

# SINGAPORE – AUSTRALIA FREE TRADE AGREEMENT

## PREAMBLE

*Australia and Singapore* (“the Parties”)

*Conscious* of their longstanding friendship and growing trade and investment relationship;

*Desiring* to improve the efficiency and competitiveness of their goods and services sectors and expand trade and investment between them;

*Recognising* that strengthening of their closer economic partnership will bring economic and social benefits and improve the living standards of their people;

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

*Recognising* their commitment to securing trade liberalisation and an outward looking approach to trade and investment;

*Mindful of* the Asia-Pacific Economic Cooperation goals of free and open trade and investment;

*Conscious* that a framework of rules for trade in goods and services, and investment will contribute to the promotion of closer links with other economies, especially in the Asia-Pacific region;

*Recognising* the need for good corporate governance and a predictable, transparent and consistent business environment to enable businesses to conduct transactions freely, use resources efficiently and take investment and planning decisions with certainty; and

*Believing* that their cooperative framework could be a dynamic one that also covers newer areas of economic cooperation;

*Have agreed* as follows:

## **01 OBJECTIVES AND GENERAL DEFINITIONS**

### *Article 1*

#### Objectives

The objectives of the Parties in concluding this Agreement are:

- (a) to strengthen the relationship between them;
- (b) to liberalise trade in goods and services between them and to establish a framework conducive for bilateral investments;
- (c) to support the wider liberalisation process in the Asia-Pacific Economic Cooperation consistent with its goals of free and open trade and investment;
- (d) to build upon their commitments at the World Trade Organization, and to support its efforts to create a predictable, and more free and open global trading environment;

- (e) to improve the efficiency and competitiveness of their goods and services sectors and expand trade and investment between them;
- (f) to establish a framework of transparent rules to govern trade and investment between them; and
- (g) to explore newer areas of economic cooperation.

*Article 2*

General Definitions

For the purposes of this Agreement:

- (a) “APEC” means Asia-Pacific Economic Cooperation;
- (b) “days” means calendar days, including weekends and holidays;
- (c) “goods” and “products” shall be understood to have the same meaning unless the context otherwise requires;
- (d)
  - (i) the term “territory” means, in respect of the Republic of Singapore, the territory of the Republic of Singapore as well as the territorial sea and any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise rights with regards to the sea, the sea-bed, the subsoil and the natural resources;
  - (i) the term “territory”, in respect of Australia, includes:
    - (A) the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and
    - (B) Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf; and
- (e) “WTO” means the World Trade Organization.

**02 TRADE IN GOODS**

*Article 1*

Definitions

For the purposes of this Chapter:

- (a) “customs duties” means any duties or charges of any kind imposed in connection with the importation of a good, and any surtaxes or surcharges imposed in connection with such importation, but does not include:
  - (i) charges equivalent to an internal tax including excise duties and a goods and services tax imposed consistently with a Party's WTO obligations;

- (ii) fees or other charges that:
  - (A) are limited in amount to the approximate cost of services rendered; and
  - (B) do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes; and
- (iii) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of the GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures;
- (b) “export subsidy” means a subsidy as defined by Article 3 of the WTO Agreement on Subsidies and Countervailing Measures and includes export subsidies listed in Article 9 of the WTO Agreement on Agriculture; and
- (c) “the GATT 1994” means the WTO General Agreement on Tariffs and Trade 1994, including Annex I (Notes and Supplementary Provisions).

*Article 2*

National Treatment On Internal Taxation And Regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994. To this end, the provisions of Article III of the GATT 1994, are incorporated into and shall form part of this Agreement.

*Article 3*

Customs Duties

2. Each Party shall eliminate all customs duties on goods originating in the territory of the other Party that meet the requirements for “originating goods” as set out in Chapter 3 (Rules of Origin). All customs duties on such goods shall thereby be free from the date of entry into force of this Agreement.

3. The classification of goods traded between the Parties shall be in conformity with the Harmonized Commodity Description and Coding System (HS).

*Article 4*

Customs Value

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the WTO Agreement on Implementation of Article VII of the GATT 1994.

*Article 5*

Export Duties

A Party shall not impose export duties on the goods set out in Annex 1 (Export Duties), when exported from its territory to the territory of the other Party.

*Article 6*

Non-Tariff Measures

1. Neither Party shall adopt or maintain any non-tariff measures 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 other provisions of this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under Article 6.1 and that they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

*Article 7*

Subsidies And Countervailing Measures

1. The Parties agree to prohibit export subsidies on all goods, including agricultural goods.

2. The Parties reaffirm their commitment to abide by the provisions of the WTO Agreement on Subsidies and Countervailing Measures.

*Article 8*

Anti-Dumping Measures

1. With respect to the application of anti-dumping measures, the Parties reaffirm their commitment to the provisions of the WTO Agreement on Implementation of Article VI of the GATT 1994.

2. The Parties agree to observe the following practices in anti-dumping cases between them:

(a) the time frame to be used for determining the volume of dumped imports in an investigation or review shall be representative of the imports of both dumped and non-dumped goods, for a reasonable period, and such reasonable period shall normally be at least 12 months;

(b) if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the WTO Agreement on Implementation of Article VI of the GATT 1994, the Party taking such a decision, shall normally apply the “lesser duty” rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry; and

(c) notification procedures shall be as follows:

(i) immediately following the acceptance by a Party of a properly documented application from an industry in that Party for the initiation of an anti-dumping

investigation in respect of goods from the other Party, the first Party shall immediately inform the other Party;

- (ii) where a Party considers that, in accordance with Article 5 of the WTO Agreement on Implementation of Article VI of the GATT 1994, there is sufficient evidence to justify the initiation of an antidumping investigation, it shall give written notice to the other Party and shall act in accordance with Article 17.2 of that Agreement concerning consultations.

3. At reviews of this Agreement under Article 3 (Review) of Chapter 17 (Final Provisions), the Parties shall review this Article, including a consideration of any recommendations by the WTO Committee on Anti-Dumping Practices.

#### *Article 9*

##### Safeguard Measures

A Party shall not initiate or take any safeguard measure within the meaning of the WTO Agreement on Safeguards against the goods of the other Party from the date of entry into force of this Agreement.

#### *Article 10*

##### Transparency

Article X of the GATT 1994 is incorporated into and shall form part of this Agreement.

#### *Article 11*

##### Measures To Safeguard The Balance Of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt restrictive import measures.

#### *Article 12*

##### General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article

XVII of the GATT 1994, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Chapter relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all WTO members are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Chapter shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

### *Article 13*

#### Security Exceptions

Nothing in this Chapter shall be construed:

- (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to fissionable materials or the materials from which they are derived;
  - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
  - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

*Article 1*Definitions

For the purposes of this Chapter:

- (a) “allowable cost to manufacture” means the sum of:
  - (i) the allowable expenditure on materials by the principal manufacturer calculated in accordance with Article 6 (Calculation of Costs – Allowable Expenditure on Materials); and
  - (ii) the allowable expenditure on labour by the principal manufacturer calculated in accordance with Article 7 (Calculation of Costs – Allowable Expenditure on Labour); and
  - (iii) the allowable expenditure on overheads by the principal manufacturer calculated in accordance with Article 8 (Calculation of Costs – Allowable Expenditure on Overheads);
- (b) “Certificate of Origin” means a certificate complying with the requirements of Annex 2A (Certificate of Origin Requirements);
- (c) “Declaration” means a declaration made in accordance with Article 11.6;
- (d) “Generally Accepted Accounting Principles” means the recognised consensus or 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 standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;
- (e) “inner container” includes any container into which goods or materials, as the case may be, are packed, other than a shipping or airline container, pallet or other similar article;
- (f) “input” means any matter or substance used or consumed in the manufacture or production of materials (other than matter or substance that is treated as an overhead);
- (g) “manufacture” means the creation of an article essentially different from the matters or substances that go into such manufacture. Manufacture does not include the following activities, performed alone or in combination with each other:
  - (i) restoration or renovation processes such as repairing, reconditioning, overhauling or refurbishing;
  - (ii) minimal operations such as pressing, labelling, ticketing, packaging and preparation for sale, conducted alone or in combination with each other; or
  - (iii) quality control inspections;
- (h) “material” means any matter or substance purchased by the principal manufacturer, and used or consumed in the processing of goods that are exported to the territory of the importing Party (other than matter or substance that is treated as an overhead);

- (i) “originating goods”, as used in Chapter 2 (Trade in Goods) and this Chapter, means goods that qualify as originating in accordance with the relevant provisions of Section A of this Chapter;
- (j) “preferential tariff treatment” means the customs duty rate that is applicable to an originating good pursuant to Article 3.1 of Chapter 2 (Trade in Goods);
- (k) “principal manufacturer” means the person in the territory of a Party who performs, or has had performed on its behalf, the last process of manufacture of the goods;
- (l) “process” means any operation performed on the goods and includes:
  - (i) a process of manufacture;
  - (ii) minimal operations such as pressing, labelling, ticketing, packaging and preparation for sale, conducted alone or in combination with each other; and
  - (iii) quality control inspections;
- (m) “production”, in relation to wholly obtained goods, means growing, mining, harvesting, fishing, hunting, gathering, trapping, capturing, farming, cultivating<sup>1</sup> or otherwise obtaining wholly obtained goods;
- (n) “producer”, in relation to wholly obtained goods, means a person who grows, mines, harvests, fishes, hunts, gathers, traps, captures, farms, cultivates or otherwise obtains wholly obtained goods;
- (o) “produce”, in relation to wholly obtained goods, means to grow, mine, harvest, fish, hunt, gather, trap, capture, farm, cultivate or otherwise obtain wholly obtained goods;
- (p) “total cost to manufacture” means the sum of:
  - (i) the total expenditure on materials by the principal manufacturer calculated in accordance with Article 5 (Calculation of Costs – Total Expenditure on Materials);
  - (ii) the allowable expenditure on labour by the principal manufacturer calculated in accordance with Article 7 (Calculation of Costs – Allowable Expenditure on Labour);
  - (iii) the allowable expenditure on overheads by the principal manufacturer calculated in accordance with Article 8 (Calculation of Costs – Allowable Expenditure on Overheads); and
  - (iv) where applicable, the total expenditure by the principal manufacturer on a process, or processes, in the manufacture of the goods performed in the territory of a non-Party calculated in accordance with Article 9 (Calculation of Costs – Total Expenditure on Overseas Processing Costs);
- (q) “unmanufactured raw products” means:
  - (i) natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and includes:

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<sup>1</sup> Cultivating includes the process of aquaculture.



- (A) animals and products obtained from animals, including greasy wool;
- (B) plants and products obtained from plants;
- (C) minerals in their natural state and ores; and
- (D) crude petroleum;

OR

- (ii) raw materials recovered in the territory of a Party from waste and scrap;
- (r) “waste and scrap” means only waste and scrap that:
  - (i) have been derived from manufacturing operations or consumption; and
  - (ii) are fit only for the recovery of raw materials; and
- (s) “wholly obtained goods” means unmanufactured raw products, or waste and scrap.

#### *Article 2*

#### Recording Of Costs And Tariff Classification

For the purposes of this Chapter:

- (a) all costs shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the goods are produced or manufactured; and
- (b) the basis for tariff classification is the Harmonized Commodity Description and Coding System.

### **SECTION A: ORIGIN CONFERMENT**

#### *Article 3*

#### Originating Goods

1. Goods shall be deemed originating goods of a Party where they are:
  - (a) wholly obtained goods produced in the territory of that Party;
  - (b) goods wholly manufactured in that Party from one or more of the following:
    - (i) unmanufactured raw products;
    - (ii) waste and scrap produced in the territory of either Party;
    - (iii) materials wholly manufactured within the territory of either Party; and/or
    - (iv) materials that are determined by both Parties to be materials meeting the requirements of Article 3.1(b)(iii);

- (c) goods partly manufactured in that Party, provided that the following conditions are met:
  - (i) that in relation to any goods:
    - (A) the last process of manufacture was performed in the territory of that Party by, or on behalf of, the principal manufacturer; and
    - (B) the allowable cost to manufacture the goods is not less than the percentage of the total cost to manufacture the goods specified below:
      - (I) 30% for the goods specified in Annex 2D (List of Goods Subject to 30% Threshold); or
      - (II) 50% for all other goods;

OR

- (ii) that in relation to any goods other than those specified in Annex 2C (List of Goods which Must be Subject to the Last Process of Manufacture within the Territory of a Party):
  - (A) one or more processes of manufacture was or were performed in the territory of that Party by, or on behalf of, the principal manufacturer;
  - (B) one or more processes was or were performed in the territory of that Party by, or on behalf of, the principal manufacturer immediately prior to export of the goods to the territory of the other Party;
  - (C) the principal manufacturer in that Party incurred all the costs associated with any process performed in the territory of a non-Party; and
  - (D) the allowable cost to manufacture the goods is not less than the percentage of the total cost to manufacture the goods specified below:
    - (I) 30% for the goods specified in Annex 2D (List of Goods Subject to 30% Threshold); or
    - (II) 50% for all other goods.

2. Where a specific shipment or shipments of identical goods within a specified period, but for unforeseen circumstances, would have complied with Article 3.1(c), the importing Party may determine that:

- (a) the percentage of 30% can be read as 28%; or
- (b) the percentage of 50% can be read as 48%.

3. In exceptional circumstances, the importing Party may allow a further derogation to the percentages set out in Article 3.1(c) for a specific period in relation to particular goods, or goods of a specific class or kind, in accordance with procedures to be agreed between the Parties.

*Article 4*

Calculation of Costs – General Provisions

1. For the purposes of Article 3.1(c)(i):
  - (a) the allowable cost to manufacture the goods excludes:
    - (i) the cost of any material purchased by the principal manufacturer and subsequently processed in the territory of a non- Party; and
    - (ii) the cost of processing (including the cost of labour or overheads) any material referred to in (i) above that is performed, whether in the territory of a Party or a non-Party, up until the return of the processed material to the territory of a Party; and
  - (b) where minimal operations or quality control inspections are conducted by, or on behalf of, the principal manufacturer, in the territory of a Party, as part of a manufacturing process, the costs of those operations or the quality control inspections, to the extent that they relate to the cost of materials, labour or overheads, can be included in the calculation of the total expenditure on materials and the allowable expenditure on materials, labour and overheads, as appropriate.
2. For the purposes of Article 3.1(c)(ii), the allowable cost to manufacture the goods excludes the cost of processing (including the cost of labour or overheads) any material in the territory of a non-Party.
3. Where a Party finds that any input, material, labour, overhead or overseas processing cost was provided free of charge or at a price that is inconsistent with the normal market value of that input, material, labour, overhead or overseas processing cost, as the case may be, an adjustment may be made by that Party to ensure that the input, material, labour, overhead or overseas processing cost reflects the normal market value. Any such adjustment made by the exporting Party shall be subject to approval of the importing Party.
4. In the calculation of the total cost to manufacture and the allowable cost to manufacture the goods, a cost incurred, whether directly or indirectly, by the principal manufacturer of the goods, must not be taken into account more than once.

*Article 5*

Calculation Of Costs – Total Expenditure On Materials

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the total cost to manufacture the goods, as required by Article 3 (Originating Goods), the total expenditure on materials by the principal manufacturer shall be calculated in accordance with the following provisions:

- (a) subject to Articles 5(b) and 5(c), the total expenditure on materials by the principal manufacturer is the amount incurred, directly or indirectly, by the principal manufacturer for all materials;
- (b) the following costs that form part of the amount incurred, directly or indirectly, by the principal manufacturer for a material shall be included in the total expenditure on materials by the principal manufacturer:

- (i) freight, insurance, shipping and packing costs, and all other costs incurred in transporting the material to the first place in the territory of either Party at which a process is performed on that material by, or on behalf, of the principal manufacturer; and
  - (ii) customs brokerage fees on the material paid in the territory of one or both Parties; and
- (c) the following costs, imposed on the materials by either Party, that form part of the amount incurred, directly or indirectly, by the principal manufacturer for a material, shall be excluded from the total expenditure on materials by the principal manufacturer:
- (i) a customs or excise duty; and
  - (ii) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty.

#### *Article 6*

##### Calculation Of Costs – Allowable Expenditure On Materials

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the allowable cost to manufacture the goods, as required by Article 3 (Originating Goods), the allowable expenditure on materials by the principal manufacturer shall be calculated in accordance with the following provisions:

- (a) subject to Articles 6(b) to 6(d), the allowable expenditure on materials by the principal manufacturer is the amount incurred, directly or indirectly, by the principal manufacturer for all materials, in the form purchased by the principal manufacturer, that were manufactured or produced in the territory of either Party;
- (b) the following costs that form part of the amount incurred, directly or indirectly, by the principal manufacturer for a material specified in Article 6(a) shall be included in the allowable expenditure on materials by the principal manufacturer:
  - (i) freight, insurance, shipping and packing costs, and all other costs incurred in transporting the material to the first place in the territory of either Party at which a process is performed on that material by, or on behalf of, the principal manufacturer; and
  - (ii) customs brokerage fees on the material paid in the territory of one or both Parties;
- (c) the following costs that form part of the amount incurred, directly or indirectly, by the principal manufacturer for a material specified in Article 6(a) shall be excluded from the allowable expenditure on materials by the principal manufacturer:
  - (i) a customs or excise duty;
  - (ii) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty, imposed on the materials by either Party; and

- (iii) the cost of any input that, in the form it was received by the manufacturer or producer of the material, was not manufactured or produced in the territory of either Party, unless Article 6(d) applies; and
- (d) where, in relation to a particular material, other than a material that is provided for processing in a non-Party, the total cost of all inputs that would otherwise be excluded from the allowable expenditure on materials by the principal manufacturer by virtue of Article 6(c)(iii), does not exceed 50% of the total expenditure on that material by the principal manufacturer, as calculated in accordance with Article 5(a), the total cost of those inputs may be included in the allowable expenditure on materials by the principal manufacturer.

#### *Article 7*

##### Calculation Of Costs – Allowable Expenditure On Labour

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the total cost to manufacture and the allowable cost to manufacture the goods, as required by Article 3 (Originating Goods), the allowable expenditure on labour by the principal manufacturer shall be the sum of the part of each cost set out in Section (i) (Labour Costs) of Annex 2B (Allowable Labour and Overhead Costs):

- (a) that is incurred, directly or indirectly, by the principal manufacturer;
- (b) that relates, directly or indirectly, and wholly or partly, to the processing of the goods in the territory of the Party; and
- (c) that can reasonably be allocated to the processing of the goods in the territory of the Party.

#### *Article 8*

##### Calculation Of Costs – Allowable Expenditure On Overheads

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the total cost to manufacture and allowable cost to manufacture the goods, as required by Article 3 (Originating Goods), the allowable expenditure on overheads by the principal manufacturer shall be the sum of the part of each cost set out in Section (ii) (Overheads) of Annex 2B (Allowable Labour and Overhead Costs):

- (a) that is incurred, directly or indirectly, by the principal manufacturer; and
- (b) that relates, directly or indirectly, and wholly or partly, to the processing of the goods in the territory of the Party; and
- (c) that can reasonably be allocated to the processing of the goods in the territory of the Party.

#### *Article 9*

##### Calculation Of Costs – Total Expenditure On Overseas Processing Costs

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the total cost to manufacture the goods, as required by Article 3 (Originating

Goods), the total expenditure by the principal manufacturer on a process, or processes, performed in the territory of the non-Party shall be the sum of that part of each cost:

- (a) that is incurred, directly or indirectly, by the principal manufacturer; and
- (b) that relates, directly or indirectly, and wholly or partly, to the processing of the goods in the territory of a non-Party, including any associated transport costs; and
- (c) that can reasonably be allocated to the processing of the goods in the territory of the non-Party.

## **SECTION B: CONSIGNMENT CRITERIA**

### *Article 10*

#### Consignment

Preferential tariff treatment shall apply only to originating goods of a Party where they are:

- (a) transported directly from the territory of that Party to the territory of the other Party;
- (b) transported through the territories of one or more non-Parties, provided that the goods:
  - (i) did not undergo operations other than packing, packaging, unloading, reloading or operations to preserve them in good condition in the territory of any such non-Party; and
  - (ii) were not traded or used in the territory of any such non-Party; or
- (c) transported from a non-Party where minimal operations were performed immediately after import from the Party in which the last process of manufacture was performed and immediately prior to export to the other Party.

## **SECTION C: DOCUMENTARY EVIDENCE**

### *Article 11*

#### Certification Of Origin

1. The exporting Party shall provide the opportunity for a principal manufacturer, a producer or an exporter to apply to an authorised body referred to in Annex 2A (Certificate of Origin Requirements) for a Certificate of Origin.
2. An application for a Certificate of Origin and a Certificate of Origin shall meet the requirements of Annex 2A (Certificate of Origin Requirements).
3. A Certificate of Origin shall be valid for multiple shipments of the goods described therein that are exported within two years from the date of issue, provided that the first shipment occurs within the first year of issue and the Certificate of Origin has not been revoked.
4. The exporting Party may revoke a Certificate of Origin by notice in writing. A revoked Certificate of Origin shall have no force from the date specified in that notice.

5. The exporting Party shall forward a copy of a notice revoking a Certificate of Origin to the applicant for the Certificate of Origin and to the importing Party, immediately upon the issue of that notice.

6. The exporting Party shall require that an exporter of goods, for which preferential tariff treatment is claimed, must declare in writing, prior to the export of those goods, that the goods are originating goods. The Declaration shall be completed by a representative of the exporter competent to make the Declaration and must include:

- (a) a reference to the exporter's invoice for the goods;
- (b) a statement that the goods are identical to goods specified in a valid Certificate of Origin nominated in the Declaration;
- (c) a statement that the goods are originating goods that comply with the rule specified in the nominated Certificate of Origin; and
- (d) the signature, name and designation of the exporter's representative, and the date the Declaration is signed.

7. Where the exporter of the goods is not the producer or principal manufacturer of the goods, the exporting Party shall require that, prior to making a Declaration pursuant to Article 11.6, the exporter must ensure that the producer or principal manufacturer has a copy of the relevant Certificate of Origin and has obtained from that producer or principal manufacturer written confirmation that the goods are originating goods. The confirmation shall be completed by the representative of the producer or principal manufacturer who is competent to make the confirmation, and shall include:

- (a) a reference to the evidence of sale of the goods between the producer or principal manufacturer and the exporter;<sup>2</sup>
- (b) a statement that the goods are identical to goods specified in a valid Certificate of Origin nominated in the confirmation;
- (c) a statement that the goods are originating goods that comply with the rule specified in the nominated Certificate of Origin; and
- (d) the signature, name and designation of the principal manufacturer's representative, and the date the confirmation is signed.

## *Article 12*

### Claim For Preferential Tariff Treatment

1. Subject to Article 12.2, the importing Party shall grant preferential tariff treatment to goods imported into its territory from the other Party, provided that the goods are originating goods, the consignment criteria specified in Article 10 (Consignment) have been met, and the importer claiming preferential tariff treatment:

- (a) has a valid Certificate of Origin and a Declaration relevant to those goods in its possession when claiming preferential tariff treatment; and
- (b) provides a copy of that Certificate of Origin and that Declaration if requested by the importing Party.

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<sup>2</sup> Evidence of sale in most cases would refer to an invoice number and not the purchase order number.

2. The importing Party may waive the requirement for a Certificate of Origin or a Declaration in certain circumstances, in accordance with its domestic laws and practices.

3. The importing Party shall grant preferential tariff treatment to goods imported after the date of entry into force of this Agreement and for which no preferential tariff treatment was earlier applied, if:

- (a) the claim for preferential tariff treatment is made within 12 months from the date of payment of customs duties, subject to domestic laws and practices in the importing Party; and
- (b) the importer provides a copy of the valid Certificate of Origin and Declaration relevant to those goods.

### *Article 13*

#### Records

1. Each Party shall require that:

- (a) a producer, a principal manufacturer or an exporter that obtains a Certificate of Origin, an exporter that makes a Declaration pursuant to Article 11.6, or a producer or principal manufacturer that makes a confirmation pursuant to Article 11.7 must maintain, for 5 years from the date of the Certificate of Origin, Declaration or confirmation, as the case may be, all records relating to the origin of the goods for which preferential tariff treatment is claimed in the importing Party, including records associated with:
  - (i) the purchase of, cost of, value of, and payment for, the goods that were exported from its territory;
  - (ii) the purchase of, cost of, value of, and payment for, all materials used or consumed in the manufacture or production of the goods that were exported from its territory;
  - (iii) the manufacture or production of the goods in the form in which the goods were exported from its territory; and
  - (iv) the Certificate of Origin, Declaration and confirmation, as the case may be, relevant to the goods; and
- (b) an importer claiming preferential tariff treatment must maintain, for 5 years after the date of importation of the goods, all records relating to the importation of the goods, including a copy of the Certificate of Origin and the Declaration relevant to those goods.

2. The records to be maintained pursuant to this Article shall include electronic records. Any such records in electronic form shall be maintained in accordance with the domestic laws and practices of the relevant Party.

### *Article 14*



### Origin Verifications

1. The importing Party may verify the eligibility of goods for preferential tariff treatment in accordance with its domestic laws and practices.
2. Verification of eligibility for preferential tariff treatment may include either Party taking the following courses of action, in accordance with mutually agreed procedures:
  - (a) instituting measures to establish the validity of the Certificate of Origin, Declaration or confirmation;
  - (b) issuing written questionnaires to be completed within a period of 30 days;
  - (c) requesting the supply of records relating to the production, manufacture or export of the goods; and
  - (d) visiting the factory or premises of the producer, principal manufacturer, or exporter or any other party in the territory of a Party associated with the production, manufacture, import or export, of the goods or of the materials or inputs used therein.
3. The importing Party shall notify the exporting Party when it approaches any party listed in Article 14.2(d) within the territory of the exporting Party during an action to verify eligibility.
4. The importing Party shall not visit the factory or premises of any party listed in Article 14.2(d) within the territory of the exporting Party without the prior consent of that party.
5. To the extent allowed by its domestic laws and practices, the exporting Party shall fully co-operate in any action to verify eligibility and shall require that producers, manufacturers and exporters co-operate in any action to verify eligibility.
6. Action to verify eligibility for preferential tariff treatment shall be completed and a decision shall be made within 90 days of the commencement of such action. Written advice as to whether goods are eligible for preferential tariff treatment must be provided to all relevant parties within 10 days of the decision being made.

### *Article 15*

#### Suspension And Denial Of Preferential Tariff Treatment

1. Notwithstanding Article 12.1, the importing Party may suspend the application of preferential tariff treatment to goods that are the subject of origin verification action under Article 14 (Origin Verifications) for the duration of that action, or any part thereof.
2. The importing Party may deny a claim for preferential tariff treatment or recover unpaid duties where:
  - (a) the goods do or did not meet the requirements of this Chapter;
  - (b) the producer, principal manufacturer, exporter, or importer of goods fails or has failed to comply with any of the relevant requirements for obtaining preferential tariff treatment; or
  - (c) action taken under Article 14 (Origin Verifications) failed to verify eligibility of the goods for preferential tariff treatment.

## **SECTION D: REVIEW AND APPEAL OF ORIGIN DETERMINATIONS**

### *Article 16*

#### Review And Appeal

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

## **SECTION E: CONSULTATION AND MODIFICATIONS**

### *Article 17*

#### Consultation And Modifications

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner, in accordance with the spirit and the objectives of this Agreement.
2. In the event of any change to the coverage of goods in Section (ii) of Annex 2D (List of Goods Subject to 30% Threshold) which significantly affects a Party's principal manufacturer, producer or exporter, the Parties shall enter into consultations on the possibility of including the goods in question into Section (i) of Annex 2D (List of Goods Subject to 30% Threshold).

## **04 CUSTOMS PROCEDURES**

### *Article 1*

#### Purpose And Definitions

1. The purpose of this Chapter is to promote the objectives of this Agreement by simplifying customs procedures in relation to bilateral trade between the Parties.
2. For the purposes of this Chapter:
  - (a) "customs law" means any statutory and regulatory provisions applicable or enforceable by the respective customs administration of each Party; and
  - (b) "customs procedures" means the treatment applied by the customs administration of each Party to goods which are subject to customs control.

### *Article 2*

#### Scope

This Chapter shall apply, in accordance with the Parties' respective national laws, rules and regulations, to customs procedures required for clearance of goods traded between the Parties.

### *Article 3*

#### General Provisions

1. Customs procedures of both Parties shall conform, where possible and to the extent permitted by their respective domestic laws, rules and regulations, to the standards and recommended practices of the World Customs Organisation, including the principles of the revised International Convention on the Simplification and Harmonisation of Customs Procedures.
2. The customs administrations of both Parties shall periodically review their customs procedures with a view to their further simplification and the development of further mutually beneficial arrangements to facilitate bilateral trade.
3. To the extent permitted by their domestic laws, rules and regulations, the Customs administrations of both Parties shall provide each other with information to assist in the investigation and prevention of infringements of customs law.
4. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:
  - (a) be contrary to the public interest as determined by its law, rules and regulations;
  - (b) be contrary to any of its laws, rules and regulations including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions; or
  - (c) impede law enforcement.

#### *Article 4*

##### Paperless Trading

1. The customs administrations of both Parties, in implementing initiatives which provide for the use of paperless trading, shall take into account the methodologies agreed in APEC and the World Customs Organisation.
2. The customs administration of each Party shall work towards having electronic means for all its customs reporting requirements as soon as practicable.
3. The customs administration of each Party shall provide electronic systems that support business applications between it and its trading community.

#### *Article 5*

##### Risk Management

1. The Parties shall administer customs procedures at their respective borders so as to facilitate the clearance of low-risk goods and focus on high-risk goods.
2. The Parties shall apply and further develop risk management techniques in the performance of their customs procedures.

#### *Article 6*

##### Sharing Of Best Practices

For future cooperative arrangements, both Parties shall facilitate initiatives to enhance further the exchange of information on best practices in relation to customs procedures, including the application of risk management techniques.

## **05 TECHNICAL REGULATIONS AND SANITARY AND PHYTOSANITARY MEASURES**

### *Article 1*

#### Purposes And Definitions

1. The purposes of this Chapter are to:
  - (a) facilitate trade and investment between the Parties through collaborative efforts which minimise the impact of mandatory requirements and/or assessments of manufacturers or manufacturing processes on the goods traded between the Parties, in the most appropriate or cost-effective manner;
  - (b) complement bilateral agreements and arrangements between the Parties relating to mandatory requirements; and
  - (c) build on the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore.
  
2. For the purposes of this Chapter, unless the context otherwise requires or it is otherwise defined in a Sectoral Annex:
  - (a) “conformity assessment” shall have the same meaning as in the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore;
  - (b) “equivalence” means the state wherein mandatory requirements applied in the territory of the exporting Party, though different from the mandatory requirements applied in the territory of the importing Party, meet the legitimate objective or achieve the appropriate level of sanitary or phytosanitary protection of the mandatory requirements applied in the territory of the importing Party;
  - (c) “mandatory requirements” means all technical regulations and sanitary and phytosanitary measures as may be set out in a Party’s laws, regulations and administrative requirements;
  - (d) “regulatory authority” means an entity of a Party that exercises a legal right to determine the mandatory requirements, control the import, use or supply of goods within its territory and/or take enforcement action to ensure that goods marketed within its territory comply with its mandatory requirements;
  - (e) “sanitary or phytosanitary measure” shall have the same meaning as in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures;
  - (f) “Sectoral Annex” means an annex to this Chapter which specifies the arrangements in respect of a specific product sector; and
  - (g) “technical regulation” shall have the same meaning as in the WTO Agreement on Technical Barriers to Trade.

*Article 2*

Scope And Obligations

1. This Chapter shall apply to mandatory requirements adopted or maintained by the Parties to fulfil their legitimate objectives and/or achieve their appropriate level of sanitary or phytosanitary protection.
2. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations:
  - (a) mandatory requirements, as appropriate to its particular national circumstances; and
  - (b) mandatory requirements necessary to ensure the quality of its imports, or for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfil other legitimate objectives, at the levels it considers appropriate.
3. Each Party shall retain all authority under its laws to interpret and implement its mandatory requirements. This includes the authority to take appropriate measures for goods that do not conform to the Party's mandatory requirements. Such measures may include withdrawing goods from the market, prohibiting their placement on the market or restricting their free movement, initiating a product recall or prohibiting an import.
4. The provisions of this Chapter shall apply to particular Sectoral Annexes as provided therein.

*Article 3*

Origin

This Chapter applies to all goods and/or assessments of manufacturers or manufacturing processes of goods traded between the Parties, regardless of the origin of those goods, unless otherwise specified in a Sectoral Annex, or unless otherwise specified by any mandatory requirement of a Party.

*Article 4*

Harmonisation

The Parties shall, where appropriate, endeavour to work towards harmonisation of their respective mandatory requirements taking into account relevant international standards, recommendations and guidelines, in accordance with their international rights and obligations.

*Article 5*

Equivalence Of Mandatory Requirements

1. The Parties shall give favourable consideration to accepting the equivalence of each other's mandatory requirements consistent with the purpose of this Chapter.

2. A Party shall accept the equivalence of the mandatory requirements, and/or the results of conformity assessment and approval procedures, of the other Party in accordance with the respective Sectoral Annex.
3. For the purposes of Article 5.2, a Sectoral Annex shall provide the following details:
  - (a) the procedures for determining and implementing the equivalence of each Party's mandatory requirements; and/or
  - (b) the procedures for accepting the results of the conformity assessment and approval procedures; and
  - (c) the regulatory authorities designated by each Party.

*Article 6*

Cooperative Activities On Sanitary And Phytosanitary/Quarantine Matters

1. The Parties shall endeavour to develop a work programme and mechanisms for co-operative activities in the areas of technical assistance and capacity building to address plant, animal and public health and food safety issues of mutual interest.
2. The Parties shall, where appropriate, endeavour to develop further the use and product coverage of electronic means of data transfer, including electronic health certificates.

*Article 7*

Conformity Assessment

1. The Parties, through the Joint Committee established by Article 11 of the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore, shall consider arrangements additional to those provided for in this Chapter to ensure that differences between the structure, organization and operation of conformity assessment procedures in their respective territories do not unnecessarily impede trade between them.
2. For the purposes of conformity assessment, each Party shall, on the request of the other Party, and in accordance with relevant international obligations and its respective applicable domestic laws, rules and regulations, take reasonable steps to facilitate access in its territory for inspection, testing and other relevant procedures.
3. The Parties affirm their intention to adopt and apply, with such modifications as may be necessary, the principles set out in the APEC Information Notes on Good Regulatory Practice for Technical Regulation with respect to conformity assessment and approval procedures in meeting their international obligations under the WTO Agreement on Technical Barriers to Trade.

*Article 8*

Exchange Of Information, And Consultation

1. The Parties shall provide notification of any changes to their mandatory requirements in accordance with their WTO obligations or in specific cases as appropriate.
2. The Parties shall, within the context of this Chapter, establish contact points to expeditiously:

- (a) broaden the exchange of information; and
  - (b) give favourable consideration to any written request for consultation.
3. The Parties shall, upon a request in writing of either Party and where appropriate, jointly:
- (a) identify and develop new Sectoral Annexes for priority sectors for this Chapter;
  - (b) agree to amend or increase the scope of existing Sectoral Annexes with a view to minimising the impact of mandatory requirements on goods traded between the Parties; and
  - (c) agree on a work programme for the implementation of this Article, consistent with the provisions of this Chapter, and implement that work programme expeditiously.

#### *Article 9*

#### Confidentiality

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

- (a) be contrary to its essential security interests;
- (b) be contrary to the public interest as determined by its domestic laws, rules and regulations;
- (c) be contrary to any of its domestic laws, rules and regulations, including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (d) impede law enforcement; or
- (e) prejudice legitimate commercial interests of particular enterprises, public or private.

#### *Article 10*

#### Final Provisions On Sectoral Annexes

1. The Parties shall conclude as appropriate Sectoral Annexes which shall provide the implementing arrangements for this Chapter.
2. A Sectoral Annex shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of that Sectoral Annex.
3. A Party may terminate a Sectoral Annex in its entirety by giving the other Party six months' advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment or equivalence for the duration of the six-month advance notice period.
4. Where urgent problems of safety, health, consumer or environmental protection or national security arise or threaten to arise for a Party, that Party may suspend the operation of any Sectoral Annex, in whole or in part, immediately. In such cases, the Party shall immediately advise the other

Party of the nature of the urgent problem, the goods covered and the objective and rationale of the suspension.

## 06 GOVERNMENT PROCUREMENT

### *Article 1*

#### Definitions

1. For the purposes of this Chapter:
  - (a) “confidential information” includes: trade secrets; know-how; privileged information; or any other information that is expressed to be confidential or sensitive by the person disclosing the information or is disclosed in circumstances importing, either expressly or implicitly, an obligation of confidence as recognised by the laws, regulations, procedures and practices of the Party concerned;
  - (b) “entities” means:
    - (i) for Australia, those entities listed at Annex 3A and their successors other than those subsequently commercialised or privatised; and
    - (ii) for Singapore, those entities listed at Annex 3B and their successors other than those subsequently commercialised or privatised;
  - (c) “limited tendering procedures” means those tendering procedures in which the procuring entity directly invites one or more suppliers to submit tenders;
  - (d) “open tendering procedures” means those tendering procedures in which the procuring entity issues a public call for tenders; and
  - (e) “tender process” includes all activities directly related to the process of procuring goods or services conducted by a Party or its entities which is open to participation by persons of the other Party before a contract for the supply of those goods or services is concluded.

### *Article 2*

#### Scope And Coverage

1. This Chapter shall apply to:
  - (a) any law, regulation, procedure or practice regarding any procurement by entities; and
  - (b) procurement of goods and services<sup>1</sup> by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of goods and services.

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<sup>1</sup> For the purposes of this Chapter, “goods and services” includes construction.



2. This Chapter shall not apply to:
- (a) internal procurement of goods and services by a Party from its own entities where no other supplier has been asked to tender. However, where such an entity submits a tender in an open tendering procedure, this Chapter shall apply;
  - (b) procurement of proprietary items required to ensure the integrity of machinery, equipment or systems. However, where such items are available from a number of sources and an open tendering procedure is used, this Chapter shall apply;
  - (c) procurement of proprietary equipment of a work, health or safety nature specified in industrial agreements. However, where such items are available from a number of sources and an open tendering procedure is used, this Chapter shall apply;
  - (d) procurement for the purposes of overseas development assistance;
  - (e) procurement of goods and services outside the territory of the procuring Party, for consumption outside the territory of the procuring Party; or
  - (f) procurement of asset management and financial advisory services pertaining to reserves held by each Party's Government or its entities.

### *Article 3*

#### National Treatment

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods, services and suppliers of the other Party offering goods or services of the other Party, treatment no less favourable than that accorded to domestic goods, services and suppliers.
2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall ensure:
- (a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and
  - (b) that its entities shall not discriminate against a locally-established supplier on the basis that it is a supplier of a good or service of the other Party.
3. The provisions of 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 such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Chapter.
4. A Party shall not discriminate in favour of corporate bodies in which that Party is a shareholder.

### *Article 4*

#### Rules Of Origin

A Party shall not apply rules of origin to goods or services imported or supplied for purposes of government procurement covered by this Chapter from the other Party, which are different from

the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same goods or services from that other Party.

*Article 5*

Technical Specifications

Technical specifications laying down the characteristics of the goods or services to be procured shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

*Article 6*

Tendering Principles

1. Entities may use open tendering procedures or limited tendering procedures.
2. Each Party shall ensure that the tendering procedures of its entities are consistent with the provisions of this Chapter, provide for mechanisms to eliminate conflict of interest between persons administering a tendering procedure and potential suppliers, achieve value for money outcomes and are conducted in a fair and nondiscriminatory manner.
3. In an open tendering procedure, entities shall publish an invitation to participate in such a way as to be readily accessible to any interested supplier of the other Party. In particular, entities shall make tender notices accessible to suppliers. Where a deadline has been specified for the close of tenders, the existence of such a deadline shall be made known in the same medium as used to publish tender notices.
4. Any conditions for participation in open tendering procedures shall be published in adequate time to enable interested suppliers of the other Party to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration and/or qualification procedures.
5. Entities shall not provide to any tenderer information with regard to a specific procurement in a manner which would have the effect of giving that tenderer an advantage over other tenderers.
6. The tender evaluation process shall be fair and non-discriminatory and shall have a mechanism to eliminate potential conflict of interest between persons administering the process and suppliers participating in the process.
7. Entities shall, on request from an unsuccessful supplier of the other Party which participated in the relevant tender, promptly provide pertinent information concerning reasons for the rejection of its tender, unless the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

*Article 7*

Registration And Qualification Of Suppliers

1. In the process of registering and/or qualifying suppliers, the entities of a Party shall not discriminate between domestic suppliers and suppliers of the other Party.
2. Any conditions for participation in open tendering procedures shall be no less favourable to suppliers of the other Party than to domestic suppliers.

3. The process of, and the time required for, registering and/or qualifying suppliers shall not be used in order to keep suppliers of the other Party off a list of suppliers or from being considered for a particular procurement.

4. Entities maintaining permanent lists of registered and/or qualified suppliers shall ensure that suppliers may apply for registration or qualification at any time, and that all registered and qualified suppliers are included in the lists within a reasonably short time.

#### *Article 8*

##### Protection And Proper Use Of Confidential Information

1. When a person of a Party discloses confidential information to the other Party or its entities, the latter Party shall ensure that such information is kept confidential and is not used for a purpose other than that for which it was disclosed, except where disclosure is required:

- (a) by an order of a court or tribunal;
- (b) by a House of Parliament or its Committees, however the relevant Party or entity may resist such an order by a claim of public interest immunity; or
- (c) under legislation governing access to government information, unless an exception or exemption under such legislation is successfully invoked in relation to the information.

2. Before any confidential information is disclosed pursuant to Article 8.1, reasonable notice in writing shall be given to the person of a Party who provided the information.

#### *Article 9*

##### Protection Of Intellectual Property In A Tender Process And The Resulting Contracts

1. Material protected by intellectual property rights as defined in Chapter 13 (Intellectual Property) that is supplied by a person of a Party in a tender process shall not lose that protection on the sole basis that it is so supplied.

2. Ownership of intellectual property specifically produced under a contract for the procurement of goods and services concluded between a person of one Party and the other Party or its entities shall be as determined by the contract.

3. The contract for the procurement of goods or services shall not affect intellectual property rights in material that existed prior to the date of the contract unless the contracting Parties expressly agree otherwise in the contract.

4. Where the contract for goods or services includes the provision of licensed software, the procuring Party or procuring entities, may not reverse assemble or reverse compile the licensed software except to the extent permitted under its copyright law.

#### *Article 10*

Application Of Provisions Of Other Chapters To This Chapter

The provisions of Article 4 (Competitive Neutrality) of Chapter 12 (Competition Policy) shall apply, *mutatis mutandis*, to procurements within the scope of this Chapter.

*Article 11*

Electronic Procurement

1. The Parties shall, within the context of their commitment to promote electronic commerce, seek to provide opportunities for government procurement to be undertaken through electronic means, hereafter referred to as “e-procurement”.
2. Each Party shall work toward a single entry point for the purpose of enabling suppliers to access information on procurement opportunities in its territory.
3. To facilitate access of suppliers of one Party to e-procurement opportunities of the other Party, the Parties shall, to the extent possible, cooperate to ensure policies and procedures are adopted that:
  - (a) promote equitable access for all potential suppliers of the other Party;
  - (b) promote the use of systems that are the most cost-effective for potential suppliers, where the Parties utilise authentication systems;
  - (c) provide for the least cost to potential suppliers, where the Parties elect to procure goods or services through online or reverse auctions;
  - (d) protect documentation from unauthorised and undetected alteration; and
  - (e) provide appropriate levels of security for data on, and passing through, the procuring entity’s network.
4. Each Party shall, to the extent possible, make procurement opportunities that are available to the public accessible to suppliers via the Internet or any publicly available electronic medium. To the extent possible, each Party shall make available relevant documentation by the same means.

*Article 12*

Review Of Tender Process

1. In the event of a complaint by a supplier that there has been a breach of the procuring Party's laws, regulations, procedures or practices regarding procurement in the context of a procurement in which they have, or have had, an interest, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord timely and impartial consideration to any such complaint.
2. Each Party shall provide suppliers of the other Party with non-discriminatory, timely, transparent and effective access to an administrative or judicial body competent to hear or review complaints of alleged breaches of the procuring Party's laws, regulations, procedures and practices regarding procurement in the context of procurements in which they have, or have had, an interest.
3. Each Party shall make information on complaint mechanisms generally available.

*Article 13*

### Transparency

1. The Parties shall apply all procurement laws, regulations, procedures and practices consistently, fairly and equitably so that their corporate governance structures provide transparency to potential suppliers.

2. The Parties shall publish and make accessible information relating to government procurement, and any changes or additions to this information, in a consistent and timely manner. Information relating to government procurement includes:

- (a) procurement laws, regulations, and policy guidelines;
- (b) open tendering opportunities and the conditions for participation;
- (c) supplier qualification mechanisms and criteria for qualification; and
- (d) decisions on contract awards.

### *Article 14*

#### Exceptions

1. Nothing in this Chapter shall be construed to prevent either Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent either Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property;
- (b) relating to the goods or services of handicapped persons, of philanthropic institutions or of prison labour; or
- (c) relating to the conservation of exhaustible natural resources.

### *Article 15*

#### Opportunities For Indigenous Persons

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall prevent Australia from promoting employment and training opportunities for its indigenous people in regions where significant indigenous populations exist.

### *Article 16*

#### Industry Development

Nothing in this Chapter shall prevent the Parties from using government procurement to promote industry development including measures to assist small and medium enterprises (SMEs) within their territory to gain access to the government procurement market.

*Article 17*

Dispute Settlement

A Party may not initiate dispute settlement proceedings under Chapter 16 (Dispute Settlement) regarding its rights and obligations under this Chapter unless:

- (a) the matter giving rise to the dispute involves a pattern of practice; and
- (b) the suppliers affected have exhausted the available remedies regarding the particular matter.

*Article 18*

Review Of Commitments

1. If, after this Agreement enters into force, a Party enters into any agreement on government procurement with a non-Party, it shall give positive consideration to a request by the other Party for incorporation herein of treatment no less favourable than under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

2. Not later than 12 months from the date of entry into force of this Agreement and biennially thereafter, the Parties shall examine and, where appropriate, update the entities specified in Annexes 3A and 3B.

3. As part of the examination referred to in Article 18.2, both Parties shall consider adding entities to their respective Annexes. This undertaking shall include Australia encouraging its State and Territory Governments to list their entities by the time of the first review, and Singapore considering adding entities not covered by the WTO Plurilateral Agreement on Government Procurement.

**07 TRADE IN SERVICES**

*Article 1*

Definitions

For the purposes of this Chapter:

- (a) “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
- (b) “commercial presence” means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition or maintenance of a legal person, or
  - (ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

- (c) “direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (d) “existing measures” means measures in force as of the date of entry into force of this Agreement;
- (e) “legal person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (f) “legal person of the other Party” means a legal person which is either:
  - (i) constituted or otherwise organised under the law of the other Party; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (A) natural persons of the other Party; or
    - (B) legal persons of the other Party identified under Article 1(f)(i);
- (g) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (h) “measures by Parties” means measures taken by:
  - (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (i) “measures by Parties affecting trade in services” include measures in respect of:
  - (i) the purchase, payment or use of a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;
  - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (j) “monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (k) “natural person of a Party” means a natural person who resides in the territory of the Party or elsewhere and who under the law of that Party:
  - (i) is a national of that Party; or

- (ii) has the right of permanent residence in that Party;
- (l) “new measures” means measures adopted after the date of entry into force of this Agreement;
- (m) “person” means either a natural person or a legal person;
- (n) “services” means all services including new and variant services in any sector except services supplied in the exercise of governmental authority;
- (o) “service consumer” means any person that receives or uses a service;
- (p) “service of the other Party” means a service which is supplied:
  - (i) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
  - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;
- (q) “service supplier” means any person that supplies a service;<sup>1</sup>
- (r) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service; and
- (s) “trade in services” is defined as the supply of a service:
  - (i) from the territory of a Party into the territory of the other Party (“cross-border”);
  - (ii) in the territory of a Party to the service consumer of the other Party (“consumption abroad”);
  - (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party (“commercial presence”);
  - (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party (“presence of natural persons”).

## *Article 2*

### Scope

1. This Chapter applies to measures by a Party affecting trade in services by service suppliers of the other Party.
2. This Chapter shall not apply to:

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<sup>1</sup> Where the service is not supplied directly by a legal person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the legal person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.



- (a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers; or
- (b) a service supplied in the exercise of governmental authority within the territory of each respective Party.

3. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

### *Article 3*

#### Market Access

Neither Party shall maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory:<sup>2</sup>

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>3</sup>
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

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<sup>2</sup> Subject to the reservations that a Party makes in respect of market access pursuant to Article 5 (Reservations), where the cross-border movement of capital is an essential part of a service supplied through the mode of supply referred to in Article 1(s)(i), that Party is hereby committed to allow such movement of capital. Subject to the reservations that a Party makes in respect of market access pursuant to Article 5 (Reservations), where a service is supplied through the mode of supply referred to in Article 1(s)(iii) that Party is hereby committed to allow related transfers of capital into its territory.

<sup>3</sup> Article 3(c) does not cover measures of a Party which limit inputs for the supply of services.

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

*Article 4*

National Treatment

1. Each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Party may meet the requirement of Article 4.1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.
4. This Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

*Article 5*

Reservations

1. Articles 3 (Market Access) and 4 (National Treatment) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central or regional level, as set out in Annex 4-I; or
    - (ii) the local level; or
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in Article 5.1(a).
2. Articles 3 (Market Access) and 4 (National Treatment) shall not apply to any existing or new measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in Annex 4-II.
3. Article 11 (Domestic Regulation) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party as set out in Annex 4-I; or
  - (b) any existing or new measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in Annex 4-II.
4. Each Party shall set out its reservations through a description of:
  - (a) with respect to Annex 4-I, the non-conforming measure to which the reservation applies; and

- (b) with respect to Annex 4-II, the sectors, subsectors or activities to which the reservation applies.

#### *Article 6*

##### Transitional Provisions On Regional Government Measures

1. Articles 3 (Market Access) and 4 (National Treatment) shall not apply to measures maintained by a Party at the regional level until the first review of this Agreement under Article 3 (Review) of Chapter 17 (Final Provisions), when modifications or additions may be incorporated into the reservations in Annex 4-I and Annex 4-II to extend the coverage of Articles 3 (Market Access) and 4 (National Treatment) to these measures. Following the first review, Articles 3 (Market Access) and 4 (National Treatment) shall apply, at the regional level, unless the nonconforming measures maintained at the regional level are covered by the reservations in Annexes 4-I and 4-II.
2. A Party shall enter into consultations at the request of the other Party with a view to ensuring that modifications or additions incorporated into the reservations in accordance with Article 6.1 are consistent with the overall balance of benefits under the Agreement, and deciding whether any necessary adjustment in the commitments of the Parties is required to preserve this balance. Article 7 (Modification or Addition of Reservations) and Chapter 16 (Dispute Settlement) shall not apply to any such adjustments. The Parties shall not apply any measure affecting trade in services at the regional level in such a manner as would improve their negotiating position and leverage.

#### *Article 7*

##### Modification Or Addition Of Reservations

1. By giving three months written notification to the other Party, a Party may modify or add to its non-conforming measures as set out in Annex 4-I and add new sectors, subsectors or activities to its reservations set out in Annex 4-II. At the request of the other Party, it shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by each Party under this Agreement. If agreement is not reached between the Parties on any necessary adjustment, the matter may be referred to arbitration in accordance with Chapter 16 (Dispute Settlement).
2. Article 7.1 shall not be construed to prejudice the right of both Parties to maintain any existing measures or adopt new measures consistent with the reservations set out in Annexes 4-I and 4-II.

#### *Article 8*

##### Additional Commitments

1. The Parties shall set out their respective additional commitments in Annex 4-III of this Agreement with respect to measures affecting trade in services not covered by Articles 3 (Market Access) and 4 (National Treatment), including those regarding qualifications, standards or licensing matters and any other matters as may be mutually agreed.

#### *Article 9*

##### Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect

the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in Article 9.1 is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of Article 9.1. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

#### *Article 10*

##### Disclosure Of Confidential Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

#### *Article 11*

##### Domestic Regulation

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

2. Each Party shall ensure that its judicial, arbitral or administrative tribunals or procedures which provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services are open on a nondiscriminatory basis to service suppliers of the other Party. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Article 11.2 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. Where authorisation is required for the supply of a service, the competent authorities of a Party shall promptly, after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

5. With the objective of ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI.4 of the WTO General Agreement on Trade in Services (GATS), with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

6. Pending the incorporation of disciplines pursuant to Article 11.5, a Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligations under this Chapter in a manner which:

- (a) does not comply with the criteria outlined in Articles 11.5(a), 11.5(b) or 11.5(c); and
- (b) could not reasonably have been expected of that Party at the time the obligations were undertaken.

7. In determining whether a Party is in conformity with its obligations under Article 11.6, account shall be taken of international standards of relevant international organisations<sup>4</sup> applied by that Party.

8. Pending the incorporation of disciplines pursuant to Article 11.5, each Party or its competent authorities shall endeavour to:

- (a) make publicly available:
  - (i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and
  - (ii) information on technical standards;
- (b) explain, on request, the policy rationale of a measure, particularly of a new measure; and
- (c) provide opportunity for comment, and give consideration to such comments, before their adoption, when introducing measures which significantly affect trade in services.

## *Article 12*

### Monopoly And Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's obligations under Articles 3 (Market Access) and 4 (National Treatment).

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's obligations under Articles 3 (Market Access) and 4 (National Treatment), the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

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<sup>4</sup> The term "relevant international organisations" refers to international bodies whose membership is open to relevant bodies of both Parties.

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

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (a) authorises or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

### *Article 13*

#### Safeguard Measures

Neither Party shall take safeguard action against services and service suppliers of the other Party from the date of entry into force of this Agreement. Neither Party shall initiate or continue any safeguard investigations in respect of services and service suppliers of the other Party.

### *Article 14*

#### Payments And Transfers

1. Subject to its reservations pursuant to Article 5 (Reservations) and except under the circumstances envisaged in Article 15 (Restrictions to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers and payments for current transactions.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 15 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

### *Article 15*

#### Restrictions To Safeguard The Balance Of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services in respect of which it has obligations under Articles 3 (Market Access) and 4 (National Treatment), including on payments or transfers for transactions relating to such obligations. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in Article 15.1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in Article 15.1;

- (d) be temporary and be phased out progressively as the situation specified in Article 15.1 improves;
- (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-Party.

3. Any restrictions adopted or maintained under Article 15.1, or any changes therein, shall be promptly notified to the other Party.

4. The Party adopting any restrictions under Article 15.1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

#### *Article 16*

##### Government Procurement

Articles 3 (Market Access) and 4 (National Treatment) shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

#### *Article 17*

##### Denial Of Benefit

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service supplier is owned or controlled by persons of a non-Party and that it has no substantive business operations in the territory of the other Party.

#### *Article 18*

##### General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals or to maintain public order;<sup>5</sup>
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

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<sup>5</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (iii) safety;
- (d) inconsistent with Article 4 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>6</sup> imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

*Article 19*

Security Exceptions

Nothing in this Chapter shall be construed:

- (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
  - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

*Article 20*

Review Of Commitments

1. If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall give positive consideration to a request by the other Party for the

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<sup>6</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

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

Tax terms or concepts in Article 18(d) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.



incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

2. If, after this Agreement enters into force, a Party further liberalizes any of its non-conforming measures in Annex 4-I or sectors, subsectors, or activities in Annex 4-II unilaterally, it shall give positive consideration to a request by the other Party for the incorporation herein of the unilateral liberalisation. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

3. If, after this Agreement enters into force, a service previously supplied in the exercise of governmental authority is subsequently supplied on a commercial basis or in competition with one or more service suppliers, the Party concerned may modify or add to its reservations in respect of that service. At the request of the other Party, the Party concerned shall enter into consultations with a view to ensuring the maintenance of the overall balance of commitments undertaken by each Party under this Agreement.

#### *Article 21*

##### Review Of Subsidies

1. The Parties shall review the treatment of subsidies in the context of developments in international fora of which both Parties are Members.

2. The Parties shall consult on appropriate steps in regard to subsidies related to trade in services where any subsidies issues arise under this Chapter.

#### *Article 22*

##### Air Transport Services

1. For the purposes of this Article:

- (a) "aircraft repair and maintenance services" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;
- (b) "air transport" means the public carriage by aircraft of passengers, baggage, cargo or mail, separately or in combination, for remuneration or hire; and
- (c) "computer reservation system (CRS) services" mean 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.

2. This Chapter and Chapter 16 (Dispute Settlement), shall not apply to measures affecting:

- (a) rights in relation to air transport, however granted; or
- (b) services directly related to the exercise of rights in relation to air transport, except as provided in paragraph 3 of this Article.

3. This Chapter shall apply to measures affecting:

- (a) aircraft repair and maintenance services; and

- (b) computer reservation system services (CRS).

4. Both Parties agree to review developments in the air transport sector at the first review of this Agreement under Article 3 (Review) of Chapter 17 (Final Provisions), or at any other time agreed between the Parties, with a view to including these developments in this Agreement.

5. While both Parties affirm their rights and obligations under the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore relating to Air Services, signed on 3 November 1967 and any subsequent amendments thereto, both Parties agree to work towards an Open Skies Air Services Agreement and to review that work in accordance with the provisions of Article 22.4.

6. The Parties affirm, *mutatis mutandis*, their rights and obligations under the GATS, including the Annex on Air Transport Services.

### *Article 23*

#### Recognition

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party.

2. The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of professional qualifications and/or registration procedures with a view to the achievement of early outcomes.

## **08 INVESTMENT**

### *Article 1*

#### Definitions

1. For the purposes of this Chapter:

- (a) “enterprise” means any corporation, company, association, partnership, trust, joint venture, sole-proprietorship or other legally recognised entity that is duly incorporated, constituted, set up, or otherwise duly organised under the law of a Party, including branches, regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability;
- (b) “freely useable currency” means a currency widely used to make payments for international transactions as classified by the International Monetary Fund;
- (c) “investment” means every kind of asset, owned or controlled, directly or indirectly, by an investor, including but not limited to the following:
  - (i) movable and immovable property and other property rights such as mortgages, liens or pledges;
  - (ii) shares, stocks, bonds and debentures of an enterprise;

- (iii) claims to money or to any contractual performance related to a business and having an economic value;
  - (iv) intellectual property rights and goodwill; and
  - (v) business concessions or similar rights required to conduct economic activity and having economic value conferred by law or under a contract, including any concession to search for, cultivate, extract or exploit natural resources;
- (d) “investor” means:
- (i) an enterprise of a Party; or
  - (ii) a natural person who resides in the territory of a Party or elsewhere and who under the law of that Party:
    - (A) is a citizen of that Party; or
    - (B) has the right of permanent residence in that Party;
- that has made, is in the process of making, or is seeking to make an investment;
- (e) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:
- (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities; and
- (f) “return” means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income.

2. For the purposes of Article 1.1(c), returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

3. An investment may be owned or controlled by an investor of a Party, notwithstanding the fact that the investment was made through an enterprise duly incorporated, constituted, set up or otherwise duly organised under the law of a non-Party.

## *Article 2*

### Scope Of Application

1. This Chapter shall apply to investments made, in the process of being made, or sought to be made, by an investor of a Party in the territory of the other Party.

2. This Chapter shall not apply to:

- (a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments; or

- (b) a natural person who is a permanent resident but not a citizen of a Party where:
  - (i) the provisions of an investment protection agreement between the other Party and the country of which the person is a citizen have already been invoked in respect of the same matter; or
  - (ii) the person is a citizen of the other Party.
- 3. Unless otherwise provided, this Chapter shall not apply to any taxation measure.
- 4. An enterprise of a Party shall not be treated as an investor of the other Party, but any investments in that enterprise by investors of that other Party shall be protected by this Chapter.
- 5. Nothing in this Chapter shall be construed to impose an obligation on a Party to privatise.

### *Article 3*

#### National Treatment

Each Party shall accord to investors of the other Party, and investments of investors of the other Party, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition) and expropriation (including any compensation) of investments in its territory, treatment that is no less favourable than that which it accords in like circumstances to its own investors and investments.

### *Article 4*

#### Transparency

Each Party shall promptly make public its laws, regulations and investment policies, and any amendments thereto, of general application that pertain to or affect investments in its territory by investors of the other Party.

### *Article 5*

#### Reservations

- 1. Article 3 (National Treatment) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central or regional level, as set out in Annex 4-I; or
    - (ii) the local level; or
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in Article 5.1(a)
- 2. Article 3 (National Treatment) shall not apply to any existing or new measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in Annex 4-II.
- 3. Each Party shall set out its reservation through a description of:
  - (a) with respect to Annex 4-I, the non-conforming measure to which the reservation applies; and

- (b) with respect to Annex 4-II, the sectors, subsectors or activities to which the reservation applies.

4. If a Party undertakes any privatisation measure, that Party shall include in Annex 4-I or Annex 4-II any non-conforming measure relating to that privatisation. For the purpose of this paragraph, “privatisation measure” means the divestment by either Party of its equity interests in an enterprise where it has a controlling ownership interest. Article 14 (Settlement of Disputes between a Party and an Investor of the other Party) shall not apply to this paragraph.

#### *Article 6*

##### Transitional Provision On Regional Government Measures

1. Articles 3 (National Treatment) shall not apply to measures maintained by a Party at the regional level until the first review of this Agreement under Article 3 (Review) of Chapter 17 (Final Provisions), when modifications or additions may be incorporated into the reservations in Annex 4-I and Annex 4-II to extend the coverage of Article 3 (National Treatment) to these measures. Following the first review, Article 3 (National Treatment) shall apply, at the regional level, unless the nonconforming measures maintained at the regional level are covered by the reservations in Annexes 4-I and 4-II by a Party.

2. A Party shall enter into consultations at the request of the other Party with a view to ensuring that modifications or additions incorporated into the reservations in accordance with Article 6.1 are consistent with the overall balance of benefits under the Agreement, and deciding whether any necessary adjustment in the commitments of the Parties is required to preserve this balance. Article 7 (Modification or Addition of Reservations) and Chapter 16 (Dispute Settlement) shall not apply to any such adjustments. The Parties shall not apply any measure affecting investment at the regional level in such a manner as would improve their negotiating position and leverage.

#### *Article 7*

##### Modification Or Addition Of Reservations

1. By giving three months written notification to the other Party, a Party may modify or add to its non-conforming measures as set out in Annex 4-I and add new sectors, subsectors or activities to its reservations set out in Annex 4-II. At the request of the other Party, it shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by each Party under this Agreement. If agreement is not reached between the Parties on any necessary adjustment, the matter may be referred to arbitration in accordance with Chapter 16 (Dispute Settlement).

2. Article 7.1 shall not be construed to prejudice the right of both Parties to maintain any existing measures or adopt any new measures consistent with the reservations set out in Annexes 4-I and 4-II.

#### *Article 8*

##### Additional Commitments

1. The Parties shall set out their respective additional commitments in Annex 4-III of this Agreement with respect to investment matters not covered by Article 3 (National Treatment).

2. Article 14 (Settlement of Disputes between a Party and an Investor of the other Party) shall not apply to these additional commitments.

*Article 9*

Expropriation And Nationalisation

3. Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) the investments of investors of the other Party unless such a measure is taken on a non-discriminatory basis, for a public purpose, in accordance with due process of law, and upon payment of compensation in accordance with this Article.

4. The expropriation shall be accompanied by the payment of prompt, adequate and effective compensation. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge. Compensation shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. Such compensation shall be effectively realisable, freely transferable in accordance with Article 11 (Transfers) and made without delay.

5. Notwithstanding Articles 9.1 and 9.2, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and Chapter 13 (Intellectual Property).

*Article 10*

Compensation For Losses

A Party shall accord to investors of the other Party whose investments in the territory of the former Party have suffered losses owing to war or other armed conflict or civil strife in that territory, treatment, as regards restitution, indemnification, compensation, or other settlement or measures it adopts or maintains relating to such losses, no less favourable than that which it accords to its own investors and investors of any non-Party.

*Article 11*

Transfers

7. Each Party shall permit, on a non-discriminatory basis, all funds of an investor of the other Party related to an investment in its territory to be transferred freely and without undue delay. Such funds include the following:

- (a) the initial capital plus any additional capital used to maintain or expand the investment;
- (b) returns;

- (c) proceeds from the sale or partial sale or liquidation of the investment;
- (d) loan payments in connection with the investment;
- (e) unspent earnings and other remuneration of personnel engaged from abroad in connection with that investment; and
- (f) compensation paid pursuant to Article 10 (Compensation for Losses).

8. Each Party shall permit such transfers to be made in the currency of the other Party or any freely useable currency at the prevailing rate of exchange on the date of transfer.

9. Notwithstanding Article 11.1, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offences, and the recovery of proceeds of crime;
- (d) ensuring the satisfaction of judgements, orders or awards in adjudicatory proceedings; or
- (e) social security, public retirement or compulsory savings schemes.

10. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 12 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

#### *Article 12*

##### Restrictions To Safeguard The Balance Of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments or transfers related to investments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in Article 12.1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in Article 12.1;
- (d) be temporary and be phased out progressively as the situation specified in Article 12.1 improves;

- (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-Party.

3. Any restrictions adopted or maintained under Article 12.1, or any changes therein, shall be promptly notified to the other Party.

4. The Party adopting any restrictions under Article 12.1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

### *Article 13*

#### Subrogation

1. If a Party or a designated agency of a Party makes a payment to any of its investors under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of an investment of an investor of that Party, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or a designated agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of the Party making the payment, pursue those rights and claims against the other Party.

### *Article 14*

#### Settlement Of Disputes Between A Party And An Investor Of The Other Party

1. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under this Chapter which causes loss or damage to the investor or its investment.

2. The parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations.

3. Where the dispute cannot be resolved as provided for under Article 14.2 within 6 months from the date of a request for consultations and negotiations, then unless the disputing investor and the disputing Party agree otherwise or either of them has already submitted the dispute to the courts or administrative tribunals of the disputing Party (excluding proceedings for interim measures of protection referred to in Article 14.5), the dispute may be submitted by either party to the dispute to:

- (a) the courts or administrative tribunals of the disputing Party;
- (b) the International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration pursuant to Articles 28 or 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington on 18 March 1965; or
- (c) arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. Each Party hereby consents to the submission of a dispute to conciliation or arbitration under Articles 14.3(b) and 14.3(c) in accordance with the provisions of this Article, conditional upon:



- (a) the submission of the dispute to such conciliation or arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter causing loss or damage to the investor or its investment; and
- (b) the disputing investor providing written notice, which shall be submitted at least 30 days before the claim is submitted, to the disputing Party of his or her intent to submit the dispute to such conciliation or arbitration and which:
  - (i) nominates either Article 14.3(b) or Article 14.3(c) as the forum for dispute settlement (and, in the case of Article 14.3(b), nominates whether conciliation or arbitration is being sought);
  - (ii) waives its right to initiate or continue any proceedings (excluding proceedings for interim measures of protection referred to in Article 14.5) before any of the other dispute settlement fora referred to in Article 14.3 in relation to the matter under dispute; and
  - (iii) briefly summarises the alleged breach of the disputing Party under this Chapter (including the articles alleged to have been breached) and the loss or damage allegedly caused to the investor or its investment.

5. Neither Party shall prevent the disputing investor from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the disputing Party, prior to the institution of proceedings before any of the dispute settlement fora referred to in Article 14.3, for the preservation of its rights and interests.

6. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

## *Article 15*

### Review Of Commitments

1. If, after this Agreement enters into force, a Party enters into any agreement on investment with a non-Party, it shall give positive consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

2. If, after this Agreement enters into force, a Party further liberalises any of its non-conforming measures in Annex 4-I or sectors, subsectors or activities in Annex 4-II unilaterally, it shall give positive consideration to a request by the other Party for the incorporation herein of the unilateral liberalisation. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

## *Article 16*

### Review Of Subsidies

1. The Parties shall review the treatment of subsidies in the context of developments at international fora to which both Parties are Members.
2. The Parties shall consult on appropriate steps in regard to subsidies related to investments or investors where any subsidies issues arise under this Chapter.

### *Article 17*

### Government Procurement

Article 3 (National Treatment) shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.

### *Article 18*

### Denial Of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such an investor where the Party establishes that the enterprise is owned or controlled by persons of a non-Party and has no substantive business operations in the territory of the other Party.

### *Article 19*

### General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on investments in the territory of a Party by investors of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals or to maintain public order;<sup>1</sup>
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;

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<sup>1</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (d) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

*Article 20*

Security Exceptions

Nothing in this Chapter shall be construed:

- (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (ii) taken in time of war or other emergency in international relations;
  - (iii) relating to the production or supply of arms and ammunition; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

*Article 21*

Disclosure Of Confidential Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

**09 FINANCIAL SERVICES**

*Article 1*

Definitions And Scope

1. The purpose of this Chapter is to provide for commitments additional to Chapter 7 (Trade in Services) and Chapter 8 (Investment) in relation to financial services to ensure that the market access treatment of financial services is based on transparent principles that are applied in a non-discriminatory manner. In the event of any inconsistency between the former provisions and the provisions of this Chapter, the latter shall prevail to the extent of such inconsistency.

2. For the purposes of this Chapter:

- (a) “financial service” means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature. Financial services shall include the activities as stated in Appendix 1;
- (b) “financial service supplier” means any natural or legal person authorised by the law of a Party to supply financial services;
- (c) “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; and
- (d) “public entity” means:
  - (i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
  - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

3. For the purposes of Articles 1(a) and 2.2(b) of Chapter 7 (Trade in Services), “a service supplied in the exercise of governmental authority” means the following:

- (a) activities conducted by a central bank or monetary authority or by any other public entity, including the management of official foreign reserves, in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans; and
- (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

4. If a Party allows any of the activities referred to in Articles 1.3(b) or 1.3(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, measures affecting such activities shall not be excluded from this Chapter and Chapter 7 (Trade in Services).

## *Article 2*

### New Financial Services

Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service of a type similar to those services that a Party would permit its own financial service suppliers, in like circumstances, to supply under its domestic law. A Party may however 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 such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

### *Article 3*

#### Prudential And Regulatory Supervision

1. Nothing in this Agreement shall be construed to prevent a Party from taking measures for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of a Party's financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.
2. These measures shall not constitute a means of arbitrary or unjustifiable discrimination against financial service suppliers of the other Party in comparison to its own like financial service suppliers, or a disguised restriction on trade in services. Each Party shall endeavour to ensure that these measures are not more burdensome than necessary to achieve their aim.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

### *Article 4*

#### Transfers Of Information And Processing Of Information

Neither Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Agreement.

### *Article 5*

#### Exceptions

For the avoidance of doubt, this Chapter shall be subject to the general and security exceptions listed in Articles 18 and 19 of Chapter 7 (Trade in Services) and Articles 19 and 20 of Chapter 8 (Investment).

### *Article 6*

#### Dispute Settlement

Arbitral tribunals agreed between or appointed by the Parties under Chapter 16 (Dispute Settlement) to adjudicate disputes on prudential issues and other financial matters, and any procedures agreed for good offices, conciliation or mediation on such matters, shall have or provide for the necessary expertise relevant to the specific financial service and dispute.

## APPENDIX 1

### Insurance And Insurance-Related Services

- (i) Direct insurance (including co-insurance):
  - (A) life
  - (B) non-life;
- (ii) Reinsurance and retrocession;
- (iii) Insurance intermediation, such as brokerage and agency;
- (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

### Banking And Other Financial Services (Excluding Insurance)

- (v) Acceptance of deposits and other repayable funds from the public;
- (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) Financial leasing;
- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) Guarantees and commitments;
- (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (A) money market instruments (including cheques, bills, certificates of deposits);
  - (B) foreign exchange;
  - (C) derivative products including, but not limited to, futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (E) transferable securities;
  - (F) other negotiable instruments and financial assets, including bullion;
- (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (xii) Money broking;

- (xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- (xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

## 10 TELECOMMUNICATIONS SERVICES

### *Article 1*

#### Purpose And Definitions

1. The purpose of this Chapter is to provide for commitments additional to Chapters 7 (Trade in Services) and 8 (Investment) in relation to telecommunication services.
2. For the purpose of this Chapter:
  - (a) “end user” means a person (including a service consumer and a service supplier) to whom a public telecommunications network or service is supplied, other than for use in the further supply of a public telecommunications network or service;
  - (b) “essential facilities” means facilities of a public telecommunications network or service that:
    - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
    - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
  - (c) “facilities-based suppliers” means suppliers of public telecommunications networks or services that are:
    - (i) licensed carriers in Australia; or
    - (ii) facilities-based operators in Singapore;
  - (d) “leased circuits” means telecommunications facilities between two or more designated points which are set aside for the dedicated use of or availability to a particular user;
  - (e) a “major supplier” is a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market<sup>1</sup> for public telecommunications networks or services as a result of:
    - (i) control over essential facilities; or
    - (ii) use of its position in the market;
  - (f) “network element” means facilities or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facilities or equipment, which may include local loops, sub-loops and line sharing;

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<sup>1</sup> For the avoidance of doubt, “relevant market” may refer to a market for the supply of public telecommunications networks or services (or parts thereof) provided by any supplier of public telecommunications networks or services, that give this supplier the ability to materially affect the terms of participation in the market (having regard to price and supply).



- (g) “number portability” means the ability of service consumers of public telecommunications networks or services to retain existing telephone numbers when switching between suppliers of like public telecommunications networks or services;
- (h) “public telecommunications service” means any telecommunications service required, explicitly or in effect, by a Party to be offered to the public generally;<sup>2</sup>
- (i) “public telecommunications network” means the telecommunications infrastructure authorised by a Party to be used to provide public telecommunications services between defined network termination points;
- (j) “regulator” means any person authorised or designated to have responsibility for the regulation of telecommunications;
- (k) “regulatory decisions” means decisions by regulators made pursuant to authority conferred under domestic law in relation to:
  - (i) the making of rules for the telecommunications industry excluding legislation and statutory rules;
  - (ii) the approval of terms and conditions, standards and codes to apply in the telecommunications industry;
  - (iii) the adjudication or other resolution of disputes between suppliers of public telecommunications networks or services; and
  - (iv) licensing;
- (l) a “supplier of public telecommunications networks or services” means a supplier of public telecommunications networks and/or public telecommunications services to users;
- (m) “telecommunications” means the transmission and reception of signals by any electromagnetic means; and
- (n) “user” means an end-user or a supplier of public telecommunications network or services.

## *Article 2*

### Scope

1. This Chapter shall apply to measures by a Party affecting trade in telecommunications services.
2. This Chapter shall not apply to measures by a Party affecting the distribution of broadcasting and audio-visual services, as defined in each Party’s domestic law and regulations.

## *Article 3*

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<sup>2</sup> “Public telecommunications service” includes Internet routing and connectivity services.

Access To And Use Of Public Telecommunications Networks Or Services<sup>3</sup>

1. Each Party shall ensure that all service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders in a timely fashion, on reasonable, transparent, and non-discriminatory terms and conditions, including as set out in Article 3.2 to Article 3.6.<sup>4</sup>

2. Each Party shall ensure that such service suppliers are permitted to:

- (a) purchase or lease and attach terminal or other equipment that interfaces with the public telecommunications network and which is necessary to supply a supplier's services;
- (b) provide services to individual or multiple service consumers over any leased or owned circuits;
- (c) interconnect leased or owned circuits with public telecommunications networks or services in the territory or across the borders of that Party or with circuits leased or owned by another service supplier;
- (d) perform switching, signalling, processing and conversion functions; and
- (e) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications networks and services to the public generally.

3. Each Party shall ensure that all 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 and for access to information contained in the databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding the preceding paragraph, 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 such measures 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:

- (a) to 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) to protect the technical integrity of public telecommunications networks or services.

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<sup>3</sup> For avoidance of doubt, access to unbundled network elements is addressed in Article 9.3.

<sup>4</sup> For avoidance of doubt, each Party may fulfil the obligations in this Article by any measure it considers necessary or appropriate, within the context of domestic law and regulation.

6. Provided that they satisfy the criteria set out in Article 3.5, 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 such networks and services;
- (b) requirements, where necessary, for the inter-operability of such services;
- (c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; or
- (d) notification, registration and licensing.

#### *Article 4*

#### Transparency

1. The Parties shall apply the measures referred to in Article 2.1 in a transparent manner, which:

- (a) provides suppliers of public telecommunications networks or services of the other Party who are likely to be affected by regulatory decisions with a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on proposed regulatory decisions and to provide these views to regulators;
- (b) requires regulators to take into account views provided by such suppliers pursuant to Article 4.1(a); and
- (c) ensures that regulators make available to such suppliers their regulatory decisions and an explanation of their reasons for those regulatory decisions.

2. At the request of a supplier of public telecommunications networks or services who is likely to be affected by regulatory decisions, regulators may, where necessary to avoid causing prejudice to the legitimate commercial interests of that supplier, impose reasonable limitations on the requirement to provide the information referred to in Article 4.1(a) and Article 4.1(c) provided that such limitations:

- (a) are applied only to the extent necessary to protect such commercial interests; and
- (b) do not deprive suppliers of public telecommunications networks or services of the other Party of their right under Article 4.1(a) to provide their views to regulators.

3. Where a licence is required, the following shall be made publicly available:

- (a) all the licensing criteria, any terms and conditions of the licence, and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

4. The reasons for the denial of a licence shall be made known to the applicant upon request.

#### *Article 5*

#### Independent Regulators

1. Regulators shall be independent of any supplier of public telecommunications networks or services.
2. The decisions of, and the procedures used by, regulators shall be fair and impartial and shall be made and implemented without undue delay.

#### *Article 6*

##### Dispute Settlement And Appeal

1. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have timely recourse to a regulator to consider and, to the extent provided for in domestic law, to resolve disputes regarding compliance with domestic measures relating to the obligations contained in this Chapter.
2. Each Party shall ensure that any supplier of public telecommunications networks or services of the other Party aggrieved by a regulatory decision has the opportunity to appeal such regulatory decision to an independent judicial or administrative authority. Such an appeal shall not constitute grounds for non-compliance by that supplier with the regulatory decision unless an appropriate authority stays such decision.
3. Each Party shall ensure that, in the hearing of appeals by an administrative authority referred to in Article 6.2.<sup>5</sup>
  - (a) suppliers of public telecommunications networks or services of the other Party which are party to the appeal have a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on the issues to be determined in the appeal and to provide these views to the administrative authority;
  - (b) the administrative authority takes into account views provided by such suppliers pursuant to Article 6.3(a); and
  - (c) the administrative authority makes available to such suppliers its decision and an explanation of the reasons for its decision.
4. At the request of a supplier of public telecommunications networks or services which is a party to an appeal referred to in Article 6.3, an administrative authority may, where necessary to avoid causing prejudice to the legitimate commercial interests of that supplier, impose reasonable limitations on the requirement to provide the information referred to in Article 6.3(a) and Article 6.3(c) provided that such limitations:
  - (a) are applied only to the extent necessary to protect such commercial interests; and
  - (b) do not deprive suppliers of public telecommunications networks or services of the other Party which are party to an appeal referred to in Article 6.3 of their right under Article 6.3(a) to provide their views to the administrative authority.

#### *Article 7*

##### General Competitive Safeguards

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<sup>5</sup> For the avoidance of doubt, this paragraph does not apply to judicial authorities of either Party.

1. Each Party shall maintain appropriate measures<sup>6</sup> for the purpose of preventing suppliers of public telecommunications networks or services in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in Article 7.1 shall be defined in each Party's sectoral or generic competition regime, as the case may be, and shall include:

- (a) anti-competitive horizontal arrangements;
- (b) misuse of market power;
- (c) anti-competitive vertical arrangements; and
- (d) anti-competitive mergers and acquisitions.

#### *Article 8*

##### Interconnection Between Suppliers Of Public Telecommunications Networks

Each Party shall maintain appropriate measures to achieve connectivity between public telecommunications networks in order to ensure that end-users of telecommunications services can communicate with each other including, where that Party considers it necessary, by requiring facilities-based suppliers to interconnect with one another.

#### *Article 9*

##### Additional Obligations Relating To Major Suppliers<sup>7</sup>

##### 1. Non-discrimination

- (a) Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications networks or services of the other Party treatment no less favourable than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated supplier of public telecommunications networks or services regarding:
  - (i) availability, provisioning, rates,<sup>8</sup> or quality of like public telecommunications networks or services; and
  - (ii) availability of technical interfaces

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<sup>6</sup> The maintenance of appropriate measures includes the effective enforcement of such measures.

<sup>7</sup> For the avoidance of doubt, the obligations imposed under this Article only apply with respect to those public telecommunications networks or services, or parts thereof, that result in a supplier of public telecommunications networks or services being a major supplier.

<sup>8</sup> The costs incurred by a major supplier in supplying public telecommunications networks or services to itself may be determined in accordance with any cost-oriented costing methodology considered appropriate by a Party. Treatment that is no less favourable regarding rates for like public telecommunications networks or services may take into account the legitimate transaction costs which the major supplier incurs in supplying such public telecommunications networks or services to suppliers of public telecommunications networks or services of the other Party.

where such suppliers of public telecommunications networks or services and subsidiaries, affiliates and non-affiliates of the major supplier are in like circumstances.

2. Competitive Safeguards

- (a) Each Party shall maintain appropriate measures<sup>9</sup> for the purpose of preventing major suppliers in its territory from engaging in or continuing anticompetitive practices.
- (b) The anti-competitive practices referred to in Article 9.2(a) shall include:
  - (i) engaging in anti-competitive cross-subsidisation;
  - (ii) using information obtained from competitors with anticompetitive results;
  - (iii) not making available, on a timely basis, to suppliers of public telecommunications networks or services of the other Party, technical information about essential facilities and commercially relevant information which is necessary for them to provide services; and
  - (iv) pricing services in a manner that is likely to unreasonably restrict competition, such as predatory pricing.

3. Unbundled Network Elements

- (a) Each Party shall ensure that major suppliers in its territory provide to facilities-based suppliers of the other Party access to network elements for the provision of public telecommunications services at any technically feasible point, on an unbundled basis, in a timely fashion; and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
- (b) Each Party may determine, in accordance with its domestic laws and regulations, which network elements it requires major suppliers in its territory to provide access to in accordance with Article 9.3(a) on the basis of the technical feasibility of unbundling and the state of competition in the relevant market.

4. Co-Location

- (a) Each Party shall ensure that major suppliers in its territory provide to facilities-based suppliers of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
- (b) Where physical co-location under Article 9.4(a) is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers cooperate with facilities-based suppliers to find and implement the most feasible alternative solution in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory. Such solutions may include:
  - (i) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;

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<sup>9</sup> The maintenance of appropriate measures includes the effective enforcement of such measures.

- (ii) conditioning additional equipment space;
  - (iii) optimizing the use of existing space; or
  - (iv) finding adjacent space.
- (c) Each Party may determine in accordance with its domestic laws and regulations the locations at which it requires major suppliers in its territory to provide co-location under Article 9.4(a) on the basis of the state of competition in the relevant market.

#### 5. Resale

- (a) Each Party shall ensure that major suppliers in its territory:
- (i) allow suppliers of public telecommunications networks or services of the other Party to purchase at reasonable rates, for the purpose of resale, specific public telecommunications services supplied by the major suppliers at retail that are designated by the first Party; and
  - (ii) do not impose unreasonable or discriminatory conditions or limitations on the resale of such public telecommunications services.

#### 6. Rights of Way

- (a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, or any other structures deemed necessary by the Party, which are owned or controlled by such major suppliers to facilities based suppliers of the other Party:
- (i) in a timely fashion; and
  - (ii) on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
- (b) Each Party may determine in accordance with its domestic laws and regulations the poles, ducts, conduits or other structures to which it requires major suppliers in its territory to provide access under Article 9.6(a) on the basis of the state of competition in the relevant market.

#### 7. Interconnection with a Major Supplier<sup>10</sup>

- (a) Each Party shall ensure that major suppliers in its territory provide interconnection to facilities-based suppliers of the other Party:
- (i) at any technically feasible point in the major supplier's network;
  - (ii) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;<sup>11</sup>

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<sup>10</sup> Australia's interconnection regime provides access on terms and conditions which are fair and reasonable to all parties and which do not unfairly discriminate between users. Access rights are guaranteed by legislation and the terms and conditions of access are established primarily through processes of commercial negotiation or by reference to access undertakings given by suppliers of public telecommunications networks or services which may draw upon an industry code of practice. Any code of practice and each supplier's undertaking will be subject to approval by the regulator.

- (iii) of a quality no less favourable than that provided by such major supplier for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
  - (iv) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates<sup>12</sup> 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
  - (v) upon request, at points in addition to the network termination points offered to the majority of facilities-based suppliers, subject to charges that reflect the cost of construction of necessary additional facilities.
- (b) Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect with major suppliers in its territory pursuant to at least one of the following options:
- (i) a publicly available reference interconnection offer;
  - (ii) any existing interconnection agreement between the major supplier and any similarly situated supplier of public telecommunications networks or services;
  - (iii) an individualised agreement between the major supplier and the supplier of public telecommunications networks or services that seeks to interconnect with it; or
  - (iv) binding arbitration.
- (c) Each Party shall ensure that the applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.
- (d) Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

## 8. Resolution of Interconnection Disputes

- (a) When facilities-based suppliers are unable to resolve disputes regarding the terms, conditions and rates on which interconnection is to be provided by a major supplier, they shall have recourse to the regulator, which shall aim to resolve the disputes within 180 days of the referral to it, provided that the resolution of complex disputes may take longer than 180 days.
- (b) Where the regulator is unable to resolve the disputes referred to in Article 9.8(a) within 180 days, each Party shall ensure that the regulator endeavours to provide interim determinations on the disputes where necessary to ensure that facilities-based suppliers of the other Party are able to interconnect with a major supplier.

### *Article 10*

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<sup>11</sup> In Australia, the rate at which interconnection is provided is determined by negotiation. Both negotiating parties have recourse to the regulator which will make a decision based on transparent criteria to ensure that rates are fair and reasonable in the circumstances.

<sup>12</sup> The regulator may resolve any dispute on what costs are relevant in determining rates.



### 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, to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

#### *Article 11*

### Access To Buildings<sup>13</sup>

Each Party shall ensure that facilities-based suppliers may install, maintain and have access to their equipment in buildings or on land that the Party considers is necessary to enable public telecommunications services to be supplied to end users who are customers of the facilities-based supplier.

#### *Article 12*

### Allocation And Use Of Scarce Resources<sup>14</sup>

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government use shall not be required.

#### *Article 13*

### Industry Participation

1. Each Party shall, through any forum or other mechanism it considers appropriate:
  - (a) facilitate the involvement of suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of industry standards and, where it considers appropriate, in the regulation of the telecommunications industry; and
  - (b) encourage suppliers of public telecommunications networks or services of the other Party operating in its territory to provide feedback to regulators on the regulation of the telecommunications industry.

#### *Article 14*

### Enforcement

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<sup>13</sup> To the extent of any inconsistency between this Article and Article 9, the latter shall prevail.

<sup>14</sup> Decisions on the allocation and assignment of spectrum and frequency management are not measures that are per se inconsistent with Article 3 (Market Access) of Chapter 7 (Trade in Services). Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of service suppliers, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

Each Party shall adopt or maintain timely, proportionate and effective sanctions for the purpose of enforcing domestic measures relating to the obligations contained in this Chapter. Such sanctions may include financial penalties, injunctions, orders to cease and desist (on an interim or final basis), and/or the ability to suspend, modify or revoke licences.

*Article 15*

Exceptions

For the avoidance of doubt, this Chapter shall be subject to the general and security exceptions listed in Articles 18 and 19 of Chapter 7 (Trade in Services) and Articles 19 and 20 of Chapter 8 (Investment).

**11 MOVEMENT OF BUSINESS PERSONS**

*Article 1*

Purpose

The purposes of this Chapter are to:

- (a) provide for rights and obligations additional to those set out in Chapters 7 (Trade in Services) and (Investment) in relation to the movement of natural persons between the Parties; and
- (b) enhance the mobility of business persons of either Party engaged in the conduct of trade and investment between the Parties, by facilitating temporary business entry and establishing streamlined, transparent immigration clearance procedures for business persons.

*Article 2*

Scope And Definitions

1. This Chapter applies to measures affecting the movement of natural persons of a Party into the territory of the other Party where such persons are:

- (a) service suppliers of the first Party;
- (b) service sellers of the first Party;
- (c) investors of the first Party in respect of an investment of that investor in the territory of the other Party; or
- (d) employed by an investor of the first Party in respect of an investment of that investor in the territory of the other Party.

2. For the purposes of this Chapter, the following definitions shall apply:

- (a) “business visitors” means natural persons of either Party who are:

- (i) service sellers;
  - (ii) short-term service suppliers;
  - (iii) investors of a Party or employees of an investor (who are managers, executives or specialists as defined under Article 2.2(c) seeking temporary entry to establish an investment; or
  - (iv) seeking temporary entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sales to the general public;
- (b) “immigration formality” means a visa, employment pass, or other document or electronic authority granting a natural person of one Party the right to reside or work in the territory of the other Party;
- (c) “intra-corporate transferee” means an employee of a service supplier, investor or enterprise of a Party established in the territory of the other Party through a branch, subsidiary or affiliate, who has been so employed for a period of not less than one year immediately preceding the date of the application for temporary entry, and who is:
- (i) a manager – a business person within an organisation who primarily directs the organisation or a department or sub-division of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment;
  - (ii) an executive – a business person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service or the operation of an investment; or
  - (iii) a specialist – a business person within an organisation who possesses knowledge at an advanced level of expertise and who possesses proprietary knowledge of the organisation’s service, research equipment, techniques, or management (A specialist may include, but is not limited to, members of a licensed profession.);
- (d) “service seller” means a natural person of a Party who is a sales representative of a service supplier of that Party and is seeking temporary entry to the other Party for the purpose of negotiating the sale of services for that service supplier, where such a representative will not be engaged in making direct sales to the general public or in supplying services directly;
- (e) “short-term service suppliers” means persons who:
- (i) are employees of a service supplier or an enterprise of a Party not having a commercial presence or investment in the other, which has concluded a

service contract with a service supplier or an enterprise engaged in substantive business operations in the other Party; and

- (ii) have been employees of the service supplier or enterprise for a time period of not less than one year immediately preceding an application for admission for temporary entry; and
- (iii) are managers, executives or specialists as defined under Article 2.2(c) and
- (iv) are seeking temporary entry to the other Party for the purpose of providing a service as a professional in the following service sectors on behalf of the service supplier or enterprise which employs them:
  - (A) professional services;
  - (B) computer and related services;
  - (C) telecommunication services; or
  - (D) financial services; and
- (v) satisfy any other requirements under the domestic laws and regulations of the other Party to provide such services in the territory of that Party; and
- (f) “temporary entry” means entry by a business visitor or an intracorporate transferee, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or enterprise which employs that visitor in the visitor’s home country.

3. Nothing in this Chapter shall apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

#### *Article 3*

##### Short-Term Temporary Entry

A Party shall, upon application by a business visitor of the other Party who otherwise meets its criteria for the grant of an immigration formality, grant that business visitor, through the issue of a single immigration formality, the right to temporary entry in the granting Party's territory for a period of up to three months.

#### *Article 4*

##### Long-Term Temporary Entry

A Party shall grant temporary entry to an intra-corporate transferee of the other Party who otherwise meets its criteria for the grant of an immigration formality unless there has been a breach of any of the conditions governing temporary entry, or an application for an extension of an immigration formality has been refused on such grounds of national security or public order by the granting Party as it deems fit:

- (a) in the case of Singapore, for an initial period of up to two years which may be extended for periods of up to three years at a time for a total term not exceeding 14 years; and
- (b) in the case of Australia, for an initial period of up to four years which may be extended for further periods of up to four years at a time for a total term not exceeding 14 years.

*Article 5*

Provision Of Information

A Party shall:

- (a) publish or otherwise make available to the other Party such information as will enable the other Party to become acquainted with its measures relating to this Chapter; and
- (b) no later than six months after the date of entry into force of this Agreement, prepare, publish or otherwise make available in its own territory, and in the territory of the other Party, explanatory material regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

*Article 6*

Dispute Settlement

1. A Party may not initiate proceedings under Chapter 16 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

- (a) the matter involves a pattern of practice; and
- (b) its natural persons affected have exhausted the available domestic administrative remedies regarding the particular matter.

2. The remedies referred to in Article 6.1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of proceedings for domestic administrative remedies, including proceedings by way of review, and the failure to issue a determination is not attributable to delays caused by the natural person.

*Article 7*

Immigration Measures

Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

*Article 8*

Expeditious Application Procedures

A Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, particularly applications from members of professions for which mutual recognition arrangements have been concluded.

*Article 9*

Notification Of Outcome Of Application

A Party shall notify the applicants for temporary entry, either directly or through their prospective employers, of the outcome of their applications, including the period of stay and other conditions.

*Article 10*

Online Lodgement And Processing

As soon as possible after the date of entry into force of this Agreement, Parties shall provide facilities for online lodgement and processing:

- (a) in the case of Australia, of immigration formalities; and
- (b) in the case of Singapore, of employment passes which shall be applied for by the prospective employers.

*Article 11*

Resolution Of Problems

The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems (within the framework of their domestic laws, regulations and other similar measures governing the temporary entry of natural persons) which may arise from the implementation and administration of this Chapter.

*Article 12*

Labour Market Testing

Neither Party shall require labour market testing, labour certification tests or other procedures of similar effect as a condition for temporary entry in respect of natural persons on whom the benefits of this Chapter are conferred.

*Article 13*

Immigration Formality Requirements

1. Australia shall accord to natural persons of Singapore conditions of entry and processing requirements relating to its Electronic Travel Authority (“ETA”) no less favourable than those accorded to natural persons of any other country eligible under the ETA or equivalent processing system for immigration formalities.
2. Singapore shall waive visa requirements for nationals of Australia, provided that such persons are not nationals of a non-Party for which visa-requirements are imposed for entry into Singapore.

*Article 14*Inclusion Of Permanent Residents

A Party shall grant the benefits of this Chapter, other than those accorded by Article 13 (Immigration Formality Requirements), to natural persons who have the right of permanent residence in the territory of the other Party, provided that these natural persons satisfy all the administrative, legal, repatriation and other requirements as may be imposed by the granting Party.

*Article 15*Employment Of Spouses And Dependants

For natural persons who have been granted the right to long-term temporary entry and who have been allowed to bring in their spouses or dependants, a Party shall, upon application, grant the accompanying spouses or dependants the right to work as managers, executives or specialists (as defined in Article 2.2(c)(i)-(iii)), or as office administrators in its territory, subject to the relevant licensing, administrative and registration requirements of the granting Party.

*Article 16*Reservations

The commitments made by each Party under this Chapter shall be subject to any reservations it has taken in its Annex 4-I (Reservations to Chapter 7 (Trade in Services) and Chapter 8 (Investment)) and Annex 4-II (Reservations to Chapter 7 (Trade in Services) and Chapter 8 (Investment)).

**12 COMPETITION POLICY***Article 1*Purpose And Definitions

1. The purpose of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of fair competition and the curtailment of anti-competitive practices.
2. For the purposes of this Chapter, “anti-competitive practices” means business conduct or transactions that adversely affect competition, such as:
  - (a) anti-competitive horizontal arrangements between competitors;
  - (b) misuse of market power, including predatory pricing by businesses;
  - (c) anti-competitive vertical arrangements between businesses; and
  - (d) anti-competitive mergers and acquisitions.

*Article 2*Promotion Of Competition

1. Each Party shall promote competition by addressing anti-competitive practices in its territory, adopting and enforcing such means or measures as it deems appropriate and effective to counter such practices.
2. Such means and measures may include the implementation of competition and regulatory arrangements.

*Article 3*

Application Of Competition Laws

1. The Parties shall ensure that all businesses registered or incorporated under their respective domestic laws are subject to such generic or relevant sectoral competition laws as may be in force in their respective territories.
2. Any measures taken by a Party to proscribe anti-competitive practices, and the enforcement actions taken pursuant to those measures, shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness.

*Article 4*

Competitive Neutrality

1. The Parties shall take reasonable measures to ensure that governments at all levels do not provide any competitive advantage to any government-owned businesses in their business activities simply because they are government owned.
2. This Article applies to the business activities of government-owned businesses and not to their non-business, non-commercial activities.

*Article 5*

Exemptions

Either Party may exempt specific measures or sectors from this Chapter, provided that such exemptions are transparent and are undertaken on the grounds of public policy or public interest.

*Article 6*

Consultation And Review

1. At the request of a Party, the Parties shall consult with a view to eliminating particular anti-competitive practices that affect trade or investment between the Parties.
2. Within six months of a generic competition law coming into effect in Singapore, the Parties shall consult in order to review the scope and operation of this Chapter with a view to negotiating amendments to this Chapter that may be necessary to ensure the comprehensive protection in their respective territories of the legitimate commercial interests of businesses of the other Party.



3. In undertaking any consultations in accordance with Article 6.2, the Parties shall also discuss the desirability of concluding arrangements for cooperation and mutual assistance in competition policy and enforcement, either as amendments to this Chapter or as separate arrangements between their respective competition authorities.

4. Any information or documents exchanged between the Parties in relation to any mutual consultations and review conducted pursuant to the provisions of this Chapter shall be kept confidential. Neither Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party which provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party before such disclosure is made.

#### *Article 7*

##### Transparency

The Parties shall publish or otherwise make publicly available their laws addressing fair competition.

#### *Article 8*

##### General

1. Nothing in this Chapter permits a Party to reopen, re-examine or to challenge under any dispute settlement procedure under this Agreement, any finding, determination or decision made by a competition authority of the other Party in enforcing the applicable competition laws and regulations.

2. Neither Party shall have recourse to any dispute settlement procedures under this Agreement for any issue arising from or relating to this Chapter.

3. In the event of any inconsistency or conflict between any provision in this Chapter and any provision contained in any other Chapter of this Agreement, the latter shall prevail to the extent of such inconsistency or conflict.

## **13 INTELLECTUAL PROPERTY**

#### *Article 1*

##### Purpose And Definitions

1. The purpose of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights.

2. For the purposes of this Chapter:

- (a) "intellectual property rights" refers to copyright and related rights; rights in trade marks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as defined and described in the WTO TRIPS Agreement;

- (b) "WIPO" means the World Intellectual Property Organisation; and
- (c) "WTO TRIPS Agreement" means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

*Article 2*

Adherence To International Instruments

1. Each Party reaffirms its commitment to the provisions of the WTO TRIPS Agreement.
2. The Parties shall accede to or ratify the WIPO Copyright Treaty concluded at Geneva on 20 December 1996 within four years of the date of entry into force of this Agreement, subject to completion of the necessary legislative and consultative processes required in each Party before formal accession to, or ratification of, that Treaty.
3. The Parties shall accede to or ratify the WIPO Performances and Phonograms Treaty concluded at Geneva on 20 December 1996 within four years of the date of entry into force of this Agreement, subject to the completion of the necessary legislative and consultative processes required in each Party before formal accession to, or ratification of, that Treaty.
4. The Parties agree to comply with the provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs concluded at Geneva on 2 July 1999, subject to the enactment of laws necessary to apply those provisions in their respective territories.

*Article 3*

Storage Of Intellectual Property In Electronic Media

Copies of copyright material to which the right of reproduction applies shall include electronic copies of works, sound recordings, and cinematographic films. This is subject to limitations or exceptions as permitted under the laws of the Parties.

*Article 4*

Measures To Prevent The Export Of Goods That Infringe Copyright Or Trade Marks

Each Party, on receipt of information or complaints, shall take measures to prevent the export of goods that infringe copyright or trade marks, in accordance with its laws, rules, regulations, directives or policies.

*Article 5*

Cooperation On Enforcement

The Parties agree to cooperate with a view to eliminating trade in goods infringing intellectual property rights, subject to their respective laws, rules, regulations, directives or policies. Such cooperation shall include:

- (a) the notification of contact points for the enforcement of intellectual property rights;
- (b) the exchange, between respective agencies responsible for the enforcement of intellectual property rights, of information concerning infringement of intellectual property rights;

- (c) policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional fora; and
- (d) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually agreed between the Parties.

*Article 6*

Cooperation On Education And Exchange Of Information On Protection, Management and Exploitation of Intellectual Property Rights

The Parties, through their competent agencies, agree to:

- (a) exchange information and material on programmes pertaining to intellectual property rights education and awareness, and to commercialisation of intellectual property, to the extent permissible under their respective laws, rules, regulations and directives; and
- (b) encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, organisations and other entities in the field of intellectual property rights protection and development, including in the education and training of patent agents.

*Article 7*

Settlement Of Disputes Relating To Domain Names And Trade Marks

Both Parties shall continue to monitor and support, where appropriate, endeavours to develop international policy or guidelines governing the resolution of disputes relating to domain names and trade marks.

**14 ELECTRONIC COMMERCE**

Preamble

The Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of avoiding barriers to its use and development, and the applicability of relevant WTO rules.

*Article 1*

Purposes And Definitions

1. The purposes of this Chapter are to promote electronic commerce between the Parties and to promote the wider use of electronic commerce globally.
2. For the purposes of this Chapter:
  - (a) “customs duties” has the same meaning as Article 1(a) of Chapter 2 (Trade in Goods);
  - (b) “electronic version” of a document means a document in an electronic format prescribed by a Party, including a document sent by facsimile transmission; and

- (c) “trade administration documents” means paper forms issued or controlled by the Government of a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

*Article 2*

Transparency

1. Each Party shall promptly publish, or otherwise promptly make publicly available where publication is not practicable, all relevant measures of general application which pertain to or affect the operation of this Chapter.
2. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application within the meaning of paragraph 1.

*Article 3*

Customs Duties

Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between Australia and Singapore.

*Article 4*

Domestic Regulatory Frameworks

1. Each Party shall maintain domestic legal frameworks governing electronic transactions based on the UNCITRAL Model Law on Electronic Commerce.
2. Each Party shall:
  - (a) minimise the regulatory burden on electronic commerce; and
  - (b) ensure that regulatory frameworks support industry-led development of electronic commerce.

*Article 5*

Electronic Authentication And Electronic Signatures

3. Each Party shall maintain domestic legislation for electronic authentication that:
  - (a) permits parties to an electronic transaction to determine the appropriate authentication technologies and implementation models for their electronic transaction, without limiting the recognition of technologies and implementation models; and
  - (b) permits parties to an electronic transaction to have the opportunity to prove in court that their electronic transaction complies with any legal requirements.
4. The Parties shall work towards mutual recognition of electronic signatures through a cross-recognition framework at government level based on internationally accepted standards.

5. The Parties shall encourage the interoperability of digital certificates in the business sector, including in financial services.

*Article 6*

Online Consumer Protection

1. Each Party shall, to the extent possible and in a manner considered appropriate by that Party, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under their respective domestic laws.

*Article 7*

Online Personal Data Protection

1. Notwithstanding the differences in existing systems for personal data protection in the territories of the Parties, each Party shall take such measures as it considers appropriate and necessary to protect the personal data of users of electronic commerce.

2. In the development of data protection standards, each Party shall take into account the international standards and criteria of relevant international organisations.

*Article 8*

Paperless Trading

1. Each Party shall make publicly available, which may include through a process prescribed by the relevant Party, electronic versions of all existing publicly available versions of trade administration documents by 2005.

2. Each Party shall accept electronic versions of its trade administration documents as the legal equivalent of paper documents except where:

- (a) there is a domestic or international legal requirement to the contrary; or
- (b) doing so would reduce the effectiveness of the trade administration process.

3. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of electronic versions of trade administration documents.

*Article 9*

Exceptions

1. This Chapter shall be subject to the general and security exceptions listed in Articles 18 (General Exceptions) and 19 (Security Exceptions) of Chapter 7 (Trade in Services).

*Article 10*

Non-Application Of Dispute Settlement Provisions

Chapter 16 (Dispute Settlement) shall not apply to Articles 4 (Domestic Regulatory Framework), 5 (Electronic Authentication and Electronic Signature), 6 (Online Consumer Protection) and 7 (Online Personal Data Protection) of this Chapter.

## **15 EDUCATION COOPERATION**

### *Article 1*

#### Scope And Purpose

The purpose of this Chapter is to foster closer people-to-people links and mutual understanding between Australia and Singapore and to enhance the role played by education in enhancing the bilateral trade and investment relationship through promoting mutual cooperation in education.

### *Article 2*

#### Fields Of Cooperation

Both Parties shall encourage and facilitate, as appropriate, exchanges in the following fields:

- (a) quality assurance processes;
- (b) on-line and distance education at all levels;
- (c) primary and secondary education systems;
- (d) higher education;
- (e) technical education and vocational training;
- (f) industry collaboration for technical and vocational training; and
- (g) teacher training and development.

### *Article 3*

#### Facilitation Of Cooperation

Both Parties shall encourage and facilitate, as appropriate, the development of contacts and cooperation between their respective government agencies, educational institutions, organisations, and other entities and the conclusion of arrangements between such bodies to cooperate in the above fields. These may be achieved through:

- (a) joint planning and implementation of programs and projects, and joint coordination of targeted activities in agreed fields;
- (b) development of collaborative training, joint research and development, technology transfer and joint ventures between appropriate authorities and institutions;
- (c) development of programs which can be jointly delivered by institutions;
- (d) exchange of teaching staff, administrators, researchers and students;

- (e) academic credit transfer and mutual recognition of academic and vocational qualifications, between recognised institutions of higher learning;
- (f) cooperation in areas of interest in technical and vocational education;
- (g) exchange of teaching and curriculum materials, teaching aids, and demonstration materials as well as the organisation of relevant specialised exhibitions and seminars;
- (h) exchange of information on:
  - (i) study opportunities in Australia and Singapore;
  - (ii) education systems and standards; and
  - (iii) research projects, symposia and other academic events;
- (i) cooperative research in emerging education issues;
- (j) collaboration on the development of quality assured innovative resources to support learning and assessment, and the professional development of teachers and trainers in training and vocational education; and
- (k) other forms of cooperation as may be mutually determined.

*Article 4*

Student Mobility And Scholarship Arrangements

1. Both Parties shall foster the mobility of students.
2. A Party shall, subject to any qualification requirements for professional practice in its territory, allow its scholarships for overseas studies to be tenable at universities in the territory of the other Party.
3. Both Parties shall encourage their government scholarship nominees to consider the other Party as one of the countries for their overseas study.

*Article 5*

Costs

1. Cooperation under this Chapter shall be subject to the availability of funds.
2. The cooperative activities under this Chapter shall be funded as mutually determined.

**16 DISPUTE SETTLEMENT**

*Article 1*

Scope And Coverage

1. Unless otherwise agreed by the Parties elsewhere in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement.

2. The rules and procedures set out in this Chapter may be waived, varied or modified by mutual agreement.
3. Findings and recommendations of an arbitral tribunal cannot add to or diminish the rights and obligations of the Parties under this Agreement.
4. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by regional or local governments or authorities within the territory of a Party. When an arbitral tribunal has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. The provisions of this Chapter relating to compensation and suspension of benefits apply in cases where it has not been possible to secure such observance.
5. Arbitral tribunals shall clarify the provisions of this Agreement in accordance with customary rules of interpretation of public international law.

## *Article 2*

### Consultations

1. Each Party shall accord adequate opportunity for consultations regarding any representations made by the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.
2. Any Party which considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, as a result of the failure of the other Party to carry out its obligations under this Agreement, may, with a view to achieving satisfactory settlement of the matter, make representations or proposals to the other Party, which shall give due consideration to the representations or proposals made to it.
3. If a request for consultation is made, the Party to which the request is made shall reply to the request within 7 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
4. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:
  - (a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement; and
  - (b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

## *Article 3*

### Good Offices, Conciliation Or Mediation

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



2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 4 (Appointment of Arbitral Tribunals).

#### *Article 4*

##### Appointment Of Arbitral Tribunals

If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to appoint an arbitral tribunal under this Article. The request shall include a statement of the claim and the grounds on which it is based.

#### *Article 5*

##### Composition Of Arbitral Tribunals

1. The arbitral tribunal referred to in Article 4 (Appointment of Arbitral Tribunals) shall consist of three members. Each Party shall appoint an arbitrator within 30 days of the receipt of the request under Article 4, and the two arbitrators appointed shall, within 30 days of the appointment of the second of them, designate by common agreement the third arbitrator.

2. The Parties shall, within 7 days of the designation of the third arbitrator, approve or disapprove the appointment of that arbitrator, who shall, if approved, chair the tribunal.

3. If the third arbitrator has not been designated within 30 days of the appointment of the second arbitrator, or one of the Parties disapproves the appointment of the third arbitrator, the Ministers in charge of trade negotiations of the Parties shall consult directly in order to jointly appoint the chair of the arbitral tribunal within a further period of 30 days.

4. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

5. Any person appointed as a member or chair of the arbitral tribunal shall not be a national of either Party and shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability, sound judgement and independence. Additionally, the chair shall not have his or her usual place of residence in the territory of, nor be employed by, either Party.

#### *Article 6*

##### Functions Of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of this Agreement, it shall recommend that a Party bring the measure into conformity with that provision.

2. The findings and recommendations of the arbitral tribunal shall be set out in a report released to the Parties. An arbitral tribunal may make its findings and recommendations upon the default of a Party.

3. An arbitral tribunal shall take its decisions by consensus; provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.

4. The arbitral tribunal shall, in consultation with the Parties and apart from the matters set out in Article 7 (Proceedings of Arbitral Tribunals), regulate its own procedures in relation to the rights of Parties to be heard and its deliberations.

#### *Article 7*

##### Proceedings Of Arbitral Tribunals

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

2. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions or its submissions to the public; provided that a Party shall treat as confidential information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

3. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

4. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its submission. Subsequently, and still at the same meeting, the Party against which the complaint has been brought shall be asked to present its submission.

5. Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to present its submission first, and shall be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

6. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.

7. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

8. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 6 shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other Party. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

9. The arbitral tribunal shall have the right, in consultation with the Parties, to seek information and technical advice from any individual or body which it deems appropriate, and shall make any such information and technical advice available to the Parties. A Party shall respond promptly and

fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

10. The report of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its draft report prior to its finalisation and shall include a discussion of any comments by the Parties in its final report.

11. The arbitral tribunal shall release to the Parties its final report on the dispute referred to it within 60 days of its formation. When the arbitral tribunal considers that it cannot release its final report within 60 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the Parties.

#### *Article 8*

##### Suspension And Termination Of Proceedings

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal established under this Agreement, in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal makes its decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

#### *Article 9*

##### Implementation

1. The Party concerned shall comply with the arbitral tribunal's recommendations within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties or, where the Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral tribunal's report, either Party may refer the matter to the tribunal, which shall determine the reasonable period of time following consultation with the Parties.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the recommendations of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal. The arbitral tribunal shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

#### *Article 10*

##### Compensation And Suspension Of Benefits

1. If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance with the recommendations of the arbitral tribunal under Article 9.2 within 20 days of the report of that arbitral tribunal being provided to the Parties, that Party shall, if so requested, enter

into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensation has been reached within 20 days after the request of the complaining Party to enter into negotiations on compensatory adjustment, the complaining Party may request the original arbitral tribunal to determine the appropriate level of any suspension of benefits conferred on the other Party under this Agreement. Where the original arbitral tribunal cannot hear the matter for any reason, a new tribunal shall be appointed under Article 4 (Appointment of Arbitral Tribunals).

3. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.

4. In considering what benefits to suspend under Article 10.2:

- (a) the Party having invoked the dispute settlement procedures should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment; and
- (b) the Party having invoked the dispute settlement procedures may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's recommendations has done so, or a mutually satisfactory solution is reached.

#### *Article 11*

##### Expenses

Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the Chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

## **17 FINAL PROVISIONS**

#### *Article 1*

##### State, Regional And Local Government

Each Party is fully responsible for the observance of all provisions in this Agreement, and, except as otherwise provided for in this Agreement, shall take such reasonable measures as may be available to it to ensure their observance by the regional and local governments and authorities within its territory, and in respect of trade in services and investment covered by Chapter 7 (Trade in Services) and Chapter 8 (Investment) of this Agreement, their observance by non-governmental bodies (in the exercise of powers delegated by central, state, regional or local government or authorities) within its territory.

*Article 2*

Contact Point

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of a Party, the contact point of the requested Party shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Party.

*Article 3*

Review

In addition to the provisions for consultations elsewhere in this Agreement, Ministers in charge of trade negotiations of the Parties shall meet within a year of the date of entry into force of this Agreement and then biennially or otherwise as appropriate to review this Agreement.

*Article 4*

Association With The Agreement

This Agreement is open to accession or association, on terms to be agreed between the Parties, by any State or separate customs territory.

*Article 5*

Relation To Other Agreements

In the event of any inconsistency between this Agreement and any other agreement to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with customary rules of public international law.

*Article 6*

Annexes

The Annexes to this Agreement shall form an integral part of this Agreement.

*Article 7*

Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed between them.

*Article 8*

Entry Into Force, Duration And Termination

1. This Agreement shall enter into force on the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of this Agreement.
2. Either Party may terminate this Agreement by giving the other Party six months' advance notice in writing.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

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