)
	Description	<u>Australian Capital Territory</u> An application for accreditation to run a public transport service must be made by an Australian citizen or permanent resident of Australia. The Minister may determine the number of taxi licences or restricted taxi licences. The Road Transport Authority must not issue a taxi licence or a restricted taxi licence if the number of taxi licences or restricted taxi licences (as appropriate) would exceed the relevant number determined by the Minister. <u>New South Wales</u> The number of taxi licences is limited. Transport for NSW will determine, before 31 March each year, the number of taxi licences to be issued during the year commencing on the following 1 July. <u>Northern Territory</u> A taxi licence will be cancelled if the holder, being an individual, has not been ordinarily resident in the Northern Territory for more than six months or, being a

		body corporate, has ceased for more than six months to have its principal place of business in the Northern Territory. <u>South Australia</u> The number of taxi licences is limited. The number of general taxi licences to operate in metropolitan Adelaide is limited to 50. <u>Western Australia</u> An application for authorisation to provide an on-demand booking service must nominate at least one person to be a responsible officer that represents the applicant in providing the on-demand booking service who is: (a) a resident of Western Australia and (b) ordinarily resident in Australia. When determining whether to grant or refuse a licence for a commercial goods vehicle, the Minister may consider the factors identified in the legislation, including the effect of the proposed service on existing services.

28	Sector	Security services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Security Industry Act 1997* (NSW)
	Description	<u>New South Wales</u> A person must be an Australian citizen or an Australian permanent resident to obtain a licence to carry on a security activity in New South Wales.

29	Sector	Distribution services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Senior Management and Boards of Directors
	Level of government	Regional
	Measures	*Rice Marketing Act 1983* (NSW)
	Description	<u>New South Wales</u> New South Wales retains marketing board arrangements for rice.

30	Sector	Recreational, cultural and sporting services
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Nature Conservation Act 2014* (ACT)
	Description	Australian Capital Territory The keeping of a non-exempt animal under the *Nature Conservation Act 2014* (ACT) is prohibited.

31	Sector	Education
	Sub-sector	Private education
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Education Act 2016* (Tas) *Education Regulations 2017* (Tas) *School Education Act 1999* (WA) Advance Determination Policy Direction 2019
	Description	<u>Tasmania</u> A person or body must not operate a non-government school, or a campus of a non-government school, unless that school is registered under the Act. In deciding whether to grant an application for registration of an individual non-government school, the Minister must consider the likely impact that the registration of the new school will have on existing schools. <u>Western Australia</u> A person may not establish or conduct a non-government school in Western Australia unless it is registered under the Act. In order to be eligible for registration there must be an advance determination in force for the proposed school. In deciding whether to make an advance determination, the Minister will consider the potential for adverse effects on existing schools.

32	Sector	Transport
	Sub-sector	Pilotage
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Ports Management Act 2015* (NT)
	Description	Northern Territory The Minister may appoint a pilotage services provider to provide pilotage services on an exclusive basis within a relevant pilotage area.

33	Sector	Pharmacies
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Health Practitioner Regulation National Law* (NSW) *Pharmacy Business Ownership Act 2001* (Qld) *Pharmacy Regulation Act 2010* (Vic) *Pharmacy Act 2010* (WA)
	Description	<u>New South Wales</u> In New South Wales, a pharmacist must not (whether as an individual or as a partner in a pharmacists' partnership or a member of a body corporate) own or otherwise have a financial interest in more than five pharmacy businesses. <u>Queensland</u> In Queensland, a person must not own a pharmacy business unless the person is: (a) a pharmacist; or (b) a corporation whose directors and shareholders are all pharmacists; or (c) a corporation as described in s 139B(ba) of the Act; or (d) a friendly society as described in ss 139B(c)-(d) of the Act; or (e) any other entity as described in the Act. In Queensland, there are limits on the number of pharmacies which a person or entity may own or have a beneficial interest in: (a) a pharmacist must not have a beneficial interest in more than five pharmacy businesses at the same time; (b) a corporation must not own more than five pharmacy businesses at the same time;

		(c) a friendly society must not own more than six pharmacy businesses at the same time. Victoria In Victoria, a person must not own or have a proprietary interest in a pharmacy business unless the person is: (a) a registered pharmacist; or (b) a company as described in ss 5(b)-(e) of the Act; or (c) any other person as described in the Act. In Victoria, there are limits on the number of pharmacy businesses which a person or company may own or have a proprietary interest in. Western Australia In Western Australia, a pharmacist, or a friendly society, must not own, or hold a proprietary interest in, more than four pharmacy businesses at any one time. A new friendly society must not acquire, or acquire a proprietary interest in, a pharmacy business, if the total number of pharmacy businesses which are owned by a new friendly society, or in which a new friendly society holds a proprietary interest, is nine or more than nine.

34	Sector	Pipeline transport
	Obligations concerned	Market Access (Investment)
	Level of government	Central and Regional
	Measures	*National Gas (South Australia) Act 2008* (SA)
	Description	South Australia A regulated pipeline service ("covered pipeline") may only be provided by certain kinds of legal entities which include: (a) a legal entity registered under the *Corporations Act 2001* (Cth); or (b) a foreign company; or (c) a corporation established by or under a law of the Commonwealth, or a state or territory, of Australia which is a "participating jurisdiction" for the purposes of the Act. The terms used in this entry must be interpreted by reference to the *National Gas (South Australia) Act 2008* (SA).

35	Sector	Mining
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Opal Mining Act 1995* (SA)
	Description	South Australia In South Australia there are limits on the maximum number of tenements for opals or other precious stones. A person must not hold at the same time: (a) more than one opal development lease; (b) more than one precious stones claim that is in a precious stones field, subject to the qualification that a person may hold two precious stones claims if one or both of the claims arise from an opal development lease; (c) more than two precious stones claims. The terms used in this entry must be interpreted by reference to the Act.

36	Sector	Mining
	Sub-sector	Petroleum
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Petroleum (Submerged Lands) Act 1982* (SA) *Petroleum Act 1998* (Vic)
	Description	South Australia Under certain circumstances, the Minister may direct the holder of a licence to increase or reduce the rate at which petroleum is being extracted or recovered in the licence area to a specified rate. Victoria Pursuant to s 60 of the *Petroleum Act 1998* (Vic), under certain circumstances, the Minister may direct the holder of a licence to reduce the rate at which petroleum is being extracted or recovered in the licence area to a specified rate.

37	Sector	Agriculture
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Land Administration Act 1997* (WA)
	Description	Western Australia The Pastoral Lands Board may from time to time determine the minimum and maximum numbers and the distribution of stock to be carried on land under a pastoral lease. The pastoral lessee must comply with such a determination. The Minister must not: (a) approve the grant of a pastoral lease to a person; or (b) approve the transfer to the person of any interest in a pastoral lease if the result of the grant or transfer would be that the pastoral land imputed to the person would exceed 500,000 hectares, unless the Minister is satisfied that the transfer would not result in so great a concentration of control of pastoral land as to be against the public interest.

38	Sector	Cat breeding
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Cat Act 2011* (WA) *Cat (Uniform Local Provisions) Regulations 2013* (WA)
	Description	Western Australia There are limits on the number of cats which may be kept at a premises in Western Australia. The numbers are set under local laws and may differ between local government areas.

39	Sector	Forestry
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Forestry Act 2012* (NSW) *Sustainable Forests (Timber) Act 2004* (Vic) *Forests Act 1958* (Vic)
	Description	<u>New South Wales</u> The Minister may, by notice in writing to the Forestry Corporation of New South Wales: (a) prohibit particular kinds of forestry operations in a special management zone; or (b) prohibit forestry operations in the zone unless particular conditions are complied with. The carrying out of general purpose logging is prohibited in a special management zone. <u>Victoria</u> VicForests has a monopoly over certain timber harvesting operations in state forests and has discretion to authorise persons to perform timber harvesting operations under contract or licence. The number of contracts or licences may be limited and there may be a limit on the total amount of resources which may be harvested.

40	Sector	Rain-making
	Obligations concerned	Market Access (Investment and Cross-Border Trade in Services)
	Level of government	Regional
	Measures	*Rain-Making Control Act 1967* (Vic)
	Description	Victoria Rain-making operations in Victoria are prohibited unless they are authorised under the Act.

41	Sector	Dog breeding
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Domestic Animals Act 1994* (Vic) *Dog Act 1976* (WA) *Dog Regulations 1976* (WA)
	Description	Victoria A commercial dog breeder in Victoria must not keep more than 50 relevant fertile female dogs. Western Australia There are limits on the number of dogs which may be kept at a premises in Western Australia. The numbers are set under local laws and may differ between local government areas.

42	Sector	Agriculture and manufacturing
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Controlled Substances Act 1984* (SA) *Drugs, Poisons and Controlled Substances Act 1981* (Vic) *Drugs, Poisons and Controlled Substances Regulations 2017* (Vic)
	Description	<u>South Australia</u> In South Australia a person may only: (a) cultivate or process alkaloid poppies; or (b) manufacture any other drug, poison or controlled substance which is regulated by the Act if they hold an approved licence and subject to the terms and conditions of the licence. Licences are granted on a discretionary basis, and the number of licences may be limited. Unless otherwise approved, a poppy cultivation licence is subject to the condition that the licensed grower must have a contract with a licensed processor for the processing of alkaloid poppies cultivated under the licence. Licences granted in South Australia to process alkaloid poppies are subject to limits on the maximum quantities which may be processed. <u>Victoria</u> Licences granted in Victoria to manufacture or formulate heroin are subject to limits on the maximum quantities which may be processed, manufactured or formulated (as appropriate).

43	Sector	Hunting
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Wildlife Act 1975* (Vic) *Wildlife (Game) Regulations 2012* (Vic)
	Description	Victoria A licence is required to hunt wildlife or game in Victoria and the number of licences granted may be limited. Hunting of game is subject to licence conditions including bag limits, which vary for different taxon of game.

44	Sector	Human and social services
	Sub-sector	Human health services
	Obligations concerned	Market Access (Investment)
	Level of government	Regional
	Measures	*Animal Research Act 1985* (NSW)
	Description	New South Wales Only a corporation may apply for accreditation as a research establishment under the *Animal Research Act 1985* (NSW).

45	Sector	All
	Obligations Concerned	Performance Requirements[22]
	Level of Government	Regional
	Measures	All existing non-conforming measures at the regional level of government.
	Description	All existing non-conforming measures at the regional level of government with respect to the imposition or enforcement of any requirement, or the enforcement of any commitment or undertaking: (a) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party;[23] (b) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology; (c) to adopt: (i) a rate or amount of royalty below a certain level; or (ii) a given duration of the term of a licence contract;[24] with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the investment and a person in the territory of the Party, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of a non-judicial governmental authority of the Party,

[22] This entry does not apply in relation to subparagraphs 1(i) or 1(j) of Article 13.11 (Performance Requirements – Investment). See also Entry 30 of Annex II.

[23] For the purposes of this paragraph, the term "technology of the Party or of a person of the Party" includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive licence.

[24] A "licence contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

		in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment.

46	Sector	Communication services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Most-Favoured-Nation (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services)
	Level of government	Central
	Measures	*Australian Postal Corporation Act 1989* (Cth)
	Description	Australia Post, a wholly-owned government entity, has the exclusive right to issue postage stamps and carry letters within Australia, whether the letters originated within or outside Australia. This includes: (a) the collection within Australia of letters for delivery within Australia; and (b) the delivery of letters within Australia. This reservation does not include: (a) the carriage of a letter weighing more than 250 grams; (b) the carriage of a letter within Australia for a charge or fee that is at least 4 times the rate of postage that is current at the time for the carriage within Australia of a standard postal article by ordinary post[25]; and (c) other exceptions to the reserved services set out in s 30 of the *Australian Postal Corporation Act 1989* (Cth). Australia Post also has certain rights, powers and immunities ascribed only to it, such as the use and access to public land for the provision of postal and courier services.

[25] As specified in accordance with the *Australian Postal Corporation Act 1989* (Cth) and its subordinate legislation and regulations or any amendments thereto.

47	Sector	Transport services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services)
	Level of government	Central
	Measures	*Air Services Act 1995* (Cth) *Air Services Regulations 1995* (Cth) *Public Governance, Performance and Accountability Act 2013* (Cth)
	Description	The following functions and services are reserved to provision by the statutory authority, Airservices Australia: airspace management, air traffic flow information, air traffic control, traffic and flight information, navigation services, aeronautical information, and aerodrome rescue and fire-fighting services.

ANNEX I

SCHEDULE OF THE UNITED KINGDOM

Contents

INTRODUCTORY NOTES

1. "Description" provides a general non-binding description of the measure for which the entry is made.

2. "Obligations Concerned" specifies the obligations referred to in paragraph 1 of Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) and paragraph 1 of Article 13.13 (Non-Conforming Measures – Investment) that do not apply to the listed measures.

3. For the avoidance of doubt, and recalling i) subparagraph 6(c) of Article 13.13 (Non-Conforming Measures – Investment) and subparagraph 3(b) of Article 8.2 (Scope – Cross-Border Trade in Services) relating to the exclusion of government procurement; and ii) subparagraph 6(b) of Article 13.13 (Non-Conforming Measures – Investment) and subparagraph 3(d) of Article 8.2 (Scope – Cross-Border Trade in Services) relating to the exclusion of subsidies or grants provided by a Party:

   > In relation to Research and Development (R&D) services, Chapter 13 (Investment) and Chapter 8 (Cross-Border Trade in Services) shall not interfere with the ability of the UK to grant exclusive rights or authorisations, for publicly funded R&D services, to nationals of the UK or enterprises of the UK having their registered office, central administration, or principal place of business in the UK.

4. In the interpretation of an entry, all elements of the entry shall be considered. An entry shall be interpreted in the light of the relevant obligations of the Chapters against which the entry is taken. The "Measures" element shall prevail over all other elements.

5. For greater certainty, the fact that a Party has made an entry does not necessarily mean that, in the absence of such an entry, the measure would be inconsistent with the obligations under Chapter 13 (Investment) and Chapter 8 (Cross-Border Trade in Services).

Entry No. I-1 – Takeovers and Mergers

Sector – Sub-Sector	All Sectors
Obligations Concerned	Performance Requirements
Level of Government	Central and Regional
Description	Investment The United Kingdom may enforce a commitment or undertaking in relation to a takeover or merger where the commitment or undertaking is not imposed or required as a condition of approval of the takeover or merger, and which is: (a) given in accordance with the provisions governing post-offer undertakings in the City Code on Takeovers and Mergers; or (b) given pursuant to Deeds of Undertaking accepted or enforced under the prerogative powers of the Crown.
Measures	*The City Code on Takeovers and Mergers.* *Companies Act 2006.* *Law of Property (Miscellaneous Provisions) Act 1989* as regards enforcement of Deeds of Undertaking in relation to takeovers or mergers.

Entry No. I-2 – Professional services (legal services)

Sector - Sub-Sector	Professional services – legal services
Industry Classification	Part of CPC 861
Obligations Concerned	Market Access National Treatment Local Presence
Level of Government	Central and Regional
Description	Investment and Cross-Border Trade in Services Residency (commercial presence) may be required by the relevant professional or regulatory body for the provision of some UK domestic legal services. Non-discriminatory legal form requirements apply. Residency may be required by the relevant professional or regulatory body for the provision of certain UK domestic legal services in relation to immigration.
Measures	For England and Wales, the *Solicitors Act 1974*, the *Administration of Justice Act 1985*, and the *Legal Services Act 2007*. For Scotland, the *Solicitors (Scotland) Act 1980* and the *Legal Services (Scotland) Act 2010*. For Northern Ireland, the *Solicitors (Northern Ireland) Order 1976*. For all jurisdictions, the *Immigration and Asylum Act 1999*. In addition, the measures applicable in each jurisdiction include any requirements set by professional and regulatory bodies.

Entry No. I-3 – Professional services (intellectual property agents)

Sector – Sub-Sector	Professional services – intellectual property agents
Obligations concerned	Local Presence Most-Favoured-Nation Treatment
Level of Government	Central
Description	Cross-Border Trade in Services Local presence is required for the provision of intellectual property agency services.
Measures	*Copyright, Designs and Patents Act 1988.*

Entry No. I-4 – Professional services (veterinary services)

Sector – Sub-Sector	Professional services – veterinary services
Industry Classification	CPC 932
Obligations Concerned	Market Access Local Presence
Level of Government	Central
Description	Cross-Border Trade in Services Only members of the Royal College of Veterinary Surgeons (RCVS) may provide veterinary services in the UK. RCVS guidelines may require physical presence for the provision of veterinary services.
Measures	*Veterinary Surgeons Act 1966.*

Entry No. I-5 – Business services

Sector – Sub-Sector	Business services – rental or leasing services without operators and other business services
Industry Classification	Part of CPC 831
Obligations Concerned	Market Access National Treatment Local Presence Most-Favoured-Nation Treatment
Level of Government	Central
Description	Investment and Cross-Border Trade in Services For rental or leasing of aircraft without crew (dry lease) aircraft used by an air carrier of the UK are subject to applicable aircraft registration requirements. A dry lease agreement to which a UK carrier is a party shall be subject to requirements in the national law on aviation safety, such as prior approval and other conditions applicable to the use of third countries' registered aircraft. To be registered, aircraft may be required to be owned either by natural persons meeting specific nationality criteria or by enterprises meeting specific criteria regarding ownership of capital and control (CPC 83104). With respect to computer reservation system (CRS) services, where the UK air carriers are not accorded, by CRS services suppliers operating outside the UK, equivalent (meaning non-discriminatory) treatment to that provided in the UK, or where UK CRS services suppliers are not accorded, by non-UK air carriers, equivalent treatment to that provided in the UK, measures may be taken to accord equivalent discriminatory treatment, respectively, to the non-UK air carriers by the CRS services suppliers operating in the UK, or to the non-UK CRS services suppliers by UK air carriers.
Measures	*Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast)* as retained in UK law by the *European Union (Withdrawal) Act 2018* and as amended by *The Operation of Air Services (Amendment etc.) (EU Exit) Regulations (S.I. 2018/1392)*.

	Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 as retained in UK law by the *European Union (Withdrawal) Act 2018* and as amended by *The Computer Reservation Systems (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1080)*.

Entry No. I-6 – Communication services

Sector – Sub-Sector	Communication services – postal and courier services
Industry Classification	Part of CPC 71235, part of 73210, part of 751
Obligations Concerned	Market Access
Level of Government	Central
Description	Investment and Cross-Border Trade in Services The organisation of the siting of letter boxes on the public highway, the issuing of postage stamps, and the provision of the registered mail service used in the course of judicial or administrative procedures may be restricted. For greater certainty, postal operators may be subject to particular universal service obligations or a financial contribution to a compensation fund.
Measures	*Postal Services Act 2011.* *Postal Services Act 2000.*

Entry No. I-7 – Transport services and services auxiliary to transport services

Sector – Sub-Sector	Transport services – auxiliary services for water transport, auxiliary services to rail transport, road transport and services auxiliary to road transport, services auxiliary to air transport services
Obligations Concerned	Market Access Local Presence Senior Management and Boards of Directors
Level of Government	Central and Regional
Description (a)	**(a) Services auxiliary to air transport services** <u>With respect to Investment – Market Access and Cross-Border Trade in Services – Market Access</u>: The level of openness of groundhandling services depends on the size of airport. The number of suppliers in each airport may be limited. For big airports, this limit may not be less than two suppliers.
Measures (a)	*The Airports (Groundhandling) Regulations 1997 (S.I. 1997/2389).*
Description (b)	**(b) Supporting services for all modes of transport** <u>With respect to Cross-Border Trade in Services – Local Presence:</u> Customs services, including customs clearance services and services relating to use of temporary storage facilities or customs warehouses, may only be provided by persons established in the UK. For the avoidance of doubt, this includes UK residents, persons with a permanent place of business in the UK or a registered office in the UK.
Measures (b)	*Taxation (Cross-Border Trade) Act 2018.* *Customs and Excise Management Act 1979.*
Description (c)	**(c) Auxiliary services for water transport** <u>With respect to Investment – Market Access, and Cross-Border Trade in Services – Market Access</u>:

	For port services, the managing body of a port, or the competent authority, may limit the number of providers of port services for a given port service.
Measures (c)	*Regulation (EU) 2017/352 of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports, Article 6* as retained in UK law by the *European Union (Withdrawal) Act 2018* and as amended by the *Pilotage and Port Services (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/671).* *Port Services Regulations 2019.*
Description (d)	**(d) Road transport and Services auxiliary to road transport** With respect to Investment – Senior Management and Boards of Directors Transport Managers within the Road Haulage sector may be required to be resident in the UK.
Measures (d)	*Goods Vehicles (Licensing of Operators) Act 1995.* *Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC* as retained in UK law by the *European Union (Withdrawal) Act 2018* and as amended by the *Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/708).*

Entry No. I-8 – Energy related activities

Sector – Sub-Sector	Energy related activities – mining and quarrying
Industry Classification	ISIC Rev 3.1 11
Obligations Concerned	Market Access
Level of Government	Central and Regional
Description	Investment A licence is necessary to undertake exploration and production activities, both onshore and offshore. But mining and quarrying services may be provided to that licence holder without restriction. This entry applies to production licences issued with respect to both onshore and offshore activities. To be a Licensee, a company must have a place of business within the UK. That means either: (a) a staffed presence in the UK; (b) registration of a UK company at Companies House; or (c) registration of a UK branch of a foreign company at Companies House. To be a party to a licence that covers a producing field, a company must either (a) be registered at Companies House as a UK company; or (b) carry on its business through a fixed place of business in the UK as defined in section 148 of the Finance Act 2003 (which normally requires a staffed presence). This entry does not cover the provision of mining and quarrying services to the licence holder. Such services may be provided without restriction, provided that the holder of the production licence meets the criteria above.
Measures	*Petroleum Act 1998.*

ANNEX II

EXPLANATORY NOTES

1. The Schedule of a Party to this Annex sets out, pursuant to Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 13.13 (Non-Conforming Measures – Investment), the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

   (a) Article 8.3 (National Treatment – Cross-Border Trade in Services) or Article 13.5 (National Treatment – Investment);

   (b) Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services) or Article 13.6 (Most-Favoured-Nation Treatment – Investment);

   (c) Article 8.5 (Market Access – Cross-Border Trade in Services) or Article 13.4 (Market Access – Investment);

   (d) Article 8.6 (Local Presence – Cross-Border Trade in Services);

   (e) Article 13.11 (Performance Requirements – Investment); or

   (f) Article 13.12 (Senior Management and Boards of Directors – Investment).

2. Each Schedule entry sets out the following elements:

   (a) "Sector" refers to the sector for which the entry is made;

   (b) "Sub-Sector", where referenced, refers to the specific sub-sector for which the entry is made;

   (c) "Industry Classification", where referenced, refers to the activity covered by the entry, according to the CPC, ISIC Rev. 3.1, or as expressly otherwise described in that entry;

      "ISIC Rev. 3.1" means the *International Standard Industrial Classification of all Economic Activities* as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No. 4, ISIC Rev. 3.1, 2002; and

      "CPC" means the *Provisional Central Product Classification* (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

(d) "Obligations concerned" specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 13.13 (Non-Conforming Measures – Investment), do not apply to the sectors, sub-sectors, or activities listed in the entry;

(e) "Description" sets out the scope or nature of the sectors, sub-sectors, or activities covered by the entry to which the reservation applies; and

(f) "Existing measures", where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, sub-sectors, or activities covered by the entry.

3. In accordance with Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 13.13 (Non-Conforming Measures – Investment), the Articles specified in the "Obligations concerned" element of an entry do not apply to the sectors, sub-sectors, and activities identified in the "Description" element of that entry.

4. In the interpretation of a schedule entry, all elements of the entry shall be considered. The "Description" element shall prevail over all other elements.

5. The list of entries below does not include measures relating to qualification requirements and procedures, technical standards, authorisation requirements and licensing requirements and procedures where they do not constitute a limitation within the meaning of Articles 8.3 (National Treatment – Cross-Border Trade in Services), Article 13.5 (National Treatment – Investment), Article 8.5 (Market Access – Cross-Border Trade in Services), Article 13.4 (Market Access – Investment), or Article 8.6 (Local Presence – Cross-Border Trade in Services). These measures may include, in particular, the need to obtain a licence, to satisfy universal service obligations, to have recognised qualifications in regulated sectors, to have completed a recognised period of training, to pass specific examinations, including language examinations, to fulfil a membership requirement of a particular profession, such as membership in a professional organisation, to have a local agent for service, or to maintain a local address, or any non-discriminatory requirements that certain activities may not be carried out in protected zones or areas. While not listed, such measures continue to apply.

6. Non-discriminatory measures do not constitute a market access limitation within the meaning of Article 8.5 (Market Access – Cross-Border Trade in Services) or Article 13.4 (Market Access – Investment) of this Agreement for any measure:

(a) concerning zoning and planning regulations affecting the development or use of land, or another analogous measure;

(b) requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation, and telecommunications;

(c) restricting the concentration of ownership to ensure fair competition;

(d) seeking to ensure the conservation and protection of natural resources and the environment, including a limitation on the availability, number, and scope of concessions granted, and the imposition of a moratorium or ban;

(e) limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectra and frequencies; or

(f) requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practice a certain profession such as lawyers or accountants.

7. For the purposes of the Schedules of Australia and the United Kingdom, an entry for a requirement to have a local presence in the territory of Australia or the United Kingdom is made against Article 8.6 (Local Presence – Cross-Border Trade in Services), and not against Article 8.3 (National Treatment – Cross-Border Trade in Services) or Article 8.5 (Market Access – Cross-Border Trade in Services).

ANNEX II

SCHEDULE OF AUSTRALIA

INTRODUCTORY NOTES

1. For the avoidance of doubt, in relation to education services, nothing in Chapter 8 (Cross-Border Trade in Services) or Chapter 13 (Investment) shall interfere with:

   (a) the ability of individual education and training institutions to maintain autonomy in admissions policies (including in relation to considerations of equal opportunity for students and recognition of credits and degrees), in setting tuition rates and in the development of curricula or course content;

   (b) non-discriminatory accreditation and quality assurance procedures for education and training institutions and their programmes, including the standards that must be met;

   (c) government funding, subsidies or grants, such as land grants, preferential tax treatment, and other public benefits, provided to education and training institutions; or

   (d) the need for education and training institutions to comply with non-discriminatory requirements related to the establishment and operation of a facility in a particular jurisdiction.

3. For greater certainty, where Australia has more than one entry in its Schedule to Annex II that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

4. All dollar figures are in Australian dollars unless specified otherwise.

1	Sector	All
	Obligations concerned	Market Access (Cross-Border Trade in Services)
	Description	Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, subject to the provisions of Chapter 11 (Temporary Entry for Business Persons), that is not inconsistent with Australia's obligations under Article XVI of GATS.
	Existing measures	

2	Sector	All
	Obligations concerned	National Treatment (Cross-Border Trade in Services and Investment) Market Access **(**Cross-Border Trade in Services and Investment**)** Local Presence Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation. For the purpose of this reservation, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.
	Existing measures	Legislation and ministerial statements at all levels of government including Australia's foreign investment framework, and the *Native Title Act 1993* (Cth).

3	Sector	All
	Obligations concerned	National Treatment (Investment) Market Access (Investment) Performance Requirements
	Description	Australia reserves the right to adopt or maintain any measure with respect to a proposed acquisition by a foreign person[1,2] of an interest in Australian land,[3] other than developed commercial land or land that is used wholly and exclusively for a primary production business.
	Existing measures	Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, *Foreign Acquisitions and Takeovers Act 1975* (Cth); *Foreign Acquisitions and Takeovers Regulation 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020* (Cth); *Financial Sector (Shareholdings) Act 1998* (Cth); and Ministerial Statements.

[1] The terms in this entry shall be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of this Agreement.
[2] The term "foreign person" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).
[3] The terms "Australian land" and "interest in Australian land" have the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

4	Sector	All
	Obligations concerned	National Treatment (Investment) Most-Favoured-Nation Treatment (Investment) Market Access (Investment) Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure with respect to the proposed acquisition by a foreign person[4,5] of an interest in agricultural land[6] where the cumulative value of the agricultural land owned by the foreign person alone or together with associates, including the proposed acquisition, is above $15 million. Australia reserves the right to adopt or maintain any measure with respect to the proposed acquisition by a foreign person of an interest in an agribusiness[7] where the cumulative value of the interest held by the foreign person in that agribusiness, alone or together with associates, including the proposed acquisition, is above $61 million.
	Existing measures	Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, *Foreign Acquisitions and Takeovers Act 1975* (Cth); *Foreign Acquisitions and Takeovers Regulation 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020* (Cth); *Financial Sector (Shareholdings) Act 1998* (Cth); and Ministerial Statements.

[4] The terms in this entry shall be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of this Agreement.
[5] The term "foreign person" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).
[6] The term "agricultural land" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).
[7] The term "agribusiness" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

5	Sector	All
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure with respect to: (a) the devolution to the private sector of activities performed in the exercise of governmental authority at the date of entry into force of this Agreement; and (b) the privatisation of government owned entities or assets. For the purposes of this entry, any measure adopted after the date of entry into force of this Agreement in relation to subparagraph (a) or (b) shall be deemed an existing non-conforming measure subject to paragraph 1 of Article 13.13 (Non-Conforming Measures – Investment) and paragraph 1 of Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services).
	Existing measures	

6	Sector	All
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Most-Favoured-Nation Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure[8] with respect to the provision of law enforcement and correctional services, and the following services[9] to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health,[10] child care, public utilities,[11] public transport, and public housing.
	Existing measures	

[8] For greater certainty, measures adopted or maintained with respect to the provision of services covered by this entry include measures for the protection of personal information relating to health and children.

[9] This includes any measure with respect to: the collection of blood and its components; the distribution of blood and blood-related products, including plasma derived products; plasma fractionation services; and the procurement of blood and blood-related products and services.

[10] For greater certainty, the subsidies programmes under Australia's Pharmaceutical Benefits Scheme and Medicare Benefits Scheme, or successor programmes, are not subject to Article 13.4 (Market Access – Investment), Article 13.5 (National Treatment – Investment), Article 13.6 (Most-Favoured-Nation Treatment – Investment), and Article 13.12 (Senior Management and Boards of Directors – Investment), in accordance with Article 13.13(6)(b) (Non-Conforming Measures – Investment); or Chapter 8 (Cross-Border Trade in Services) in accordance with Article 8.2(3)(d) (Scope – Cross-Border Trade in Services).

[11] With respect to the central level of government, applies only with respect to Article 13.4 (Market Access – Investment), Article 13.11 (Performance Requirements – Investment), Article 13.12 (Senior Management and Board of Directors – Investment), and Article 8.5 (Market Access – Cross-Border Trade in Services).

7	Sector	Broadcasting and Audio-visual Services, Advertising Services, Live Performance[12]
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Most-Favoured-Nation Treatment (Investment and Cross-Border Trade in Services)[13] Market Access (Investment and Cross-Border Trade in Services) Local Presence[14] Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure[15] with respect to: (a) transmission quotas for local content on free-to-air commercial television broadcasting services; (b) non-discriminatory expenditure requirements for Australian production on subscription television broadcasting services; (c) transmission quotas for local content on free-to-air radio broadcasting services; (d) other audio-visual services transmitted electronically, in order to make Australian audio-visual content reasonably available to Australian consumers;[16] (e) spectrum management and licensing of broadcasting services;[17] and (f) subsidies or grants for investment in Australian cultural activity.

[12] With respect to "live performance" this entry applies only in respect of subparagraph (f).
[13] Applies only to the treatment as local content of New Zealand programmes or productions.
[14] Applies only in respect of subparagraph (e) and in respect of the licensing of services covered by subparagraph (d).
[15] For greater certainty, this includes the right to adopt or maintain measures under subparagraphs (a) through (f) with respect to the services supplied by the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation.
[16] Any such measure will be implemented in a manner that is consistent with Australia's commitments under Article XVI and Article XVII of GATS.
[17] In respect of subparagraph (e), Australia's reservation applies only in respect of Article 13.4 (Market Access – Investment), Article 13.11 (Performance Requirements – Investment), Article 8.5 (Market Access – Cross-Border Trade in Services), and Article 8.6 (Local Presence – Cross-Border Trade in Services).

		This entry does not apply to foreign investment restrictions in the broadcasting and audio-visual services sector.
	Existing measures	*Broadcasting Services Act 1992* (Cth) *Radiocommunications Act 1992* (Cth) *Income Tax Assessment Act 1936* (Cth) *Income Tax Assessment Act 1997* (Cth) *Screen Australia Act 2008* (Cth) Broadcasting Services (Australian Content and Children's Television) Standards 2020 Broadcasting Services (Australian Content in Advertising) Standard 2018 Broadcasting Services (Events) Notice (No. 1) 2010 Commercial Radio Codes of Practice and Guidelines Community Radio Broadcasting Codes of Practice

8	Sector	Broadcasting and Audio-visual Services
	Obligations concerned	Most-Favoured-Nation Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment) Performance Requirements
	Description	Australia reserves the right to adopt or maintain, under the International Co-production Program, preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production arrangements, confers national treatment on works covered by these arrangements.
	Existing measures	International Co-production Program

9	Sector	Recreational, Cultural and Sporting Services (other than audio-visual services)
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Most-Favoured-Nation Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure with respect to the creative arts,[18,19] Indigenous traditional cultural expressions, and other cultural heritage.[20]
	Existing measures	

[18] For the purposes of this entry, "creative arts" means: the performing arts (including live theatre, dance and music); visual arts and craft; literature (other than literary works transmitted electronically); and hybrid art works, including those which use new technologies to transcend discrete art form divisions. For live performances of the "creative arts", as defined, this entry does not extend beyond subsidies and grants for investment in Australian cultural activity.

[19] Notwithstanding this, such measures shall be implemented in a manner that is consistent with Australia's commitments under Article XVI and Article XVII of GATS, as applicable.

[20] For the purposes of this entry, "cultural heritage" means: ethnological, archaeological, historical, literary, artistic, scientific, or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives, and other heritage collecting institutions.

10	Sector	Education services
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Most-Favoured-Nation Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure with respect to primary education.
	Existing measures	

11	Sector	Distribution services
	Obligations concerned	Market Access (Investment and Cross-Border Trade in Services)
	Description	Australia reserves the right to adopt or maintain any measure with respect to wholesale and retail trade services of tobacco products, alcoholic beverages, or firearms.
	Existing measures	

12	Sector	All
	Obligations concerned	Most-Favoured-Nation Treatment (Investment and Cross-Border Trade in Services)
	Description	Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.[21] Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor taken as part of a process of economic integration or trade liberalisation between the parties to the *Australia-New Zealand Closer Economic Relations Trade Agreement* done at Canberra on 28 March 1983.[22] Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor of a Pacific Island Forum member state under any international agreement in force or signed after the date of entry into force of this Agreement. Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non-Parties under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving: (a) aviation; (b) fisheries; or (c) maritime matters, including salvage.
	Existing measures	

[21] For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.
[22] For greater certainty, this includes measures adopted or maintained under any existing or future protocol to that agreement.

13	Sector	Gambling and betting
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.
	Existing measures	*Interactive Gambling Act 2001* (Cth) and Ministerial Statements

14	Sector	Maritime transport
	Obligations concerned	National Treatment (Investment and Cross-Border Trade in Services) Market Access (Investment and Cross-Border Trade in Services) Local Presence Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services.[23]
	Existing measures	*Customs Act 1901* (Cth) *Fair Work Act 2009* (Cth) *Seafarers' Rehabilitation and Compensation Act 1992* (Cth) *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth) *Income Tax Assessment Act 1936* (Cth) *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth) *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (Cth) *Shipping Reform (Tax Incentives) Act 2012* (Cth) *Shipping Registration Act 1981* (Cth) *Shipping Registration Regulations 2019* (Cth)

[23] For the purposes of this entry, "cabotage" is defined as the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia. "Offshore transport" refers to shipping services involving the transportation of passengers or goods between a port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea and the subsoil of that seabed.

15	Sector	Transport services
	Obligations concerned	National Treatment (Investment) Market Access (Investment) Performance Requirements Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.
	Existing measures	*Airports Act 1996* (Cth) *Airports (Ownership-Interests in Shares) Regulations 1996* (Cth) *Airports Regulations 1997* (Cth)

16	Sector	Fishing; services incidental to fishing
	Obligations concerned	Market Access (Investment)
	Description	Australia reserves the right to adopt or maintain any measure with respect to access to and use of the biological resources and fishing grounds situated in the Australian Fishing Zone or waters under the jurisdiction of a state or territory.
	Existing measures	

17	Sector	All, except Financial Services
	Obligations concerned	Senior Management and Boards of Directors
	Description	Australia reserves the right to adopt or maintain any measure with respect to: (a) requirements that senior managers be resident in Australia; (b) requirements that less than a majority of the board of directors, or any committee thereof, be of a particular nationality, or resident in Australia, where that requirement would not materially impair the ability of the investor to exercise control over its investment, except in relation to the measures which are described in Annex I and reserved against Article 13.12 (Senior Management and Boards of Directors – Investment).
	Existing measures	

18	Sector	Nuclear Industry
	Obligations concerned	Market Access (Investment)
	Description	Australia reserves the right to adopt or maintain any measure with respect to nuclear activities. Australia reserves the right to adopt or maintain any measure with respect to nuclear facilities, including: (a) nuclear fuel fabrication plants; (b) nuclear power plants; (c) enrichment plants; and (d) reprocessing facilities. For the purposes of this entry "nuclear activities" means any procedure or operation involved in the prospecting for, mining, milling, treatment, processing, conversion, enrichment, fabrication, use, reprocessing, or disposal of nuclear material.
	Existing measures	

19	Sector	Electricity
	Obligations concerned	Market Access (Investment)
	Description	Australia reserves the right to adopt or maintain any measure with respect to the production, collection, storage, and distribution of electricity.
	Existing measures	

20	Sector	All
	Obligations concerned	Market Access (Investment)
	Description	Australia reserves the right to adopt or maintain any measure with respect to water, including for domestic, industrial, commercial, agricultural, environmental, cultural, or other uses.
	Existing measures	

21	Sector	Mining and related activities
	Obligations concerned	Market Access (Investment)
	Description	Australia reserves the right to adopt or maintain any measure with respect to hydraulic fracturing and exploration and mining of coal seam gas.
	Existing measures	

22	Sector	Forestry
	Obligations concerned	Market Access (Investment)
	Description	Australian Capital Territory Australia reserves the right to adopt or maintain any measure with respect to plantation forestry and commercial harvesting of native timber in the Australian Capital Territory.
	Existing measures	*Planning and Development Act 2007* (ACT) *Territory Plan 2008* (ACT)

23	Sector	Transport
	Sub-sector	Commercial passenger transport
	Obligations concerned	Market Access (Investment)
	Description	Northern Territory Australia reserves the right to limit the number of licences in force for any class of commercial passenger vehicle in the Northern Territory.
	Existing measures	*Commercial Passenger (Road) Transport Act 1991* (NT)

24	Sector	Transport
	Sub-sector	Ports
	Obligations concerned	Market Access (Investment)
	Description	Northern Territory Australia reserves the right to adopt or maintain any measure with respect to the operation or ownership of ports in the Northern Territory.
	Existing measures	

25	Sector	Transport
	Obligations concerned	Market Access (Investment)
	Description	Queensland Australia reserves the right to impose market entry restrictions on a public passenger service in Queensland, which includes taxis, hire cars, and limousines.
	Existing measures	*Transport Operations (Passenger Transport) Act 1994* (Qld) *Transport Operations (Passenger Transport) Regulation* 2018 (Qld)

26	Sector	Agriculture
	Sub-sector	Genetically modified crops
	Obligations concerned	Market Access (Investment)
	Description	Victoria Australia reserves the right to adopt or maintain any measure with respect to the cultivation, or any other dealing with, genetically modified crops in Victoria.
	Existing measures	

27	Sector	All
	Obligations concerned	Market Access (Investment and Cross-Border Trade in Services)
	Description	Victoria In Victoria, the Minister may: (a) provide, operate, control, deregulate or direct any vital industry while a vital industry declaration is in force; and (b) employ such persons in such numbers and upon such terms as appear necessary for the carrying into effect of these powers. Australia reserves the right to adopt or maintain any measure with respect to the activities referred to in subparagraphs (a) and (b) in Victoria.
	Existing measures	*Vital State Industries (Works and Services) Act 1999* (Vic)

28	Sector	Mining and related activities
	Obligations concerned	Market Access (Investment)
	Description	Western Australia Australia reserves the right to adopt or maintain any measure with respect to mining in Western Australia.
	Existing measures	

29	Sector	Energy
	Obligations concerned	Market Access (Investment)
	Description	Western Australia Australia reserves the right to adopt or maintain any measure with respect to the production, collection, storage, and distribution of energy in Western Australia.
	Existing measures	

30	Sector	All
	Obligations concerned	Performance Requirements
	Description	Australia reserves the right to adopt or maintain any measure at the regional level of government with respect to the imposition or enforcement of any requirement, or the enforcement of any commitment or undertaking: (a) to locate the regional or world headquarters of an enterprise in its territory; or (b) to achieve a given level or value of research and development in its territory, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment.
	Existing measures	

ANNEX II

SCHEDULE OF THE UNITED KINGDOM

Contents

INTRODUCTORY NOTES

1. For the avoidance of doubt, and recalling i) subparagraph 6(a) of Article 13.13 (Non-Conforming Measures – Investment) and subparagraph 3(b) of Article 8.2 (Scope – Cross-Border Trade in Services) relating to the exclusion of government procurement; and ii) subparagraph 6(b) of Article 13.13 (Non-Conforming Measures – Investment) and subparagraph 3(d) of Article 8.2 (Scope – Cross-Border Trade in Services) relating to the exclusion of subsidies or grants provided by a Party:

   In relation to Research and Development (R&D) services, Chapter 13 (Investment) and Chapter 8 (Cross-Border Trade in Services) shall not interfere with the ability of the UK to grant exclusive rights or authorisations, for publicly funded R&D services, to nationals of the UK or enterprises of the UK having their registered office, central administration, or principal place of business in the UK.

2. With respect to computer services, any of the following services shall be considered as 'computer and related services', regardless of whether they are delivered via a network, including the Internet:

   (a) consulting, adaptation, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;

   (b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), as well as consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management, or use of or for computer programmes;

   (c) data processing, data storage, data hosting, or database services;

   (d) maintenance and repair services for office machinery and equipment, including computers; and

   (e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.

For greater certainty, services enabled by computer and related services, other than those listed in (a) to (e), shall not be regarded as 'computer and related services' in themselves.

3. For greater certainty, the fact that a Party has made an entry does not necessarily mean that, in the absence of such an entry, the measure would be inconsistent with the obligations under Chapter 13 (Investment) and Chapter 8 (Cross-Border Trade in Services).

4. With respect to Annex II Entry 1 on Most-Favoured-Nation Treatment relating to agreements, the absence of language regarding the scope of the entry for differential treatment resulting from an amendment of those agreements in force or signed prior to the date of entry into force of this Agreement is without prejudice to the UK's interpretation of the scope of the entry.

Entry No. II-1 – All sectors

Sector	All sectors
Obligations Concerned	Market Access National Treatment Local Presence Most-Favoured-Nation Treatment Senior Management and Boards of Directors Performance Requirements
Description	The UK reserves the right to adopt or maintain any measure with respect to the following: **(a) Public utilities** <u>With respect to Investment – Market Access:</u> Services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators. Public utilities exist in sectors such as related scientific and technical consulting services, research and development (R&D) services on social sciences and humanities, technical testing and analysis services, environmental services, health services, transport services, and services auxiliary to all modes of transport. Exclusive rights on such services are often granted to private operators, for instance operators with concessions from public authorities, subject to specific service obligations. Given that public utilities often also exist at the sub-central level, detailed and exhaustive sector-specific scheduling is not practical. This sub-entry (a) does not apply to telecommunications and to computer and related services. **(b) Most-Favoured-Nation Treatment** <u>With respect to Investment – Most-Favoured-Nation Treatment and Cross-Border Trade in Services – Most-Favoured-Nation Treatment:</u> According differential treatment pursuant to any international investment treaty or other trade agreement in force or signed prior to the date of entry into force of this Agreement.

	According differential treatment to a country pursuant to any existing or future bilateral or multilateral agreement which: (i) creates an internal market in services and investment; (ii) grants the right of establishment; or (iii) requires the approximation of legislation in one or more economic sectors. An internal market on services and investment means an area without internal frontiers in which the free movement of services, capital, and persons is ensured. The right of establishment means an obligation to abolish in substance all barriers to establishment among the parties to the regional economic integration agreement by the entry into force of that agreement. The right of establishment shall include the right of nationals of the parties to the regional economic integration agreement to set up and operate enterprises under the same conditions provided for nationals under the law of the country where such establishment takes place. The approximation of legislation means: (i) the alignment of the legislation of one or more of the parties to the regional economic integration agreement with the legislation of the other party or parties to that agreement; or (ii) the incorporation of common legislation into the law of the parties to the regional economic integration agreement. Such alignment or incorporation shall take place, and shall be deemed to have taken place, only at such time that it has been enacted in the law of the party or parties to the regional economic integration agreement. According differential treatment relating to the right of establishment to nationals or enterprises through existing or future bilateral agreements between the UK and any of the following countries or principalities:

	Andorra, Monaco, San Marino, and the Vatican City State. According differential treatment to a third country pursuant to existing or future agreements relating to air services or to related services in support of air services. **(c) Arms, ammunitions, and war material** With respect to Investment – Market Access, National Treatment, Most-Favoured-Nation Treatment, Senior Management and Boards of Directors, Performance Requirements and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence, Most-Favoured-Nation Treatment: Production or distribution of, or trade in, arms, munitions, and war material. War material is limited to any product which is solely intended and made for military use in connection with the conduct of war or defence activities. **(d) Presence of natural persons** With respect to Cross-Border Trade in Services – Market Access: The supply of a service by the presence of natural persons, subject to the provisions of Chapter 11 (Temporary Entry for Business Persons), that is not inconsistent with the United Kingdom's obligations under the GATS.

Entry No. II-2 – Professional services (legal services and auditing services)

Sector – Sub-Sector	Professional services – legal services and auditing services
Industry Classification	Part of CPC 861, part of 862, part of 87902
Obligations Concerned	Market Access Local Presence National Treatment Senior Management and Boards of Directors
Description (a)	Investment and Cross-Border Trade in Services **(a) Legal services (part of CPC 861, part of 87902).** The UK reserves the right to adopt or maintain any measure with respect to the supply of legal advisory and legal authorisation, documentation, and certification services provided by legal professionals entrusted with public functions, such as notaries, and with respect to services provided by bailiffs.
Description (b)	**(b) Auditing services (CPC – 86211, 86212 other than accounting and bookkeeping services)** The UK reserves the right to adopt or maintain any measure with respect to the cross-border supply of auditing services.
Existing measures (b)	*Companies Act 2006.*

Entry No. II-3 – Professional services (health related and retail of pharmaceuticals)

Sector	Health related professional services and retail sales of pharmaceutical, medical and orthopaedic goods, other services provided by pharmacists
Industry Classification	CPC 63211, 85201, 9312, 9319
Obligations Concerned	Market Access National Treatment Local Presence
Description	**(a) Medical and dental services; services provided by midwives, nurses, physiotherapists, psychologists and paramedical personnel (CPC 63211, 85201, 9312, 9319)** With respect to Investment – Market Access: Establishment for doctors under the National Health Service is subject to medical manpower planning (CPC 93121, 93122). With respect to Cross-Border Trade in Services – Market Access, National Treatment, Local Presence The UK reserves the right to adopt or maintain any measure with respect to the supply of all health-related professional services, including the services provided by professionals such as medical doctors, dentists, midwives, nurses, physiotherapists, paramedical personnel, and psychologists, (part of CPC 85201, CPC 9312, part of 93191). **(b) Retail sales of pharmaceutical, medical and orthopaedic goods, other services provided by pharmacists (CPC 63211)** With respect to Investment – Market Access and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence: The UK reserves the right to adopt or maintain any measure with respect to the supply of cross-border retail sales of pharmaceuticals and of medical and orthopaedic goods, and other services provided by pharmacists. Establishment in the UK is required for the retail of pharmaceuticals and specific medical goods to the general public in the UK.

Entry No. II-4 – Business services (collection agency services and credit reporting services)

Sector – Sub-Sector	Business Services – collection agency services, credit reporting services
Industry Classification	CPC 87901, 87902
Obligations Concerned	Market Access National Treatment Local Presence
Description	Cross-Border Trade in Services The UK reserves the right to adopt or maintain any measure with respect to the supply of collection agency services and credit reporting services.

Entry No. II-5 – Business services (placement services)

Sector – Sub-Sector	Business services – placement services
Industry Classification	CPC 87202, 87204, 87205, 87206, 87209
Obligations Concerned	Market Access National Treatment Local Presence Senior Management and Boards of Directors
Description	Investment and Cross-Border Trade in Services The UK reserves the right to adopt or maintain any measure with respect to the following: (a) The supply of placement services of domestic help personnel, other commercial or industrial workers, nursing and other personnel (CPC 87204, 87205, 87206, 87209); (b) Requiring establishment for, and the prohibition of cross-border supply of, placement services of office support personnel and other workers.

Entry No. II-6 – Business services (investigation services)

Sector – Sub-Sector	Business services – investigation services
Industry Classification	CPC 87301
Obligations Concerned	Market Access National Treatment Local Presence Performance Requirements Senior Management and Boards of Directors
Description	Investment and Cross-Border Trade in Services The UK reserves the right to adopt or maintain any measure with respect to the supply of investigation services (CPC 87301).

Entry No. II-7 – Business services (other business services)

Sector – Sub-Sector	Business services – other business services
Industry Classification	CPC 86764, 86769, 8868
Obligations Concerned	Market Access National Treatment Local Presence
Description	Cross-Border Trade in Services The UK reserves the right to adopt or maintain any measure with respect to the cross-border supply of maintenance and repair services in relation to the following: (a) rail transport equipment; (b) internal waterways transport vessels; (c) maritime vessels. Only recognised organisations authorised by the UK may carry out statutory surveys and certification of ships on behalf of the UK. Establishment may be required.
Existing measures:	*Regulation (EC) No 391/2009 of the European Parliament and the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations* as retained in UK law by the *European Union (Withdrawal) Act 2018*, and as amended by the *Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019.*

Entry No. II-8 – Education services

Sector	Education services
Industry Classification	CPC 92
Obligations Concerned	Market Access National Treatment Local Presence Senior Management and Boards of Directors Performance Requirements
Description	Investment and Cross-Border Trade in Services The UK reserves the right to adopt or maintain any measure with respect to the following: (a) All educational services which receive public funding or State support in any form and are therefore not considered to be privately funded. Where the supply of privately funded education services by a foreign provider is permitted, participation of private operators in the education system may be subject to concession allocated on a non-discriminatory basis; (b) The supply of privately funded other education services, which means other than those classified as being primary, secondary, higher and adult education services (CPC 929).

Entry No. II-9 – Health and social services

Sector	Health and social services
Industry Classification	CPC 931 (other than 9312, part of 93191), CPC 933
Obligations Concerned	Market Access National Treatment Local Presence Senior Management and Boards of Directors Performance Requirements
Description	The UK reserves the right to adopt or maintain any measure with respect to the following: **(a) Health services – including hospital, ambulance, residential health services (CPC 931 other than 9312, part of 93191)** <u>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Performance Requirements:</u> (i) The supply of all health services which receive public funding or State support in any form, and are therefore not considered to be privately funded; (ii) All privately funded health services other than hospital services; (iii) The participation of private operators in the privately funded health network may be subject to concession on a non-discriminatory basis. An economic needs test may apply. Main criteria: number of and impact on existing establishments, transport infrastructure, population density, geographic spread, and creation of new employment. **(b) Health and social services, including pension insurance (CPC 931 other than 9312, part of 93191)** <u>With respect to Cross-Border Trade in Services – Market Access, National Treatment, Local Presence:</u> The cross-border supply of health services, the cross-border supply of social services, as well as activities or services forming part of a public retirement plan or statutory system of social security.

	Sub-entries (a) and (b) do not relate to the supply of any health-related professional services, including the services provided by professionals such as medical doctors, dentists, midwives, nurses, physiotherapists, paramedics, and psychologists, which are covered by other entries. **(c) Social services, including pension insurance** With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Performance Requirements: (i) The supply of all social services which receive public funding or State support in any form, and are therefore not considered to be privately funded, and activities or services forming part of a public retirement plan or statutory system of social security; (ii) The supply of privately funded social services other than services relating to convalescent and rest houses and old people's homes; (iii) The participation of private operators in the privately funded social network may be subject to concession on a non-discriminatory basis. An economic needs test may apply. Main criteria: number of and impact on existing establishments, transport infrastructure, population density, geographic spread, and creation of new employment.

Entry No. II-10 – Health, Social and Education Services

Sector	Health, Social and Education Services
Obligations Concerned	Market Access National Treatment Senior Management and Boards of Directors
Description	<u>Investment</u> The UK, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity providing health, social or education services, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests and assets to control any resulting enterprise, by investors of Australia or their investments. With respect to such a sale or other disposition, the UK may adopt or maintain any measure relating to the nationality or residency of senior management or members of the boards of directors, as well as any measure limiting the number of suppliers. For the purposes of this entry: (a) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of the sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality or residency requirements or imposes limitations on the numbers of suppliers as described in this entry shall be deemed to be an existing measure subject to paragraph 1 of Article 13.13 (Non-Conforming Measures – Investment) and paragraph 1 of Article 8.7 (Non-Conforming Measures – Cross-Border Trade in Services); and (b) 'state enterprise' means an enterprise owned or controlled through ownership interests by the UK and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Entry No. II-11 – Recreational, cultural and sporting services

Sector	Recreational, cultural and sporting services
Industry Classification	CPC 963, 9619, 964
Obligations Concerned	Market Access National Treatment Local Presence Senior Management and Boards of Directors Performance Requirements
Description	Investment and Cross-Border Trade in Services The UK reserves the right to adopt or maintain any measure with respect to the following: (a) The supply of library, archive, museum and other cultural services (CPC 963); (b) The cross-border supply of entertainment services, including theatre, live bands, circus and discotheque services (CPC 9619, 964 other than 96492); (c) The supply of gambling activities, which involve wagering a stake with pecuniary value in games of chance, including in particular lotteries, scratch cards, gambling services offered in casinos, gambling arcades or licensed premises, betting services, bingo services and gambling services operated by and for the benefit of charities or non-profit-making organisations (CPC 96492).

Entry No. II-12 – Transport services and auxiliary transport services

Sector	Transport services
Obligations Concerned	Market Access National Treatment Local Presence Most-Favoured-Nation Treatment Performance Requirements Senior Management and Boards of Directors
Description (a)	The UK reserves the right to adopt or maintain any measure with respect to the following: **(a) Maritime transport and any other commercial activity undertaken from a ship** <u>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Performance Requirements and Cross-Border Trade in Services – Market Access, Local Presence, National Treatment:</u> The nationality of the crew on a seagoing or non-seagoing vessel. <u>With respect to Investment – Market Access, National Treatment, Most-Favoured-Nation Treatment, Senior Management and Boards of Directors:</u> For the purpose of registering a vessel and operating a fleet under the flag of the UK (all commercial marine activity undertaken from a seagoing ship, including fishing, aquaculture, and services incidental to fishing; international passenger and freight transportation (CPC 721); and services auxiliary to maritime transport). This paragraph does not apply to enterprises incorporated in the UK and having an effective and continuous link to its economy. <u>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Most-Favoured-Nation Treatment, Performance Requirements and Cross-Border Trade in Services- Market Access, Local Presence, National Treatment, Most-Favoured-Nation Treatment</u> The supply of maritime cabotage services

	Maritime cabotage services cover: (i) transportation of passengers or goods between a port or point located in the UK and another port or point located in the UK, including on its continental shelf as provided in the UN Convention on the Law of the Sea; (ii) traffic originating and terminating in the same port or point located in the UK. For greater certainty, this entry applies to related traffic in support of offshore activities.
Description (b)	**(b) Auxiliary services to maritime transport** With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence: The supply of pilotage and berthing services. Only vessels flying the flag of the UK may provide pushing and towing services (CPC 7214).
Description (c)	**(c) Inland waterways transport and auxiliary services to inland waterways transport** With respect to Investment – Market Access, National Treatment, Most-Favoured-Nation Treatment, Senior Management and Boards of Directors, Performance Requirements and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence, Most-Favoured-Nation Treatment: Inland waterways passenger and freight transportation (CPC 722); and services auxiliary to inland waterways transportation. For greater certainty, this entry also covers the supply of cabotage transport on inland waterways (CPC 722).

Description (d)	**(d) Rail transport and auxiliary services to rail transport** With respect to Investment – Market Access, National Treatment and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence: Railway passenger transportation (CPC 7111). With respect to Investment– Market Access and Cross-Border Trade in Services – Market Access, Local Presence: Railway freight transportation (CPC 7112).
Description (e)	**(e) Road transport (passenger transportation, freight transportation, international truck transport services) and services auxiliary to road transport** With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence: (i) to require establishment and to limit the cross-border supply of road transport services (CPC 712); (ii) an economic needs test may apply to taxi services in the UK setting a limit on the number of service suppliers. Main criterion: Local demand as provided in applicable laws (CPC 71221).
Existing Measures (e)	*Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC* as retained in UK law by the *European Union (Withdrawal) Act 2018* and as amended by *The Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019;* *Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road*

	haulage market as retained in UK law by the *European Union (Withdrawal) Act 2018* and as amended by *The Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019;* and *Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006* as retained in UK law by the *European Union (Withdrawal) Act 2018* and as amended by *The Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019.*
Description (f)	**(f) Space transport and rental of space craft** <u>With respect to Investment – Market Access, National Treatment, Performance Requirements, Senior Management and Boards of Directors and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence:</u> Transportation services via space and the rental of space craft (CPC 733, part of 734).
Description (g)	**(g) Air Traffic Management and Air Traffic Control** <u>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors:</u> (i) NATS Holdings Ltd and its successors; (ii) The exercise of statutory powers and the discharge of statutory functions and duties in relation to Air Traffic Management and Air Traffic Control.
Existing Measures (g)	*Transport Act 2000.*
Description (h)	**(h) Most-favoured-nation exemptions**

	With respect to Investment – Most-Favoured-Nation Treatment, and Cross-Border Trade in Services – Most-Favoured-Nation Treatment: Road and rail transport To accord differential treatment to a country pursuant to existing or future agreements relating to international road haulage (including combined transport – road or rail) and passenger transport, concluded between the UK and a third country (CPC 7111, 7112, 7121, 7122, 7123). That treatment may: (i) reserve or limit the supply of the relevant transport services between the contracting parties or across the territory of the contracting parties to vehicles registered in each contracting party; or (ii) provide for tax exemptions for such vehicles.
Description (i)	**(i) Air services** With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Most-Favoured-Nation Treatment, Performance Requirements: Air carriers and airports. This paragraph does not apply to air carriers used for specialty air services.

Entry No. II-13 – Fishing and water

Sector	Fishing, aquaculture, services incidental to fishing; collection, purification and distribution of water
Industry Classification	ISIC Rev. 3.1 0501, 0502, 41, CPC 882
Obligations Concerned	Market Access National Treatment Local Presence Most-Favoured-Nation Treatment Performance Requirements Senior Management and Boards of Directors
Description (a)	Investment and Cross-Border Trade in Services **(a) Fishing, aquaculture and services incidental to fishing (ISIC Rev. 3.1 0501, 0502, CPC 882)** The UK reserves the right to adopt or maintain any measure, in particular within the framework of UK fisheries policy, and of fishing agreements with a third country, with respect to access to and use of the biological resources and fishing grounds situated in the maritime waters coming under the sovereignty or jurisdiction of the UK. The UK reserves the right to adopt or maintain any measure (i) to the effect that the fishing activity of fishing vessels flying its flag must have an economic link (to the extent and according to the terms specified in the measure) with the UK and (ii) relating to fishing vessels' eligibility to use UK fishing opportunities by reference to the nationality of the owner or owners of vessels or place of incorporation of a company. The UK reserves the right to adopt or maintain any measure: (i) regulating the landing of catches performed in the quotas allocated to vessels of Australia or of a designated third country in UK ports; (ii) determining a minimum size for a company in order to preserve both artisanal and coastal fishing vessels; (iii) according differential treatment pursuant to existing or future international agreements relating to fisheries;

	(iv) with regard to the nationality of the crew of a fishing vessel flying the flag of the UK; or (v) with respect to the establishment of marine or inland aquaculture facilities.
Existing measures (a)	*Fisheries Act 2020.*
Description (b)	**(b) Collection, purification and distribution of water** <u>With respect to Investment – Market Access, National Treatment and Cross-Border Trade in Services – Market Access, Local Presence, National Treatment:</u> The UK reserves the right to adopt or maintain any measure with respect to activities, including services relating to the collection, purification and distribution of water to household, industrial, commercial or other users, including the supply of drinking water, and water management.

Entry No. II-14 – Energy related activities

Sector	Production of energy and related services
Industry Classification	ISIC Rev. 3.1 401, 402, CPC 7131, 887 (other than advisory and consultancy services)
Obligations Concerned	Market Access Local Presence National Treatment Performance Requirements Senior Management and Boards of Directors
Description	Investment and Cross-Border Trade in Services The UK reserves the right to adopt or maintain any measure where the UK permits foreign ownership of a gas or electricity transmission system, or an oil and gas pipeline transport system, with respect to enterprises of Australia controlled by natural persons or enterprises of a third country which accounts for more than five per cent of the UK's oil, natural gas or electricity imports, in order to guarantee the security of the energy supply of the UK. This entry does not apply to advisory and consultancy services provided as services incidental to energy distribution.

Entry No. II-15 – Other services not included elsewhere

Sector	Other services not included elsewhere
Obligations Concerned	Market Access National Treatment Local Presence Performance Requirements Senior Management and Boards of Directors
Description	Investment and Cross-Border Trade in Services The UK reserves the right to adopt or maintain any measure with respect to the provision of new services other than those classified in the CPC.