



REPUBLIK INDONESIA

INDONESIA-AUSTRALIA

## COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

### PREAMBLE

The Government of Australia ("Australia") and the Government of the Republic of Indonesia ("Indonesia"), hereinafter referred to collectively as "the Parties":

**REINFORCING** the longstanding bonds of friendship and cooperation between them, the growing bilateral economic relationship and their shared regional interests and ties;

**RECALLING** the positive contribution made to the trade and investment relationship between the Parties by the *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* ("AANZFTA"), signed at Hua Hin on 27 February 2009;

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

**RECOGNISING** that open, transparent and competitive markets are key drivers of economic growth, poverty reduction, job creation, innovation, expansion of productive capacity and human development;

**RESOLVING** to create clear and mutually advantageous rules governing their trade and investment to promote a predictable, transparent and consistent commercial framework for business operations, minimise barriers, enhance economic efficiency and create a larger market with more opportunities for business;

**DESIRING** to generate broader and deeper economic integration between the Parties, strengthening inclusive economic growth and development, and advancing economic cooperation;

**RESOLVING** to strengthen their economic, trade, and investment relations to contribute to the objectives of sustainable development in its economic, social and

environmental dimensions, and to promote trade and investment under this Agreement;

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

**BUILDING ON** the respective rights and obligations and undertakings of the Parties under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") and other existing international agreements and arrangements to which the Parties are party;

**HAVE AGREED AS FOLLOWS:**

## CHAPTER 1

### INITIAL PROVISIONS AND GENERAL DEFINITIONS

#### **Article 1.1: Establishment of the Indonesia-Australia Comprehensive Economic Partnership as a Free Trade Area**

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

#### **Article 1.2: Objectives**

The objectives of the Parties in concluding this Agreement are to:

- (a) establish a framework for enhanced cooperation to promote the development of a predictable, transparent and consistent business environment that will lead to the improvement of economic efficiency and the growth of trade and investment;
- (b) progressively liberalise and facilitate trade in goods between the Parties through, *inter alia*, progressive elimination of tariff and non-tariff barriers in substantially all trade in goods between the Parties;
- (c) progressively liberalise trade in services between the Parties to achieve a high quality agreement that has substantial sectoral coverage and provides for the substantial elimination of restrictions and discriminatory measures affecting trade in services;
- (d) create a liberal, facilitative and competitive investment environment, that will enhance investment opportunities between the Parties through promotion, protection, facilitation and liberalisation of foreign investment;
- (e) create frameworks that promote the utilisation of electronic commerce in trade and investment between the Parties;
- (f) cooperate in the promotion of competition, economic efficiency, consumer welfare and the mitigation of anti-competitive practices;
- (g) promote economic cooperation for the effective and efficient implementation and utilisation of this Agreement; and

(h) facilitate trade between the Parties by promoting efficient and transparent procedures that expedite the movement, release and clearance of goods to reduce costs and ensure predictability for importers and exporters.

### **Article 1.3: Relation to Other Agreements**

1. Recognising the Parties' intention for this Agreement to coexist with their existing international agreements, including the WTO Agreement, each Party affirms its existing rights and obligations with respect to the other Party.<sup>1</sup>

2. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which it and the other Party are party, the Parties shall, on request, consult with each other with a view to reaching a mutually satisfactory solution.<sup>2</sup> This paragraph is without prejudice to a Party's rights and obligations under Chapter 20 (Consultations and Dispute Settlement).

### **Article 1.4: General Definitions<sup>3</sup>**

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

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

**Agreement** means the Indonesia-Australia Comprehensive Economic Partnership Agreement;

**central level of government** means:

- (i) for Australia, the Commonwealth government; and
- (ii) for Indonesia, the central level of the Government of the Republic of Indonesia;

**covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry

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<sup>1</sup> For greater certainty, the Schedules to this Agreement are without prejudice to a Party's rights and obligations under the WTO Agreement and the *ASEAN-Australia-New Zealand Free Trade Agreement*.

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

<sup>3</sup> For greater certainty, references to agreements in Annex 1A to the WTO Agreement include the general interpretative note to Annex 1A.

into force of this Agreement or established, acquired or expanded thereafter and which, where applicable, has been admitted according to its laws and regulations<sup>4</sup>;

**customs administration** means:

- (i) for Australia, the Department of Home Affairs or its successor; and
- (ii) for Indonesia, the Directorate General of Customs and Excise, Ministry of Finance;

**customs duty** means any customs or import duty and a charge of any kind, including any tax or surcharge, imposed in connection with the importation of a good, but does not include any:

- (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of GATT 1994, in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;
- (ii) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the AD Agreement, as may be amended and the *Agreement on Subsidies and Countervailing Measures* in Annex 1A to the WTO Agreement, as may be amended; or
- (iii) fee or any charge commensurate with the cost of services rendered;

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

**days** means calendar days, including weekends and holidays;

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

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<sup>4</sup> For greater certainty, in the case of Indonesia, "admitted according to its laws and regulations" may include a requirement for specific approval in writing.

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

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

**GATT 1994** means the *General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement;

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

**Harmonized System (HS)** means the Harmonized Commodity Description and Coding System established by the *International Convention on the Harmonized Description and Coding System* signed at Brussels on 14 June 1983, as amended;

**Joint Committee** means the Joint Committee established in accordance with Article 18.1 (Establishment of the Joint Committee) of Chapter 18 (Institutional Provisions);

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

**natural person of a Party** means:

(i) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007*, as amended from time to time, or any successor legislation or a permanent resident of Australia;

(ii) for Indonesia, a natural person who is Indonesian national as defined in the *Indonesia Law No. 12/2006*, as amended from time to time, or any successor legislation;

**originating good** means qualifying as originating under the rules of origin set out in Chapter 4 (Rules of Origin);

**perishable goods** means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions;

**person** means a natural person or an enterprise;

**regional level of government** means:

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

(ii) for Indonesia, a province of Indonesia, as defined under Indonesian law;

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

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

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

**territory** means:

(i) for Australia:

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

(B) Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereignty, sovereign rights or jurisdiction, as the case may be, in accordance with international law, including the *United Nations Convention on the Law of the Sea*, done at Montego Bay, December 10, 1982;

(ii) for Indonesia, the land territories, internal waters, archipelagic waters, territorial sea, including seabed and subsoil thereof, and airspace over such territories and waters, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction as defined in its laws and in accordance with international law, including the *United Nations Convention on the Law of the Sea*, done at Montego Bay, December 10, 1982;

**WTO** means the World Trade Organization; and

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

## CHAPTER 2

### TRADE IN GOODS

#### **Article 2.1: Definitions**

For the purposes of this Chapter, unless otherwise specified:

**Agreement on Agriculture** means the *Agreement on Agriculture* in Annex 1A to the WTO Agreement;

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

**export subsidy** means a subsidy as defined by Article 3 of the SCM Agreement and includes export subsidies listed in Article 9 of the Agreement on Agriculture; and

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

#### **Article 2.2: Reduction or Elimination of Customs Duties**

1. Except as otherwise provided in this Agreement, each Party shall reduce or eliminate its customs duties on originating goods of the other Party in accordance with its schedule of tariff commitments in Annex 2-A.
2. Except as otherwise provided in this Agreement, neither Party shall apply customs duties on an originating good of the other Party above the rate specified in its schedule of tariff commitments in Annex 2-A.
3. If the most-favoured-nation (hereinafter referred to as "MFN") rate of customs duty applied by a Party on a particular good is lower than the rate of customs duty provided for in its schedule of tariff commitments in Annex 2-A, that Party shall:

- (a) apply the lower rate to the originating good of the other Party; and
- (b) publish changes to the MFN rate on the internet.

### **Article 2.3: Tariff Rate Quotas**

For products in respect of which a Party establishes a Tariff Rate Quota ("TRQ") in its Schedule to Annex 2-A, that Party shall grant tariff preference to imports of such products from the other Party as specified in the Appendix to the first Party's Schedule.

### **Article 2.4: 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 GATT 1994. To this end, Article III of GATT 1994 shall be incorporated into and made part of this Agreement, *mutatis mutandis*.

### **Article 2.5: Customs Valuation**

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

### **Article 2.6: Acceleration or Improvement of Tariff Commitments**

1. On the request of a Party, the other Party shall consult with the requesting Party to consider accelerating or improving its schedule of tariff commitments in Annex 2-A.
2. An agreement between the Parties to accelerate or improve the schedule of tariff commitments in Annex 2-A shall be incorporated into this Agreement in accordance with Article 2 (Amendments) of Chapter 21 (Final Provisions).
3. A Party may at any time unilaterally accelerate or improve its schedule of tariff commitments in Annex 2-A. A Party intending to do so shall inform the other Party before the new schedule of tariff commitments takes effect, or, in any event, as early as practicable. For greater certainty, a Party may raise a customs duty to the level established in its schedule of tariff commitments in Annex 2-A following a temporary unilateral acceleration or improvement.

### **Article 2.7: Elimination of Export Subsidies**

Neither Party shall adopt or maintain any export subsidy on any good destined for the territory of the other Party.

### **Article 2.8: Administrative Fees and Formalities**

1. Article VIII of the GATT 1994 is incorporated into and made part of this agreement, *mutatis mutandis*.
2. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.
3. Each Party shall make publicly available including on the internet where feasible details of the fees and charges that it imposes in connection with importation and exportation.

### **Article 2.9: Duty-Free Entry of Commercial Samples of Negligible Value**

Each Party shall grant duty-free entry to commercial samples of negligible value imported from the territory of the other Party, regardless of their origin, but may require that commercial samples of negligible value be imported solely for the solicitation of orders for goods or services provided from the territory of the other Party or a non-Party and not be imported for commercial sale.

### **Article 2.10: Classification of Goods and Transposition of Schedules of Tariff Commitments**

1. The classification of goods in trade between the Parties shall be in conformity with the Harmonised System and its amendments.
2. The Parties shall mutually decide whether any revisions are necessary to implement Annex 2-A due to periodic amendments and transposition of the HS Code.
3. If the Parties decide that revisions are necessary in accordance with paragraph 2, the transposition of the schedules of tariff commitments shall be carried out in accordance with the methodologies and procedures adopted by the Committee on Trade in Goods. The procedures should, at a minimum, provide for:

(a) the timely circulation by a Party of a draft schedule of tariff commitments in the nomenclature of the revised HS Code accompanied by a two-way transposition setting out at national tariff line level:

(i) a concordance between the draft schedule of tariff commitments in the nomenclature of the revised HS Code and the schedule of tariff commitments in the nomenclature of the then current HS Code; and

(ii) a concordance between the schedule of tariff commitments in the nomenclature of the then current HS Code and the draft schedule of tariff commitments in the nomenclature of the revised HS Code;

(b) the provision of comments by the other Party on the draft schedules circulated in accordance with sub-paragraph (a), and consultations between the Parties, as necessary, with a view to resolving any concerns raised. Consultations shall take place within 60 days of a Party requesting such consultations.

4. Following completion of the transposition process in paragraph 3, the Parties through the Committee on Trade in Goods shall endorse and publish such revisions in a timely manner.

5. Each Party shall ensure that the transposition of its schedule of tariff commitments under paragraph 3 does not afford less favourable treatment to an originating good of the other Party set out in its schedule of tariff commitments in Annex 2-A.

#### **Article 2.11: Committee on Trade in Goods**

1. The Parties hereby establish a Committee on Trade in Goods (“the Committee”) comprising representatives of each Party.

2. The Committee shall meet as necessary to consider any matters arising under this Chapter. The Committee shall meet at least once a year unless agreed otherwise by the Parties.

3. The Committee shall establish a contact point for each Party at a senior level to facilitate communication between the Parties, including to encourage consultation, as early as practicable, on any matter relating to this Chapter or Chapter 3 (Non-Tariff Measures) that creates disruption or may affect trade in goods between the Parties.

4. The Committee's functions shall include, *inter alia*:
- (a) reviewing and monitoring the implementation of this Chapter;
  - (b) promoting trade in goods between the Parties, including consultations on accelerating or improving tariff commitments under this Agreement and other issues as appropriate;
  - (c) addressing barriers to trade in goods between the Parties especially those related to the application of non-tariff measures, and, where appropriate, referring any matters to the Joint Committee for consideration;
  - (d) endorsing the transposition of the schedules of tariff commitments in Annex 2-A in accordance with Article 2.10, and consulting to resolve any conflicts;
  - (e) reviewing and endorsing reports from:
    - (i) the Sub-Committee on Sanitary and Phytosanitary Matters;
    - (ii) the Sub-Committee on Technical Barriers to Trade;
    - (iii) the Sub-Committee on Trade Facilitation; and
    - (iv) the Sub-Committee on Rules of Origin;
  - (f) identifying, reviewing and recommending activities to be submitted to the Committee on Economic Cooperation, including activities proposed by the Sub-Committees referred to in sub-paragraph (e) above; and
  - (g) discussing any other matter arising under this Chapter as agreed by the Parties.

5. The Committee shall consult, as appropriate, with other committees established under this Agreement when addressing issues of relevance to those committees.

6. The Committee shall prepare and submit a report on its work to the Joint Committee annually, or as otherwise agreed by the Parties. In preparing such reports, the Committee shall consult, as appropriate, with the Sub-Committee on Sanitary and Phytosanitary Matters, the Sub-Committee on Technical Barriers to Trade, the Sub-Committee on Trade Facilitation and the Sub-Committee on Rules of Origin.

7. The meetings of the Committee may occur in person, or by any other means as agreed by the Parties.

#### **Article 2.12: Exchange of Data**

1. The Parties recognise the value of trade data in accurately analysing the implementation of the Agreement. The Parties shall cooperate with a view to conducting periodic exchanges of data relating to trade in goods between the Parties. The Committee on Trade in Goods may determine procedures, as appropriate, for any exchanges of data under this paragraph.

2. A Party shall give positive consideration to a request from the other Party for technical assistance for the purposes of exchange of data under paragraph 1.

#### **Article 2.13: Relation to Safeguard Measures Under the WTO Agreement**

1. Nothing in this Agreement shall affect the rights and obligations of the Parties under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.

2. Except as provided in paragraph 3, nothing in this Agreement shall confer any rights or impose any obligations on the Parties with regard to actions taken in accordance with Article XIX of GATT 1994, the Safeguards Agreement or Article 5 of the Agreement on Agriculture.

3. On the request of the other Party, a Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of the notification given to the WTO Committee on Safeguards under Article 12.1(a) of the Safeguards Agreement.

#### **Article 2.14: Antidumping and Countervailing Duties**

Each Party retains its rights and obligations under Article VI of the GATT 1994, the AD Agreement and the SCM Agreement, and nothing in this Agreement shall be construed to confer any additional rights or impose any additional obligations on a Party.

### **Article 2.15: Trade Remedies Dialogue**

1. In order to enhance transparency and mutual understanding on trade remedies including on their respective trade remedies system and practices, the Parties agree to establish a High Level Dialogue.
2. The Parties shall meet at senior officials' level. The first meeting shall be within one year of entry into force of this Agreement and subsequent meetings shall be as agreed by the Parties thereafter.

## CHAPTER 3

### NON-TARIFF MEASURES

#### Article 3.1: General Application

1. Unless otherwise provided, neither Party shall adopt or maintain any non-tariff measure on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations or this Agreement.
2. Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 1 in accordance with Articles 19.2 (Publication) and 19.3 (Provision of Information) of Chapter 19 (Transparency) and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles in trade with the other Party. Any new measure or modification to an existing measure shall be duly notified to the other Party as soon as practicable, but in any event no later than the day the measure takes effect.
3. Each Party shall ensure that its laws, regulations, procedures and administrative rulings relating to non-tariff measures are promptly published, including on the internet where feasible, or otherwise made available in such a manner as to enable the other Party to become acquainted with them.

#### Article 3.2: Mechanism on Non-Tariff Measures

1. If a Party considers that a non-tariff measure of the other Party is an unnecessary obstacle to trade, that Party may nominate such a non-tariff measure for review by the Committee on Trade in Goods by notifying the other Party at least 30 days before the date of the next scheduled meeting of the Committee. A nomination of a non-tariff measure for review shall include reasons for its nomination and, if possible, suggested solutions.
2. Within 360 days of the date of entry into force of this Agreement, the Committee on Trade in Goods shall establish procedures for review of non-tariff measures nominated by either Party. Such review shall include consideration of the commercial significance of the trade impacted by the non-tariff measure, any progress achieved elsewhere, and whether less trade-restrictive alternatives exist. The Parties acknowledge that some non-tariff measures are imposed for legitimate reasons.

3. The Committee on Trade in Goods shall be supported in its review of non-tariff measures by the Sub-Committee on Sanitary and Phytosanitary Matters, Sub-Committee on Technical Barriers to Trade, Sub-Committee on Trade Facilitation and other relevant technical bodies, as appropriate, in accordance with this Agreement.

4. Once it has reviewed the non-tariff measures, the Committee on Trade in Goods shall provide advice to the Joint Committee on any non-tariff measures that should receive priority consideration by the Joint Committee and provide guidance, if possible, on solutions.

5. In accordance with Chapter 15 (Economic Cooperation), the Committee on Trade in Goods shall take into account opportunities relating to non-tariff measures, including capacity building and institutional strengthening programs in its recommendations on possible economic cooperation activities to the Committee on Economic Cooperation.

6. Under certain circumstances, each Party may establish a special contact point to liaise with relevant entities of the other Party in relation to specific non-tariff measures affecting trade between the Parties.

7. Chapter 20 (Consultations and Dispute Settlement) shall not apply to the mechanism under this Article. This Article shall not prejudice the rights of the Parties under Chapter 20 (Consultations and Dispute Settlement) regarding any other provision in this Agreement. This Article shall not affect the interpretation of any other provision in this Agreement.

### **Article 3.3: Quantitative Restrictions**

Unless otherwise provided, neither Party shall adopt or maintain any prohibition or restriction 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 this Agreement. To this end, Article XI of GATT 1994 shall be incorporated into and made part of this Agreement *mutatis mutandis*.

### **Article 3.4: Import Licensing**

1. Each Party shall ensure that all import licensing measures are implemented in a transparent and predictable manner, and applied in accordance with the

*Agreement on Import Licensing Procedures* in Annex 1A to the WTO Agreement (“Import Licensing Agreement”).<sup>5</sup>

2. After the date of entry into force of this Agreement, each Party shall promptly notify the other Party of existing import licensing procedures. Thereafter, each Party shall notify any new import licensing procedures and any modification to its existing import licensing procedures, to the extent possible 60 days before it takes effect, but in any case no later than the effective date of the licensing requirement. The information in any notification under this Article shall be in accordance with Articles 5.2 and 5.3 of the Import Licensing Agreement.

3. On request of the other Party, a Party shall respond to the request of that Party for information on import licensing requirements of general application within 60 days of receiving the request.

4. A Party shall be deemed to be in compliance with the obligations in paragraph 2 with respect to an import licensing procedure if:

(a) with respect to any new or modified import licensing procedure, it has notified that procedure to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement in accordance with Articles 5.1, 5.2 and 5.3 of that Agreement; or

(b) with respect to any existing import licensing procedure, in that Party’s most recent annual submission, due before the date of entry into force of this Agreement, to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement, it has provided, with respect to that procedure, the information requested in that questionnaire.

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<sup>5</sup> In accordance with the WTO Agreements, for live female cattle (HS 0102.29.90), frozen beef (HS 0202.20.00) and sheep meat (HS 0204.41.00; 0204.42.00; 0204.43.00; 0204.50.00), Indonesia shall issue import permits, or equivalent instruments used for import authorisation, automatically and without seasonality.

## CHAPTER 4

### RULES OF ORIGIN

#### Section A: General Provisions

##### Article 4.1: Definitions

For the purposes of this Chapter:

**adjusted value** is:

- (i) the FOB value of the good determined in accordance with the Customs Valuation Agreement, inclusive of the cost of transport and insurance to the port or site of final shipment abroad; or
- (ii) if there is no FOB value of the good or it is unknown and cannot be ascertained, the value determined in accordance with the Customs Valuation Agreement, *mutatis mutandis*;

**aquaculture** means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

**competent governmental authority** means the authority that is responsible for the issuing of a certificate of origin or for the designation of certification entities or bodies. For Indonesia, this refers to the Ministry of Trade, and for Australia, this refers to the Department of Foreign Affairs and Trade;

**exporter** means a person located in an exporting Party who exports a good from the exporting Party in accordance with the applicable laws and regulations of the exporting Party;

**FOB** means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATi 1994 and the Customs Valuation Agreement;

**generally accepted accounting principles** means the recognised consensus or substantial authoritative support in a Party, with respect to the

recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

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

**identical and interchangeable materials** means materials that are fungible as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

**importer** means a person who imports a good into the importing Party in accordance with the applicable laws and regulations of the importing Party;

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

- (i) fuel and energy;
- (ii) tools, dies and moulds;
- (iii) spare parts and materials used in the maintenance of equipment and buildings;
- (iv) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- (v) gloves, glasses, footwear, clothing, safety equipment and supplies,
- (vi) equipment, devices and supplies used for testing or inspecting goods;
- (vii) catalysts and solvents; and
- (viii) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

**Issuing Body** means a certification entity or body designated by the competent governmental authority of the exporting Party to issue the certificates of origin;

**material** means any matter or substance used or consumed in the production of goods or physically incorporated into a good or subjected to a process in the production of another good;

**non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;

**originating material** means a material that qualifies as originating under this Chapter;

**packaging materials and containers for retail sale** means materials or containers in which a good is packaged or presented for its retail sale;

**producer** means a person who grows, mines, raises, harvests, fishes, traps, hunts, farms, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles a good;

**product specific rules** are rules in Annex 4-C that specify that the materials used to produce a good have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a qualifying value content (QVC) criterion; and

**production** means methods of obtaining goods including growing, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling a good.

## **Section B: Originating Goods**

### **Article 4.2: Originating Goods**

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

- (a) is wholly produced or obtained in a Party as provided in Article 4.3;
- (b) is not wholly produced or obtained in a Party provided that the good has satisfied the requirement of Article 4.4;

- (c) is produced in a Party exclusively from originating materials; or
- (d) otherwise qualifies as an originating good under this Chapter, and meets all other applicable requirements of this Chapter.

#### **Article 4.3: Wholly Obtained or Produced Goods**

For the purposes of Article 4.2, a good that is wholly obtained or produced in the territory of a Party means:

- (a) plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked, or gathered there;
- (b) live animals born and raised there;
- (c) goods obtained from live animals there;
- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing there;
- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed there;
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;
- (g) goods produced on board any factory ship registered or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in subparagraph (f);
- (h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which non-parties exercise jurisdiction under exploitation rights granted in accordance with international law;
- (i) goods which are:
  - (i) waste and scrap derived from production or consumption there; provided that such goods are fit only for the recovery of raw materials; or

(ii) used goods collected there; provided that such goods are fit only for the recovery of raw materials; and

(j) goods obtained or produced there solely from products referred to in subparagraphs (a) to (i) or from their derivatives.

#### **Article 4.4: Goods Not Wholly Produced or Obtained**

1. For the purposes of Article 4.2(b) a good is an originating good of a Party if it satisfies the product specific rules set out in Annex 4-C.

2. Where a product specific rule provides a choice of rules from a QVC-based rule of origin, a Change of Tariff Classification (“CTC”) based rule of origin, a specific manufacturing or processing operation each Party shall permit the exporter of the goods to decide which rule to use in determining whether the goods qualify as originating goods of the Party.

3. Where product specific rules specify a certain QVC, the QVC shall be calculated using one of the methods set out in Article 4.5.

4. Where product specific rules requiring that the materials used have undergone CTC or a specific manufacturing or processing operation, the rules shall apply only to non-originating materials.

5. Notwithstanding paragraph 1 of this Article, a good which is covered by Attachment A or B of the Ministerial Declaration on Trade in Information Technology Products adopted in the Ministerial Conference of the WTO on 13 December 1996 shall be deemed to be originating in a Party if it is assembled from materials covered under the same Attachments.

#### **Article 4.5: Calculation of Qualifying Value Content**

For the purposes of Article 4.4, the formula for calculating the qualifying value content (QVC) will be either:

Direct Formula (Build-up Method)

$$QVC = \frac{\text{IA-CEPA material cost} + \text{labour cost} + \text{overhead costs} + \text{profit} + \text{other costs}}{\text{Adjusted Value}} \times 100$$

or

Indirect Formula (Build-down Method)

$$QVC = \frac{\text{Adjusted Value} - \text{Value of Non-Originating Materials}}{\text{Adjusted Value}} \times 100$$

where:

**QVC** is the qualifying value content, expressed as a percentage;

**IA-CEPA material cost** is the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;

**labour costs** are wages, remuneration and other employee benefits associated with the production of the goods;

**overhead costs** are the cost of the following, to the extent that the cost can be attributed to the production of the goods:

- (i) inspection and testing of materials and goods;
- (ii) insurance of plant, equipment and materials;
- (iii) dies, moulds and tooling;
- (iv) depreciation, maintenance and repair of plant and equipment;
- (v) interest payments for plant and equipment;
- (vi) research, development, design and engineering;
- (vii) the following items in relation to real property used for the production of the goods:
  - (A) insurance;
  - (B) rent and lease payments;
  - (C) mortgage interest;
  - (D) depreciation on buildings;
  - (E) maintenance and repair; and
  - (F) rates and taxes;

- (vii) leasing plant and equipment;
- (viii) energy, electricity, water and other utilities;
- (ix) storage of the goods within the place in which the production of the goods occurs;
- (x) royalties or licences for patented machines or processes used in the production of the goods or for the right to produce the goods;
- (xi) disposal of non-recyclable waste; and
- (xii) security within the place in which the production of the goods occurs.

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

**other costs** are costs incurred in placing the goods in a ship or other means of transport for exportation and includes transport costs, storage and warehousing costs, port handling fees, brokerage fees and service charges.

**value of non-originating materials** is the value of the non-originating materials that are acquired and used in the production of the goods, but does not include, as applicable:

- (i) the value of a material that is self-produced;
- (ii) the costs of freight, insurance, packing and all other costs incurred to transport the material to the location of the producer of the good;
- (iii) duties, taxes and customs brokerage fees on the material, paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable;
- (iv) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product;

- (v) the cost of processing incurred in the territory of one or both of the Parties in the production of the non-originating material; and
- (vi) the cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

#### **Article 4.6: Recording of Costs**

For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the Party in which the good is produced.

#### **Article 4.7: Accumulation**

For the purposes of Article 4.2, a good which complies with the origin requirements provided therein and which is used in another Party as a material in the production of another good shall be considered to originate in the Party where working or processing of the finished good has taken place.

#### **Article 4.8: Minimal Operations and Processes**

Where a claim for origin is based solely on a QVC, the operations or processes listed below, undertaken by themselves or in combination with each other, are considered to be minimal and shall not be taken into account in determining whether or not a good is originating:

- (a) ensuring preservation of goods in good condition for the purposes of transport or storage;
- (b) facilitating shipment or transportation;
- (c) packaging or presenting goods for transportation or sale;
- (d) simple processes, consisting of sifting, classifying, washing, and other similar operations;
- (e) affixing of marks, labels or other like distinguishing signs on products or their packaging; and
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

#### **Article 4.9: *De Minimis***

1. A good that does not satisfy a change in tariff classification requirement in accordance with Article 4.4 will nonetheless be an originating good if:

(a) for a good, other than that provided for in Chapters 50 to 63 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the adjusted value of the good; or

(b) for a good provided for in Chapters 50 to 63 of the HS Code, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the adjusted value of the good,

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

2. The value of such materials shall, however, be included in the value of non-originating materials for any applicable QVC requirement.

#### **Article 4.10: Accessories, Spare Parts, Tools and Instructional or Other Information Materials**

The origin of the accessories, spare parts, tools and Instructional or Other Information Materials presented and classified with a good and delivered with the good at the time of importation:

(a) shall be disregarded if the good is subject to a change in tariff classification requirement; and

(b) shall be taken into account as originating or non-originating materials, as the case may be, in calculating the QVC of the good, if the good is subject to a QVC requirement,

provided that:

(c) the accessories, spare parts, tools and Instructional or Other Information Materials are not invoiced separately from the good and are included in the price of the good, regardless of whether they appear specified or separately identified in the invoice itself; and

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

#### **Article 4.11: Identical and Interchangeable Materials**

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

2. The inventory management method used under paragraph 1 for particular identical and interchangeable materials shall continue to be used for that material throughout the fiscal year.

#### **Article 4.12: Packaging Materials and Containers for Retail Sale**

1. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification or a specific manufacturing or processing operation, set out in Annex 4-C.

2. If a good is subject to a QVC requirement, the value of packaging materials and containers described in paragraph 1 shall be taken into account as originating or non-originating materials, as the case may be, in calculating the QVC of the good.

#### **Article 4.13: Packing Materials and Containers for Transportation and Shipment**

1. Packing materials and containers for transportation and shipment shall not be taken into account when determining whether a good is an originating good.

2. For the purposes of paragraph 1, "packing materials and containers for transportation and shipment" means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which the good is packaged for retail sale.

#### **Article 4.14: Indirect Materials**

An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

### **Section C: Territorial Requirements**

#### **Article 4.15: Consignment Criteria**

1. An originating good of a Party shall be deemed to meet the consignment criteria when it is:

- (a) transported directly from that Party; or
- (b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that:
  - (i) it does not undergo operations other than unloading, reloading, unpacking and repacking, labelling, or any other operation to preserve it in good condition;
  - (ii) the good has not entered the commerce of a non-Party, and;
  - (iii) the transit entry can be explained by geographical, economic or logistical reasons.

2. If an originating good of a Party does not meet the consignment criteria referred to in paragraph 1 that good shall not be considered an originating good of that Party.

3. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require importers who claim the preferential tariff treatment for the good to submit appropriate evidence of compliance with paragraph 1, including:

- (a) a copy of a through bill of lading or other contractual transport documents such as bills of lading, packing lists;
- (b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, or;

- (c) any other evidence related to the goods themselves.

#### **Article 4.16: Exhibition Goods**

1. Notwithstanding Article 4.15, an originating good of a Party imported into the other Party after an exhibition in the other Party or a non-Party, shall continue to qualify as an originating good on the condition that the good meets the requirements as set out in Section B (Originating Goods), and provided that it is shown to the satisfaction of the customs administration of the importing Party that:

- (a) an exporter has dispatched the originating good from the territory of the exporting Party to the other Party or non-Party where the exhibition is held and has exhibited it there;
- (b) the exporter has sold the originating good or transferred it to a consignee in the importing Party;
- (c) the originating good has been consigned during the exhibition or immediately thereafter to the importing Party in the state in which it was sent for the exhibition;
- (d) the exhibition is any trade, agriculture or crafts exhibition, fair or similar show or display which is not organised for private purposes in shops or business premises with the view to the sale of foreign goods; and
- (e) the originating good has not entered the commerce of the other Party or non-Party, including where the originating good was exhibited under customs control.

2. For the purposes of implementing paragraph 1, the documentary evidence of origin shall be provided, if required, to the customs administration of the importing Party. The name and address of the exhibition must be indicated thereon. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.

## **Section D: Preferential Tariff Treatment**

### **Article 4.17: Claim for Preferential Tariff Treatment**

1. The importing Party may, in accordance with its laws and regulations, accept a claim for preferential tariff treatment at or after the time of importation of an originating good.
2. In order to claim preferential tariff treatment, the importer shall possess valid documentary evidence of origin. The importing Party may, in accordance with its laws and regulations, require presentation of the documentary evidence of origin at or after the time of importation.
3. An importing Party may require that an importer who presents documentary evidence of origin provides other documents or information to support the claim.

### **Article 4.18: Obligations Relating to Importation**

1. Each Party shall provide that, if the importer has reason to believe that the documentary evidence of origin is based on incorrect information that could affect the accuracy or validity of the documentary evidence of origin, the importer shall correct the importation document in accordance with that Party's laws and regulations, and pay any customs duty and, if applicable, penalties owed.
2. No importing Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim in accordance with that Party's laws and regulations, and pays any applicable customs duty under the circumstances provided for in the Party's law.

### **Article 4.19: Denial of Preferential Tariff Treatment**

1. The customs administration of the importing Party may deny a claim for preferential tariff treatment when:
  - (a) the good does not qualify as an originating good; or
  - (b) the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter.

2. If an importing Party denies a claim for preferential tariff treatment, on request it shall provide advice in writing to the importer that includes the reasons for the denial.

3. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party.

4. A Party shall not reject a claim for preferential tariff treatment due only to minor errors or discrepancies in a documentary evidence of origin.<sup>6</sup>

5. For multiple goods declared under the same documentary evidence of origin, a problem encountered with one of the goods listed shall not affect or delay the granting of preferential tariff treatment and release of the remaining goods listed in the documentary evidence of origin.

#### **Article 4.20: Documentary Evidence of Origin**

1. For the purposes of this Agreement, a documentary evidence of origin is any of:

- (a) a certificate of origin made out in accordance with Annex 4-A;
- (b) a declaration of origin made in accordance with Annex 4-B by an exporter registered or certified by the exporting Party in accordance with its laws and regulations.

2. Subparagraph (b) shall apply only after the exporting Party has notified the importing Party, that it shall implement this subparagraph. Such notification may stipulate that subparagraph (a) shall cease to apply to the exporting Party.

#### **Article 4.21: Exceptions from Documentary Evidence of Origin**

Notwithstanding Article 4.20, neither Party shall require a documentary evidence of origin if:

- (a) the customs value of the importation does not exceed 1000 Australian dollars for Australia, or 200 United States dollars for Indonesia, or any higher amount as the importing Party may establish; or,

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<sup>6</sup> A minor error or discrepancy shall not invalidate a documentary evidence of origin if it is duly established that this document does in fact correspond to the imported goods.

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

provided that the importation does not form part of a series of importations carried out or planned for the purpose of evading compliance with the importing Party's laws governing claims for preferential tariff treatment under this Agreement.

## **Section E: Cooperation on Verification**

### **Article 4.22: Origin Verification**

1. The customs administration of the importing Party may verify the eligibility of a good for preferential tariff treatment in accordance with its laws, regulations and administrative practices by:

- (a) instituting measures to establish the validity of the documentary evidence of origin;

- (b) requesting further information relating to the origin of the good from the relevant importer of a good for which preferential tariff treatment was claimed; or

- (c) issuing written requests to the provider of the documentary evidence of origin for further information relating to the origin of the good and notify such request, preferably by electronic means, to the exporting Party, for Australia the Department of Foreign Affairs and Trade and for Indonesia the Ministry of Trade.

2. A request for information in accordance with paragraph 1(c) shall not preclude the use of the verification visit provided for in Article 4.23.

3. The recipient of a request for information under paragraph 1 shall provide the information requested within a period of 60 days from the date the written request is made.

4. The customs administration of the importing Party shall provide written advice as to whether the goods are eligible for preferential tariff treatment to all the relevant parties within 60 days of receipt of information necessary to make a decision.

#### **Article 4.23: Verification Visit**

1. If the customs administration of the importing Party wishes to undertake a verification visit, it shall issue a written request to the provider of the documentary evidence of origin at least 30 days in advance of the proposed verification visit.
2. The customs administration of the importing Party shall notify the exporting Party of the written request to undertake the verification visit.
3. The written request referred to in paragraphs 1 and 2 shall at a minimum include:
  - (a) the identity of the customs administration issuing the request;
  - (b) the name of the exporter or the producer of the exporting Party whose goods is subject to the verification visit;
  - (c) the date the written request is made;
  - (d) the proposed date and place of the visit;
  - (e) the objective and scope of the proposed visit, including specific reference to the goods subject to the verification;
  - (f) a copy of the documentary evidence of origin; and
  - (g) the names and titles of the officials of the customs administration or other relevant authorities of the importing Party who will participate in the visit.
4. The provider of the documentary evidence of origin, if they are not the exporter or producer, shall notify the exporter or producer of the intended verification visit by the customs administration or other relevant authorities of the importing Party and request the exporter or producer to:
  - (a) permit the customs administration or other relevant authorities of the importing Party to visit their premises or factory; and
  - (b) provide information relating to the origin of the good.
5. The provider of the documentary evidence of origin, if they are not the exporter or producer, shall advise the exporter or producer that, should they fail to respond by a specified date, preferential tariff treatment may be denied.

6. The provider of the documentary evidence of origin shall advise the customs administration of the importing Party within 30 days of the date of the written request from the customs administration of the importing Party whether the exporter or producer has agreed to the request for a verification visit.

7. The customs administration of the importing Party shall not visit the premises or factory of any exporter or producer in the territory of the exporting Party without written prior consent from the exporter or producer.

8. The customs administration of the importing Party shall complete any action to verify eligibility for preferential tariff treatment and make a decision within 150 days of the date of the request to the provider of the documentary evidence of origin under paragraph 1, provided that all information necessary to make a decision has been provided. The customs administration of the importing Party shall provide written advice as to whether goods are eligible for preferential tariff treatment to the relevant parties within 20 days of the decision being made.

## **Section F: Final Provisions**

### **Article 4.24: Goods in Transport or Storage**

In accordance with Article 4.17, the customs administration of the importing Party shall grant preferential tariff treatment for an originating good of the exporting Party which, on the date of entry into force of this Agreement:

- (a) and subject to the laws and regulations of the importing Party, has not entered the commerce of the Party, including an originating good stored in a warehouse under Customs control; or
- (b) is in the process of being transported from the exporting Party to the importing Party.

### **Article 4.25: Review and Appeal**

The importing Party shall grant the rights of review and appeal in matters relating to the determination of origin under this Chapter in accordance with Article 5.8 (Review and Appeal) of Chapter 5 (Customs Procedures).

#### **Article 4.26: Record Keeping**

1. Each Party shall require that:
  - (a) an exporter shall maintain for not less than five years from the date of exportation, or for such longer period as the law of the exporting Party may provide, all records relating to the origin of a good for which preferential tariff treatment is claimed in the importing Party, including the documentary evidence of origin relevant to the good, or a copy thereof; and
  - (b) an importer claiming preferential tariff treatment shall maintain, for not less than five years after the date of importation of a good, all records relating to the importation of the good, including the documentary evidence of origin relevant to the good, or a copy thereof.
2. A person who certifies origin shall maintain for not less than three years from the date of issuance all records necessary to demonstrate that the good is originating.
3. Such records may be in electronic form.

#### **Article 4.27: Confidentiality**

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

#### **Article 4.28: Sub-Committee on Rules of Origin**

1. For the purposes of the effective and uniform implementation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (ROO Sub-Committee).
2. The ROO Sub-Committee shall consist of government representatives of the Parties. It shall meet at the formal request of either of the Parties.
3. The functions of the ROO Sub-Committee shall include:
  - (a) monitoring the implementation and administration of this Chapter;
  - (b) discussion of any issue that may have arisen in the course of implementation, including any matters that may have been referred to the

ROO Sub-Committee by the Goods Committee established in accordance with Article 2.11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) or the Joint Committee;

(c) discussion of any proposed modifications of the rules of origin under this Chapter and Annex 4-C;

(d) consultation on issues relating to rules of origin and administrative cooperation; and

(e) prior to the entry into force of an amended version of the Harmonized System, consultation to prepare updates to this Chapter and Annex 4-C to this Agreement that are necessary to reflect changes to the Harmonized System.

4. The Sub-Committee may recommend economic cooperation activities to the Economic Cooperation Committee to ensure the effective implementation of this Agreement, and to enable the Parties to meet their international obligations.

## **ANNEX 4-A**

### **PROCEDURES FOR ISSUING CERTIFICATES OF ORIGIN**

For the purpose of implementing this Chapter, the following operational procedures on the issuance of Certificates of Origin and other related administrative matters shall be observed by each Party.

#### **Issuing Bodies**

##### **Rule 1**

The Certificate of Origin shall be issued by an Issuing Body of the exporting Party. Details of the Issuing Bodies shall be notified by each Party to the other Party, prior to the entry into force of this Agreement. Any subsequent changes shall be promptly notified by each Party to the other Party.

##### **Rule 2**

1. Each Party shall provide the names, addresses, specimen signatures and specimens of the impressions of official seals of their respective Issuing Bodies to the customs administration of the other Party. Any subsequent changes shall be promptly notified to the customs administration of the other Party.

2. Any Certificate of Origin issued by a person not included in the list may not be honoured by the customs administration of the importing Party.

##### **Rule 3**

For the purpose of determining originating status, the Issuing Bodies shall have the right to call for supporting documentary evidence or other relevant information to carry out any check considered appropriate in accordance with respective domestic laws, regulations and administrative practices.

## Applications

### Rule 4

1. The manufacturer, producer, or exporter of the good or its authorised representative shall apply in writing or by electronic means to an Issuing Body, in accordance with the laws and regulations of the exporting Party and the procedures of the Issuing Body's procedures, requesting a pre-exportation examination of the origin of the good to be exported.
2. The result of the examination, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in issuing a Certificate of Origin for the good to be exported thereafter.
3. Pre-exportation examination need not apply to a good for which, by its nature, origin can be easily determined.

### Rule 5

The manufacturer, producer, or exporter of the good or its authorised representative shall apply for the Certificate of Origin by providing appropriate supporting documents and other relevant information, proving that the good to be exported qualifies as originating.

## Pre-Exportation Examination

### Rule 6

The Issuing Body shall, to the best of its competence and ability, carry out proper examination, in accordance with the laws and regulations of the exporting Party or the procedures of the Issuing Body, upon each application for the Certificate of Origin to ensure that:

- (a) the application and the Certificate of Origin are duly completed and signed by the authorised signatory;
- (b) the good is an originating good in accordance with Article 4.2;
- (c) other statements in the Certificate of Origin correspond to appropriate supporting documents and other relevant information; and

- (c) information in the List of Data Requirements is provided for the goods being exported.

### **Issuance of Certificate of Origin**

#### **Rule 7**

1. The format of the Certificate of Origin is to be determined by the Parties and shall contain the data requirements listed in the List of Data Requirements in Appendix 4-A.1.
2. The Certificate of Origin shall comprise one (1) original and two (2) copies.
3. The Certificate of Origin shall:
  - (a) be in hardcopy;
  - (b) bear a unique reference number separately given by each place or office of issuance;
  - (c) be in the English language; and
  - (d) bear an authorised signature and official seal of the Issuing Body. The signature and official seal may be applied electronically.
4. The original Certificate of Origin shall be forwarded by the exporter to the importer for submission to the customs administration of the importing Party. Copies shall be retained by the Issuing Body and the exporter.
5. Multiple goods declared on the same Certificate of Origin shall be allowed, provided that each good is originating in its own right.

#### **Rule 8**

To implement Article 4.2, the Certificate of Origin issued by the Issuing Body shall specify the relevant origin conferring criteria.

## **Rule 9**

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the erroneous material and making any addition required. Such alterations shall be approved by a person authorised to sign the Certificate of Origin and certified by the appropriate Issuing Body. Unused spaces shall be crossed out to prevent any subsequent addition.

## **Rule 10**

1. The Certificate of Origin shall be issued as near as possible to, but no later than three (3) working days after, the date of exportation.
2. Where a Certificate of Origin has not been issued as provided for in paragraph 1 due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively, but no longer than 12 months from the date of exportation, bearing the words "ISSUED RETROACTIVELY".

## **Rule 11**

In the event of theft, loss or destruction of a Certificate of Origin, the manufacturer, producer, exporter or its authorised representative may apply to the Issuing Body for a certified true copy of the original Certificate of Origin. The copy shall be made on the basis of the export documents in their possession and bear the words "CERTIFIED TRUE COPY". This copy shall bear the date of issuance of the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued no longer than 12 months from the date of issuance of the original Certificate of Origin.

## **Presentation**

## **Rule 12**

The following time limits for the presentation of the Certificate of Origin shall be observed:

- (a) the Certificate of Origin shall be valid for a period of 12 months from the date of issue and shall be submitted to the customs administration of the importing Party within that period;

(b) where the Certificate of Origin is submitted to the customs administration of the importing Party after the expiration of the time limit for its submission, such Certificate of Origin shall still be accepted, subject to the importing Party's laws, regulations or administrative practices, when failure to observe the time limit results from *force majeure* or other valid causes beyond the control of the importer or exporter; and

(c) the customs administration of the importing Party may accept such Certificate of Origin, provided that the goods have been imported before the expiration of the time limit of that Certificate of Origin.

## APPENDIX 4-A.1

### List of Data Requirements

1. Exporter details	The name and address and contact details of the exporter
2. Shipment details (a Certificate of Origin can only apply to a single shipment of goods)	(a) consignee name and address  (b) sufficient details to identify the consignment, such as importer's purchase order number, invoice number and date and Air Way Bill or Sea Way Bill or Bill of Lading  (c) Port of Discharge, if known
3. Full description of goods	(a) detailed description of the goods, including HS Code (6-digit level), and if applicable, product number and brand name  (b) the relevant origin conferring criteria  (c) Adjusted Value when the QVC origin criteria is used
4. Certification by Issuing Body	Certification by the Issuing Body that the goods specified in the Certificate of Origin meet all the relevant requirements of Chapter 4 (Rules of Origin) based on the evidence provided
5. Certificate of Origin number	A unique number assigned to the Certificate of Origin by the Issuing Body

## ANNEX 4-B

### PROCEDURES FOR MAKING DECLARATIONS OF ORIGIN

1. A declaration of origin may be made if the products originate under this Agreement.
2. Subject to Article 4.26, an exporter making a Declaration of Origin shall, on request of the customs administration of either Party, submit records as evidence of the originating status of the products concerned.
3. A Declaration of Origin shall be made on the invoice, the delivery note or any other commercial documents which describe the products concerned in sufficient detail to enable them to be identified, by typing, stamping or legibly printing on that document the following declaration:

“The exporter of the products covered by this document declares that, where clearly indicated, these products are of Australian / Indonesian preferential origin and meet the requirements of Chapter 4 (Rules of Origin) of the IA-CEPA.”

4. A Declaration of Origin:
  - (a) need not follow a prescribed format;
  - (b) shall clearly indicate for each originating good the 6 digit HS Code, and the relevant origin criteria that is met, being either:
    - (i) WO, meaning the good is wholly obtained or produced;
    - (ii) PE, meaning the good is produced exclusively from originating materials;
    - (iii) CTC, meaning the good meets the relevant change in tariff classification rule for its 6 digit HS Code as set out in Annex 4-C;
    - (iv) QVC, meaning the good meets the relevant qualifying value content rule for its 6 digit HS Code as set out in Annex 4-C; or
    - (v) SP, meaning the good meets a specific process rule (such as a chemical reaction or processing rule) for its 6 digit HS Code as set out in Annex 4-C;

- (c) shall bear:
  - (i) the signature of the declarant or the company seal or stamp for non-natural persons;
  - (ii) the name and contact details of the exporter;
  - (iii) the unique number identifying the exporter as an exporter entitled to make a declaration under Article 4.20; and
  - (iv) the date the declaration was made;
- (d) may be made after exportation. To the extent permitted by the laws and regulations of the importing Party, it may be presented after the entry of the goods into the territory;
- (e) shall be submitted electronically or in original hardcopy if requested by the importing Party;
- (f) shall apply to a single importation of an originating good of the exporting Party into the importing Party;
- (g) shall be valid for 12 months after the date that it was made or for a longer period specified by the laws and regulations of the importing Party;
- (h) shall be submitted in English; and
- (i) shall have no erasures or superimpositions, and shall have any alteration made by striking out the erroneous material and making any addition required. Such alteration shall be initialled by the declarant.

**CHAPTER 5**  
**CUSTOMS PROCEDURES**

**Article 5.1: Definitions**

For the purposes of this Chapter:

**customs law** means such laws and regulations administered and enforced by the customs administration of each Party concerning the importation, exportation, and transit/transshipment of goods;

**customs procedures** means the treatment applied by the customs administration of a Party to goods which are subject to that Party's customs law; and

**temporary admission** means customs procedures under which certain goods (including means of transport) can be brought into a Party's territory conditionally relieved, totally or partially, from payment of import duties and taxes and without application of import prohibitions or restrictions of an economic character; such goods (including means of transport) must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

**Article 5.2: Objectives**

The objectives of this Chapter are to:

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

### **Article 5.3: Scope**

This Chapter shall apply, in accordance with the respective laws and regulations of the Parties, to customs procedures applied to goods traded between the Parties.

### **Article 5.4: Customs Procedures and Trade Facilitation**

1. Each Party shall ensure that its customs procedures and practices are administered to:

(a) facilitate trade in a predictable, impartial, uniform and transparent manner, including through the expeditious clearance of goods; and

(b) avoid arbitrary and unwarranted procedural obstacles.

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

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

### **Article 5.5: Customs Cooperation**

1. The customs administration of each Party shall endeavour to assist the customs administration of the other Party, in relation to the implementation and operation of this Chapter and other customs matters as the Parties may agree.

2. Each Party shall endeavour to provide the customs administration of the other Party with timely notice of any significant modification of its customs laws or customs procedures that is likely to substantially affect the operation of this Agreement.

3. The Parties shall encourage their customs administrations to consult with each other regarding significant customs issues that affect trade between the Parties.

4. The customs administrations of the Parties shall endeavour to establish or maintain channels of communication for customs cooperation, including by establishing contact points, in order to facilitate the rapid and secure exchange of information and improve coordination on importation issues.

## **Article 5.6: Publication and Enquiry Points**

1. Each Party shall make publicly available, including online, its customs laws, regulations and general administrative procedures applied or enforced by its customs administration, not including law enforcement procedures and internal operational guidelines.
2. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters and shall make information on how to make such enquiries publicly available online. Such customs matters shall include but not be limited to:
  - (a) the application of duty drawback, deferral or other types of relief that reduce, refund or waive customs duties;
  - (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
  - (c) rules for the classification or valuation of products for customs purposes;
  - (d) penalty provisions for breaches of import, export or transit formalities; and
  - (e) procedures for appeal or review.
3. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall provide interested persons the opportunity to and a reasonable period of time in which to comment on the proposed introduction or amendment of customs laws and procedures.

## **Article 5.7: Advance Ruling**

1. Each Party, through its customs administration or other relevant authorities, on the application of a person described in paragraph 2(a) or 2(b), shall provide in writing advance rulings in respect of:
  - (a) tariff classification;
  - (b) questions arising from the application of the principles of the Customs Valuation Agreement, and;
  - (c) origin of goods.

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

- (a) provide that an importer in its territory may apply for an advance ruling before the importation of the goods in question;
- (b) provide that an exporter or producer in the territory of the other Party may apply for an advance ruling before the importation of the goods in question;
- (c) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an application for an advance ruling;
- (d) provide that its customs administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;
- (e) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker;
- (f) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in the laws, regulations or administrative determinations of each Party; and
- (g) provide in writing the reasons for the decision.

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

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

5. A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law (including human error), the information provided is false or inaccurate, if there is a change in its laws and regulations which is consistent with this Agreement, or there is a change in a material fact or circumstance on which the ruling is based.

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

7. Each of the provisions of paragraphs 1 and 2 shall only apply between the Parties, when a Party has the capacity to implement that provision, and when provided for under the laws and regulations of that Party.

#### **Article 5.8: Review and Appeal**

1. Each Party shall ensure that any person to whom it issues a decision on a customs matter has access, within its territory, to:

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

2. Each Party shall ensure that the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

#### **Article 5.9: Penalties**

1. Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs law.

2. Each Party shall ensure that a penalty imposed by its customs administration for a breach of customs law is imposed only on the person legally responsible for the breach.

3. Each Party shall ensure that the penalty imposed by its customs administration is dependent on the facts and circumstances<sup>7</sup> of the case and is commensurate with the degree and severity of the breach.

4. Each Party shall ensure that if a penalty is imposed by its customs administration for a breach of customs law, an explanation in writing is provided to

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<sup>7</sup> Facts and circumstances shall be established objectively in accordance with each Party's laws and regulations.

the person upon whom the penalty is imposed specifying the nature of the breach and the law used for determining the penalty.

#### **Article 5.10: Risk Management**

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk goods and that simplifies the clearance and movement of low-risk goods.
2. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

#### **Article 5.11: Release of Goods**

1. In order to facilitate bilateral trade, each Party shall adopt or maintain simplified customs procedures for the efficient release of goods. This paragraph shall not require a Party to release a good if its requirements for release have not been met.
2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:
  - (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws;
  - (b) provide for customs information to be submitted and processed in electronic format as appropriate, before the goods arrive in order to expedite the release of goods from customs control upon arrival;
  - (c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and
  - (d) allow the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.
3. As a condition for such release, a Party may require:
  - (a) payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined

in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations; or

(b) a guarantee in the form of a surety, a deposit or other appropriate instrument provided for in its laws and regulations.

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

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

(b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled.

#### **Article 5.12: Temporary Admission of Goods**

1. Each Party shall allow temporary admission as provided for in its laws and regulations, and grant duty-free temporary admission for goods including, but not limited to, the following, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry in accordance with the laws and regulations of the importing Party;

(b) goods intended for display or demonstration;

(c) commercial samples;

(d) goods admitted for sports purposes;

(e) goods admitted for repair or alteration from the territory of the other Party<sup>8</sup>; and

(f) containers, pallets and packing material, that are in use or to be used in the international transportation of goods.

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<sup>8</sup> For the purposes of this Article, "repair or alteration" does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

2. Each Party shall, on request of the person concerned and for reasons its customs administration considers valid, extend the time limit for temporary admission beyond the period initially fixed.

3. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than the port through which it was admitted.

4. Each Party shall, in accordance with its laws and regulations, provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good was destroyed within the period fixed for temporary admission, including any lawful extension.

#### **Article 5.13: Information Technology**

1. Each Party shall apply information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within relevant international organisations, including the World Customs Organization.

2. The customs administration of each Party shall endeavour to establish as soon as practicable an electronic means for communication of relevant information required by it and other relevant, trade-related agencies to facilitate the international movement of goods and means of transport.

3. The introduction and enhancement of information technology shall, to the greatest extent possible, be carried out in consultation with relevant parties, including businesses directly affected.

#### **Article 5.14: Confidentiality**

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

(a) be contrary to the public interest as determined by its laws and regulations;

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

(c) impede law enforcement; or

(d) prejudice legitimate commercial interests, which may include competitive position, of particular enterprises, public or private.

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

## CHAPTER 6

### TRADE FACILITATION

#### Article 6.1: Definitions

For the purposes of this Chapter:

**Trade Facilitation Agreement** means the *Agreement on Trade Facilitation* in Annex 1A to the WTO Agreement.

#### Article 6.2: Objectives

The objectives of this Chapter are to:

- (a) expedite the movement, release and clearance of goods, including goods in transit; and
- (b) provide for effective cooperation so as to support the Parties in acquiring capacity to implement trade facilitative measures, including those provided under the Trade Facilitation Agreement.

#### Article 6.3: Scope

This Chapter shall apply to trade in goods between the Parties and shall be implemented in accordance with the Parties' respective laws and regulations.

#### Article 6.4: Publication and Enquiry Points

1. Each Party shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

- (a) procedures relating to the administration of tariff quotas;
- (b) country of origin marking, if it is a prerequisite for importation;
- (c) the eligibility requirements for goods re-entered after repair and alteration;

- (d) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;
- (e) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (f) laws, regulations, and administrative rulings of general application relating to rules of origin;
- (g) import, export or transit restrictions or prohibitions; and
- (h) procedures for appeal or review.

2. Each Party shall, within its available resources, establish or maintain one or more enquiry points to expeditiously provide advice or information to answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1, and to provide the required forms and documents referred to in paragraph 1(d) preferably through electronic means.

#### **Article 6.5: Perishable Goods**

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

- (a) under normal circumstances within the shortest possible time; and
- (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

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

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

4. In cases of significant delay in the release of perishable goods, and upon written request, the importing Party shall, to the extent practicable, provide a communication on the reasons for the delay.

#### **Article 6.6: Acceptance of Copies**

1. Each Party shall, where appropriate, accept paper or electronic copies of supporting documents required for import, export or transit formalities.

2. Where a government agency of a Party already holds the original of such a document, any other agency of that Party shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

3. A Party shall not require an original or copy of export declarations submitted to the customs administrations of the exporting Party as a requirement for importation. Nothing in this paragraph precludes a Party from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

#### **Article 6.7: Support for Trade Facilitation**

In order to expedite the movement, release and clearance of goods, and to provide for effective cooperation in acquiring capacity to implement on trade facilitative measures, the Parties agree that:

(a) all provisions of this Chapter shall apply between the Parties 90 days after the date of entry into force of this Agreement unless a Party notifies the other Party that it currently lacks the capacity to implement a provision of this Chapter. Such notification shall be made through diplomatic channels within 90 days of the date of entry into force of this Agreement. A provision notified in this way shall not apply between the Parties until such notification is revoked;

(b) the Committee on Trade in Goods established under Article 2.11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) shall consider any assistance required for the Parties to acquire the capacity to implement the notified provisions and keep under review the implementation capacity of the Parties at each meeting; and

(c) the Committee on Trade in Goods may decide to revoke a notification under subparagraph (a) with respect to a provision of this Chapter. Where a

notification is revoked the relevant provision shall apply between the Parties, from a date agreed between the Parties.

**Article 6.8: Trade Facilitation Sub-Committee**

1. For the purposes of the effective implementation and operation of this Agreement relating to matters within the scope of this Chapter, the Parties hereby establish a Sub-Committee on Trade Facilitation (the Trade Facilitation Sub-Committee).
2. The functions of the Trade Facilitation Sub-Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Agreement relating to matters within the scope of this Chapter;
  - (b) identifying areas relating to matters within the scope of this Chapter to be improved to facilitate trade between the Parties;
  - (c) recommending economic cooperation activities relating to matters within the scope of this Chapter to the Committee on Trade in Goods;
  - (d) reporting the findings of the Trade Facilitation Sub-Committee to the Committee on Trade in Goods; and
  - (e) carrying out other functions as may be delegated by the Committee on Trade in Goods.
3. The Trade Facilitation Sub-Committee shall be composed of and co-chaired by representatives of the governments of the Parties.
4. The Trade Facilitation Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

## CHAPTER 7

### SANITARY AND PHYTOSANITARY MEASURES

#### Article 7.1: Definitions

For the purposes of this Chapter:

**competent authorities** mean those authorities within each Party recognised by the national government as responsible for developing and administering sanitary and phytosanitary measures within that Party;

**international standards, guidelines and recommendations** shall have the same meaning as set out in paragraph 3 of Annex A to the SPS Agreement; and

**sanitary or phytosanitary measure** shall have the same meaning as set out in paragraph 1 of Annex A to the SPS Agreement.

#### Article 7.2: Objectives

The objectives of this Chapter are to:

- (a) protect human, animal or plant life or health in the territory of each Party while facilitating bilateral trade;
- (b) provide greater transparency in and deepen understanding of the application of each Party's laws, regulations and procedures relating to sanitary and phytosanitary measures;
- (c) strengthen communication, consultation and cooperation between the Parties and particularly between the Parties' competent authorities which are responsible for matters covered by this Chapter; and
- (d) enhance practical implementation of the principles and disciplines contained within the SPS Agreement.

#### Article 7.3: Scope

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

#### **Article 7.4: General Provisions**

1. Each Party affirms its rights and obligations with respect to each other under the SPS Agreement.
2. The Parties commit to apply the principles of the SPS Agreement in the development, application or recognition of any sanitary or phytosanitary measures with the intent to facilitate trade between them, while protecting human, animal or plant life or health in the territory of each Party. The Parties also recognise the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific evidence in accordance with the SPS Agreement.

#### **Article 7.5: Equivalence**

1. The Parties recognise that the principle of equivalence as provided for under Article 4 of the SPS Agreement, has mutual benefits for both exporting and importing countries.
2. The Parties shall follow the procedures for determining the equivalence of SPS measures and standards developed by the WTO SPS Committee and relevant international standard setting bodies in accordance with Annex A of the SPS Agreement, as amended from time to time.
3. Compliance by an exported product that has been accepted as equivalent to SPS measures and standards of the importing Party shall not remove the need for that product to comply with any other relevant mandatory requirements of the importing Party.

#### **Article 7.6: Adaptation to Regional Conditions**

1. The Parties recognise that adaptation to regional conditions including regionalisation, zoning and compartmentalisation is an important means to facilitate trade. To that end, each Party shall take into account, as appropriate, relevant guidelines, standards and recommendations, developed by the WTO SPS Committee and other relevant international standard setting bodies, in accordance with Annex A of the SPS Agreement.
2. The Parties shall give positive consideration to cooperation on matters relating to the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence in accordance with Article 6 of the SPS Agreement with the objective of acquiring confidence in the procedures followed by each Party for the

recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.

#### **Article 7.7: Competent Authorities and Contact Points**

1. Each Party shall provide the other Party with a description of its competent authorities and their division of responsibilities.
2. Each Party shall provide the other Party with a contact point to facilitate distribution of requests or notifications made in accordance with this Chapter.
3. Each Party shall ensure the information provided under paragraphs 1 and 2 is kept up to date.

#### **Article 7.8: Transparency and Notification**

1. The Parties recognise the value of transparency in the adoption and application of sanitary and phytosanitary measures, including through the sharing of information about their respective sanitary and phytosanitary measures.
2. Each Party shall notify changes to its sanitary and phytosanitary measures, including the development and adoption of a regulation, in accordance with Annex B of the SPS Agreement and relevant decisions of the WTO SPS Committee by using the WTO SPS notification submission system as a means of notifying the other Party at an early stage, allowing comments from the other Party in writing, discussing these comments on request of the other Party, and taking the comments and results of the discussion into account.
3. A Party shall normally allow at least 60 days for the other Party to provide written comments on the proposed measure after it makes the notification under paragraph 2. If feasible and appropriate, the notifying Party should allow more than 60 days. The notifying Party shall consider any reasonable request from the other Party to extend the comment period. On request of the other Party, the notifying Party shall respond to the written comments of the other Party in an appropriate manner.
4. The Parties recognise that paragraphs 2 and 3 are subject to the flexibilities for notification provided in Annex B of the SPS Agreement, including in cases where urgent problems of human, animal or plant life or health protection arise or threaten to arise for a Party.

### **Article 7.9: Cooperation**

1. Each Party shall explore opportunities for further cooperation, collaboration and information exchange with the other Party on sanitary and phytosanitary matters of mutual interest in accordance with the objectives of this Chapter.
2. In relation to paragraph 1, each Party shall endeavour to coordinate with regional or multilateral work programmes with the objective of avoiding unnecessary duplication and to maximise the benefits from the application of resources.
3. The Parties agree to further explore how they can strengthen cooperation on the provision of technical assistance especially in relation to trade facilitation.

### **Article 7.10: Technical Consultations**

1. If a Party considers that there is a disruption to trade on sanitary and phytosanitary grounds, it may request technical consultations with the other Party on an urgent basis with a view to facilitating trade.
2. On receiving a request under paragraph 1, the other Party shall promptly provide any requested information and respond to questions pertaining to the matter, and if requested, enter into consultations within 30 days of receiving such a request. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations within 60 days of receiving a request for consultations, or a timeline agreed upon by the Parties.

### **Article 7.11: SPS Sub-Committee**

1. The Parties hereby agree to establish a Sub-Committee on Sanitary and Phytosanitary Matters (SPS Sub-Committee), consisting of representatives from the relevant government agencies of each Party.
2. The SPS Sub-Committee shall meet within one year of the date of entry into force of this Agreement and annually thereafter, unless the Parties otherwise agree.
3. The SPS Sub-Committee may set up subsidiary working groups, as agreed between the Parties.
4. The SPS Sub-Committee shall agree its terms of reference and the terms of reference of subsidiary working groups established under paragraph 3 as soon as possible after the date of entry into force of this Agreement, but no later than the

conclusion of the first meeting of the SPS Sub-Committee. The terms of reference may be amended at any time by written agreement of the Parties.

5. The SPS Sub-Committee shall review the progress made by the Parties in implementing their commitments under this Chapter.

6. The SPS Sub-Committee may consider proposals for technical cooperation activities on sanitary and phytosanitary matters and perform any other function set out in its terms of reference in accordance with paragraph 4, unless the Parties otherwise agree.

7. Subsidiary working groups may meet to make decisions bilaterally implementing the commitments under this Chapter relating to agriculture, food, fisheries, forestry, and sanitary and phytosanitary policy matters and measures. Each working group shall provide to the SPS Sub-Committee updates on the status of their work.

8. Decisions and records of meetings held under this Article shall be agreed by the Parties. Meetings may occur in person, by teleconference, by video conference, or through any other means as mutually determined by the Parties.

9. The SPS Sub-Committee shall report to the Committee on Trade in Goods or a subsidiary body established by it.

#### **Article 7.12: Non-Application of Chapter 20 (Consultations and Dispute Settlement)**

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

## CHAPTER 8

### TECHNICAL BARRIERS TO TRADE

#### Article 8.1: Definitions

For the purposes of this Chapter, the definitions provided for under Annex 1 to the *Agreement on Technical Barriers to Trade* (TBT Agreement) in Annex 1A to the WTO Agreement shall apply.

#### Article 8.2: Objectives

The objectives of this Chapter are to facilitate trade in goods between the Parties by:

- (a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;
- (b) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;
- (c) strengthening information exchange and cooperation between the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;
- (d) strengthening cooperation between the Parties in the work of international bodies related to standardisation and conformity assessments; and
- (e) providing a framework to implement supporting mechanisms to realise these objectives.

#### Article 8.3: Scope

1. For the mutual benefit of the Parties, this Chapter applies to all standards, technical regulations and conformity assessment procedures of the central level of government bodies that may affect trade in goods between the Parties, except:

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

(b) sanitary or phytosanitary measures as defined in Chapter 7 (Sanitary and Phytosanitary Measures).

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by local government and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

3. Nothing in this Chapter shall limit the right of a Party to prepare, adopt and apply standards, technical regulations and conformity assessment procedures only to the extent necessary to fulfil a legitimate objective. Such legitimate objectives are, *inter alia*, national security requirements; the prevention of deceptive practices; protection of human health or safety; animal or plant life or health; or the environment.

#### **Article 8.4: Affirmation of the TBT Agreement**

Each Party affirms its rights and obligations with respect to each other under the TBT Agreement.

#### **Article 8.5: Standards**

1. With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies accept and comply with Annex 3 to the TBT Agreement.

2. Each Party shall encourage the standardising body or bodies in its territory to cooperate with the standardising body or bodies of other Parties. Such cooperation shall include, but is not limited to:

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

## **Article 8.6: Technical Regulations**

1. Where relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.
2. Each Party shall give positive consideration to accepting as equivalent, technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its own regulations.
3. If a Party does not accept a technical regulation of another Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.

## **Article 8.7: Conformity Assessment Procedures**

1. Each Party shall give positive consideration to accepting the results of conformity assessment procedures of the other Party, even if those procedures differ from its own, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.
2. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party with a view to increasing efficiency, avoiding duplication and ensuring cost effectiveness of the conformity assessments. In this regard, each Party may choose, depending on the situation of that Party and the specific sectors involved, a broad range of approaches. These may include but are not limited to:
  - (a) recognition by a Party of the results of conformity assessments performed in the territory of the other Party;
  - (b) recognition of cooperative arrangements between accreditation bodies in the territory of each Party;
  - (c) mutual recognition of conformity assessment procedures conducted by bodies located in the territory of the other Party;
  - (d) use of existing regional and international multilateral recognition agreements and arrangements;

(e) designating conformity assessment bodies located in the territory of the other Party to perform conformity assessment; and

(f) suppliers' declaration of conformity, where present and future opportunities arise as appropriate.

3. Each Party shall exchange information with the other Party on its experience in the development and application of the approaches in paragraph 2(a) to (f) and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, on request of the other Party, explain its reasons for not accepting the results of any conformity assessment procedures performed in the territory of that other Party.

#### **Article 8.8: Cooperation**

1. The Parties shall intensify their joint efforts in the field of standards, technical regulations and conformity assessment procedures with a view to facilitating access to each other's markets.

2. Each Party shall, on request of the other Party, give positive consideration to proposals to supplement existing cooperation on standards, technical regulations and conformity assessment procedures. Such cooperation, which shall be on mutually determined terms and conditions, may include but is not limited to:

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

(b) cooperation between conformity assessment bodies, both governmental and non-governmental, in the territories of each Party such as:

(i) use of accreditation to qualify conformity assessment bodies; and

(ii) enhancing infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;

(c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of

standards and conformity assessment procedures such as enhancing participation in the existing frameworks for mutual recognition developed by relevant regional and international bodies; and

(d) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures such as:

(i) cooperation in the development and promotion of good regulatory practice;

(ii) transparency, including ways to promote improved access to information on standards, technical regulations and conformity assessment procedures; and

(iii) management of risks relating to health, safety, the environment and deceptive practices.

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

#### **Article 8.9: Consultations**

1. Each Party shall give prompt and positive consideration to any request from the other Party for consultations on issues relating to the implementation of this Chapter.

2. Where a matter covered under this Chapter cannot be clarified or resolved as a result of consultations, the Parties shall refer it to the Sub-Committee on Technical Barriers to Trade (TBT Sub-Committee) to identify a workable and practical solution to facilitate trade.

#### **Article 8.10: Agreements or Implementing Arrangements**

1. The Parties shall seek to identify trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors.

2. Such trade-facilitating initiatives may include agreements or implementing arrangements on regulatory issues, such as alignment of standards, convergence or equivalence of technical regulations, conformity assessment procedures and compliance issues.

3. A Party which is party to an existing agreement or implementing arrangement shall give consideration to extending such an agreement or implementing arrangement to the other Party on request of that Party. Such consideration may be subject to appropriate confidence building processes to ensure equivalency of relevant standards, technical regulations or conformity assessment procedures.

4. If a Party declines a request of the other Party to consider extending the application of an existing agreement or implementing arrangement it shall, on request of that Party, explain the reasons for its decision.

#### **Article 8.11: Transparency**

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

2. Each Party shall ensure that the information relating to standards, technical regulations and conformity assessment procedures is published. Such information should be made available in electronic form and, where possible, in printed form.

#### **Article 8.12: Contact Points**

1. The Parties shall designate a contact point or contact points who shall have responsibility for coordinating the implementation of this Chapter.

2. The Parties shall provide each other with the name of the designated contact point or contact points and the contact details of the relevant official in that organisation, including telephone, facsimile, email and any other relevant details.

3. The Parties shall notify each other promptly of any change of their contact points or any amendments to the details of the relevant officials.

4. The Parties shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party.

#### **Article 8.13: TBT Sub-Committee**

1. The Parties hereby establish a Sub-Committee on TBT (TBT Sub-Committee), consisting of representatives of the Parties, to promote and monitor the implementation and administration of each Party's standards, technical regulations and conformity assessment procedures covered in this Chapter.
2. The TBT Sub-Committee shall meet as agreed by the Parties. Meetings may be conducted annually in person, or by any other means as agreed by the Parties.
3. The TBT Sub-Committee shall determine its terms of reference in accordance with this Chapter.
4. The TBT Sub-Committee shall determine its work programme in response to priorities as identified by the Parties.

#### **Article 8.14: Non-Application of Chapter 20 (Consultations and Dispute Settlement)**

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

## CHAPTER 9

### TRADE IN SERVICES

#### Article 9.1: Definitions

For the purposes of this Chapter:

**airport operation services** means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

**commercial presence** means any type of business or professional establishment, including through:

- (i) the constitution, acquisition or maintenance of an enterprise; or
- (ii) the creation or maintenance of a branch or a representative office,

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

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

**controlled** means having the power to name a majority of directors or otherwise legally direct an enterprise's actions;

**enterprise of the other Party** means an enterprise which is either:

- (i) constituted or otherwise organised in accordance with the law of the other Party; or
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
  - (A) natural persons of the other Party; or
  - (B) enterprises of the other Party identified under subparagraph (A);

**ground handling services** means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

**measures adopted or maintained by a Party** means measures adopted or maintained by:

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

**owned** means holding more than 50 per cent of the equity interest in an enterprise;

**selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

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

**service supplier of a Party** means a person of a Party that supplies a service;<sup>9,10</sup>

**specialty air services** means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or

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<sup>9</sup> Where the service is not supplied directly by an enterprise but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the enterprise) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers in accordance with this Chapter. 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 of a Party where the service is supplied.

<sup>10</sup> For greater certainty, 'service supplier of a Party' includes a person of a Party that seeks to supply a service.

passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; and

**trade in services or supply of a service** means the supply of a service:

- (i) from the territory of a Party into the territory of the other Party;
- (ii) in the territory of a Party to a person of the other Party;
- (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party; or
- (iv) by a natural person of a Party in the territory of the other Party.

#### **Article 9.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to services offered to the public generally and the use of them in connection with the supply of a service;
- (d) the presence, including commercial presence, in a Party's territory of a service supplier of the other Party; and
- (e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. This Chapter shall not apply to:

- (a) government procurement;
- (b) services supplied in the exercise of governmental authority; and
- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

3. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment.

4. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

- (a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;
- (b) selling and marketing of air transport services;
- (c) computer reservation system services;
- (d) specialty air services;
- (e) airport operation services; and
- (f) ground handling services.

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

6. If the Annex on Air Transport Services of GATS is amended unless the Parties otherwise agree, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

### **Article 9.3: National Treatment<sup>11</sup>**

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

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<sup>11</sup> For greater certainty, whether treatment is accorded in "like circumstances" under Article 9.3 or Article 9.4 depends on the totality of the circumstances, including the relevant economic or business sector or sectors concerned and whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives or on the basis of nationality. Where treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives, that treatment is not inconsistent with Article 9.3 or Article 9.4.

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

#### **Article 9.4: Most-Favoured-Nation Treatment**

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

#### **Article 9.5: Market Access<sup>12</sup>**

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
  - (i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
  - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>13</sup> or
  - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

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<sup>12</sup> For greater certainty, the Parties consider limitations on the participation of foreign capital in terms of maximum percentage equity limits on foreign shareholding or the total value of individual or aggregate foreign investment to breach Article 9.3.

<sup>13</sup> Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

## **Article 9.6: Local Presence**

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service<sup>14</sup>.

## **Article 9.7: Non-Conforming Measures**

1. Articles 9.3, 9.4, 9.5 and 9.6 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central level of government, as set out by that Party in its Schedule to Annex I (Trade in Services and Investment Schedules); or
    - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I (Trade in Services and Investment Schedules); or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.3, Article 9.4, Article 9.5 or Article 9.6.
2. Articles 9.3, 9.4, 9.5 and 9.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II (Trade in Services and Investment Schedules).

## **Article 9.8: Domestic Regulation<sup>15</sup>**

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

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<sup>14</sup> For greater certainty, cross-border supply of a service means the supply of a service, except where it is by a service supplier of a Party through commercial presence in the territory of the other Party.

<sup>15</sup> For greater certainty, this Article is without prejudice to a Party's rights and obligations under the WTO Agreement.

procedures which provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services are open on a non-discriminatory basis to a service supplier 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. Paragraph 2 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. While recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures that it adopts or maintains are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service; and
- (b) in the case of licensing procedures, are not in themselves a restriction on the supply of the service.

5. In determining whether a Party is in conformity with its obligations under paragraph 4(a), account shall be taken of international standards of relevant international organisations<sup>16</sup> applied by that Party.

6. If a Party requires authorisation for the supply of a service, not otherwise excluded through Article 9.7, it shall ensure that its competent authorities:

- (a) where specific time periods exist for applications, allow an applicant a reasonable period for the submission of an application;
- (b) upon submission from the applicant, initiate the processing of an application without undue delay;
- (c) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:
  - (i) inform the applicant that the application is incomplete;

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<sup>16</sup> "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

- (ii) at the request of the applicant provide guidance on why the application is considered incomplete;
  - (iii) provide the applicant with the opportunity to provide the additional information that is required to complete the application; and
  - (iv) where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;
- (d) to the extent practicable, establish an indicative timeframe for the processing of an application;
- (e) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
- (f) on request of the applicant, provide, without undue delay, information concerning the status of the application;
- (g) if an application is rejected, to the extent practicable, inform the applicant in writing of the reasons for the rejection, either directly or on request, as appropriate. The applicant will have the possibility of resubmitting, at its discretion, a new application;
- (h) if appropriate, accept copies of documents that are authenticated in accordance with the Party's laws and regulations in place of original documents; and
- (i) to the extent practicable, ensure that authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

7. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service<sup>17</sup>.

8. Each Party shall, where it requires authorisation for supply of a service,

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<sup>17</sup> For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auctions, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

promptly publish<sup>18</sup> or otherwise make publicly available the information necessary for a service supplier, or a person seeking to supply a service, to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia* and where applicable:

- (a) fees;
- (b) contact information of relevant competent authorities;
- (c) procedures for appeal or review of decisions concerning applications;
- (d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;
- (e) opportunities for public involvement, such as through hearings or comments;
- (f) indicative timeframes for processing of an application;
- (g) the requirements and procedures; and
- (h) technical standards.

9. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

- (a) the examination is scheduled at reasonable intervals; and
- (b) a reasonable period of time is provided to enable applicants to request to take the examination.

10. Further to paragraph 9, each Party should explore, as appropriate, the possibility of:

- (a) using electronic means for conducting such examinations;
- (b) conducting such examinations orally; and
- (c) providing opportunities for taking such examinations in the territory of the other Party.

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<sup>18</sup> For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website.

11. Each Party shall ensure that physical presence in the territory of the other Party is not required for the submission of an application for a license or qualification.

12. Each Party shall endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions in accordance with domestic law.

13. Where a Party permits a service supplier of the other Party to provide a professional service, that Party shall ensure that there are procedures in place domestically to assess the competency of professionals of the other Party.

14. Subject to its laws and regulations, a Party shall permit service suppliers of the other Party to use the enterprise names under which they trade in the territory of the other Party and otherwise ensure that the use of enterprise names is not unduly restricted.

15. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

#### **Article 9.9: Recognition**

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, it may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party or a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the other Party or non-Party concerned, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of a non-Party, nothing in Article 9.4 shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to the other Party to

demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

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

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

6. As set out in Annex 9-A, the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

#### **Article 9.10: Denial of Benefits**

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

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of the other Party.

#### **Article 9.11: Transparency**

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons<sup>19</sup> regarding its laws and regulations that relate to the subject matter of this Chapter.

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<sup>19</sup> For the purpose of this paragraph "interested persons" refers to a person whose direct interest in trade in services could be potentially affected by such laws and regulations.

2. If a Party does not provide advance notice and opportunity for comment in accordance with Article 19.2 (Publication) of Chapter 19 (Transparency) with respect to its laws and regulations that relate to the subject matter of this Chapter, it shall on request of the other Party, provide in writing the reasons for not doing so.

#### **Article 9.12: Payments and Transfers**

1. Each Party shall permit all transfers and payments that relate to the supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws and regulations<sup>20</sup> that relate to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

#### **Article 9.13: Review**

1. The Parties shall review this Chapter and related Annexes and Schedules within three years of the date of entry into force of this Agreement with a view to substantially reducing or eliminating discrimination and enhancing market access between the Parties with regard to trade in services. The review shall include the identification of measures to increase trade in services under this Chapter and related Annexes and Schedules between the Parties. Unless the Parties

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<sup>20</sup> For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws and regulations relating to its social security, public retirement or compulsory savings programmes.

otherwise agree, the initial review, including actions to incorporate the results into this Agreement, shall be completed within two years of initiating the review.

2. The Parties shall subsequently review this Chapter and related Annexes and Schedules every five years thereafter, with a view to substantially reducing or eliminating all remaining discrimination and enhancing market access between the Parties with regard to trade in services.

3. At each review the Parties shall also consider other trade in services issues of mutual interest.

#### **Article 9.14: Committee on Trade in Services**

1. The Parties hereby establish a Committee on Trade in Services (Trade in Services Committee) consisting of representatives of the Parties.

2. The Trade in Services Committee shall meet within two years from the date of entry into force of this Agreement and thereafter as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The Trade in Services Committee's functions shall be to:

- (a) review the implementation of this Chapter;
- (b) implement Article 9.13;
- (c) consider any other matters related to this Chapter identified by either Party;
- (d) consider matters related to Chapter 10 (Financial Services), Chapter 11 (Telecommunications), Chapter 12 (Movement of Natural Persons) and Chapter 13 (Electronic Commerce), and direct the activities of the Professional Services Working Group; and
- (e) report to the Joint Committee as required.

## ANNEX 9-A

### PROFESSIONAL SERVICES

#### *General Provisions*

1. Each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for certification and licensing and to provide recommendations to the Professional Services Working Group with respect to any professional service.
2. Without limiting the potential scope of work, the standards and criteria referred to in paragraph 1 may include and be developed with regard to the following matters:
  - (a) education – accreditation of schools or academic programs;
  - (b) examinations – qualifying examinations for certification and licensing, including alternative methods of assessment, such as oral examinations and interviews;
  - (c) experience – length and nature of experience required for licensing;
  - (d) conduct and ethics – standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
  - (e) professional development and re-certification – continuing education and ongoing requirements to maintain professional certification;
  - (f) scope of practice – extent of, or limitations on, permissible activities;
  - (g) local knowledge – requirements for knowledge of such matters as local laws, regulations, geography, or climate; and
  - (h) consumer protection – alternatives to any residency requirements, including bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.
3. For the purpose of transparency, on request of the other Party, a Party shall, provide information concerning standards and criteria for the certification and licensing of professional service suppliers, including information concerning the appropriate regulatory or other body to consult regarding these standards and criteria.

4. Each Party shall encourage its relevant bodies to take into account other multilateral agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.

*Professional Services Working Group*

5. The Parties hereby establish a Professional Services Working Group (Working Group), comprising representatives of each Party, to facilitate implementation of paragraphs 1 through 4. The Working Group shall meet annually or as agreed by the Parties.
6. The issues that the Working Group should consider, for professional services generally and, as appropriate, for individual professional services, include:
  - (a) procedures for fostering the development of mutual recognition arrangements between relevant bodies,
  - (b) the feasibility of developing model procedures for the licensing and certification of professional services suppliers; and
  - (c) other issues of mutual interest relating to the supply of professional services; and
  - (d) supporting Indonesia to reference the Indonesian Qualifications Framework to the ASEAN Qualifications Reference Framework with Australia's technical assistance.
7. In implementing this Annex, the Working Group shall consider, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to professional services.
8. To assist the Working Group in its activities, the Parties shall, as appropriate, encourage the involvement of their respective peak professional services sector industry bodies. The Parties shall consider and provide a response to any joint views, advancing projects where feasible and mutually agreed.
9. The Parties shall encourage peak bodies to provide initial joint views no later than one year after the first meeting of the Working Group.
10. Each Party shall encourage its relevant bodies to implement any decisions or recommendations of the Working Group within an agreed time.
11. The Working Group, at each meeting, shall review the implementation of the

Annex and progress made, including with respect to any recommendation for initiatives to promote mutual recognition of standards and criteria and temporary licensing, and agree on the further direction of its work.

## CHAPTER 10

### FINANCIAL SERVICES

#### Article 10.1: Definitions

1. For the purposes of this Chapter:

**financial institution** means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located by entities such as a central bank or a financial services authority;

**financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services auxiliary to a service of a financial nature. Financial services include the following activities:

#### *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; and
- (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 transactions;
- (vii) financial leasing;

- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (A) money market instruments (including cheques, bills, certificates of deposits);
  - (B) foreign exchange;
  - (C) derivative products, including futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (E) transferable securities; and
  - (F) other negotiable instruments and financial assets, including bullion;
- (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (xii) money broking;
- (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including

credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

**financial service supplier** means a person that seeks to supply or supplies a financial service;

**new financial services** means a financial service that is not supplied by any financial services supplier in the territory of a Party but which is supplied and regulated in the territory of the other Party. This may include services related to existing and new products or the manner in which the product is delivered;

**public entity** means a government, a central bank or monetary authority or financial services authority of a Party, or any financial institution that is owned or controlled by a Party; and

**self-regulatory organisation** means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, other organisation or association that:

- (i) is recognised as having self-regulatory powers; or
- (ii) exercises regulatory or supervisory authority;

over financial service suppliers by legislation or delegation from central, regional or local governments or authorities.

2. For the purposes of subparagraph (f) of Article 14.1 (Definitions) of Chapter 14 (Investment), the term **investment** means, in respect of a financial service:

(a) 'investment' as defined in Article 14.1 (Definitions) of Chapter 14 (Investment), except that, with respect to 'loans' and 'debt instruments' referred to in that Article:

- (i) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (ii) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (i), is not an investment;

(b) for greater certainty, a loan granted by or debt instrument owned by a financial service supplier of the other Party, other than a loan to or debt

instrument issued by a financial institution, is an investment for the purposes of Chapter 14 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 14.1 (Definitions) of Chapter 14 (Investment).

3. For the purposes of Article 9.1 (Definitions) of Chapter 9 (Trade in Services), the term “services supplied in the exercise of governmental authority” means, in respect of a financial service:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except where a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.

4. The definition of “services supplied in the exercise of governmental authority” in Article 9.1 (Definitions) of Chapter 9 (Trade in Services) shall not apply to the services covered by this Chapter.

#### **Article 10.2: Scope**

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

2. This Chapter shall apply to measures adopted or maintained by a Party affecting the trade or supply of a financial service. Reference to trade in financial services or supply of a financial service in this Chapter shall mean ‘trade in services or supply of a service’ as defined in Article 9.1 (Definitions) of Chapter 9 (Trade in Services).

3. Notwithstanding paragraph 1,

(a) sub-paragraphs 6 through 15 of Article 9.8 (Domestic Regulation) of Chapter 9 (Trade in Services) and Article 14.6 (Prohibition of Performance Requirements) of Chapter 14 (Investment) shall not apply to the services covered by this Chapter; and

(b) Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) shall only apply to the services covered by this Chapter for claims that a Party has breached Articles 14.7 (Minimum Standard of

Treatment), 14.8 (Treatment in Case of Armed Conflict or Civil Strife), 14.9 (Transfers), 14.11 (Expropriation and Compensation), 14.15 (Special Formalities and Disclosure of Information) and 14.13 (Denial of Benefits) of Chapter 14 (Investment).

4. In the event of any inconsistency between this Chapter and Chapter 9 (Trade in Services), Chapter 11 (Telecommunications), Chapter 13 (Electronic Commerce), Chapter 14 (Investment) or Chapter 19 (Transparency), this Chapter shall prevail to the extent of the inconsistency.

#### **Article 10.3: New Financial Services<sup>21</sup>**

Each Party shall endeavour to permit a financial institution of the other Party established in its territory to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or regulation, or modifying an existing law or regulation. Notwithstanding Article 9.5 (Market Access) of Chapter 9 (Trade in Services), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorisation and may refuse the authorisation for prudential reasons under Article 10.5.

#### **Article 10.4: Treatment of Certain Information and Processing of Information**

Neither Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts or to require compliance with domestic regulation in relation to data management and storage and system maintenance so long as such right is not used to circumvent the provisions of this Chapter and Chapter 9 (Trade in Services) and Chapter 14 (Investment).

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<sup>21</sup> The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to request that it authorise the supply of a financial service that is not supplied in the territory of the other Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

## Article 10.5: Exceptions

1. Notwithstanding any other provisions of this Agreement except for Chapter 2 (Trade in Goods), Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures), Chapter 7 (Sanitary and Phytosanitary Measures) and Chapter 8 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>22 23</sup> including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 9 (Trade in Services), Chapter 11 (Telecommunications), Chapter 13 (Electronic Commerce), or Chapter 14 (Investment), shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies.

3. Notwithstanding Article 14.9 (Transfers) of Chapter 14 (Investment) and Article 9.12 (Payments and Transfers) of Chapter 9 (Trade in Services), a Party may prevent or limit transfers by a financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

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

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<sup>22</sup> The Parties understand that the term 'prudential reasons' includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

<sup>23</sup> For greater certainty, if a measure challenged under Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) is determined to have been adopted or maintained by a Party for prudential reasons in accordance with the procedures in Article 10.12, a tribunal shall find that the measure is not inconsistent with the Party's obligations under this Agreement and, accordingly, shall not award any damages with respect to that measure.

5. For greater certainty, nothing in this Chapter, Chapter 9 (Trade in Services), Chapter 11 (Telecommunications), Chapter 13 (Electronic Commerce) or Chapter 14 (Investment) shall prevent a Party from requiring the non-discriminatory licensing or registration of financial service suppliers supplying a service from the territory of a Party into the territory of the other Party and of financial instruments for prudential reasons in accordance with paragraph 1 of this Article.

#### **Article 10.6: Recognition**

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

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such an agreement or arrangement, or to negotiate one comparable with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement.

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

#### **Article 10.7: Transparency and Administration of Certain Measures**

1. The Parties recognise that transparent measures governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets.

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

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

4. Each Party shall ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

5. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

6. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services.

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

8. A Party's regulatory authority shall make an administrative decision on a complete application of a financial service supplier of the other Party relating to the supply of a financial service, within 180 days and shall notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

9. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

#### **Article 10.8: Self-Regulatory Organisations**

Where a Party requires a financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into its territory, the Party shall endeavour to ensure that the self-regulatory organisation accords national treatment and most-favoured-nation treatment to financial service suppliers of the other Party in accordance with Article 9.3 (National Treatment) and Article 9.4 (Most-Favoured-Nation Treatment) of Chapter 9 (Trade in Services) and Article 14.4 (National Treatment) and Article 14.5

(Most-Favoured-Nation Treatment) of Chapter 14 (Investment).<sup>24</sup> Each Party shall accord to financial services suppliers of the other Party treatment no less favourable than it accords, in like circumstances, to financial services suppliers of a non-Party with respect to the treatment afforded by self-regulatory organisations.

#### **Article 10.9: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.<sup>25</sup>

#### **Article 10.10: Consultations**

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services, including matters arising at the regional level of government of the other Party. The other Party shall give sympathetic consideration to the request to hold consultations. The Parties shall report the results of their consultations to the Committee on Trade in Services.
2. Consultations under this Article shall include officials of the authorities specified in Annex 10-A.
3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

#### **Article 10.11: Dispute Settlement**

1. Chapter 20 (Consultations and Dispute Settlement) shall apply as modified by this Article to the settlement of disputes concerning measures affecting financial

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<sup>24</sup> For greater certainty, a Party may require a financial service supplier to be present in its territory as a requirement for membership of, participation in, or access to a self-regulatory organisation of a Party.

<sup>25</sup> For greater certainty, a Party need not grant access under this Article to a financial institution of the other Party established in its territory if such access is not granted to its own financial institution in like circumstances.

services arising under this Chapter, Chapter 9 (Trade in Services) and Chapter 14 (Investment).

2. If a Party claims that a dispute arises within the meaning of paragraph 1, Article 20.8 (Establishment and Reconvening of Panels) of Chapter 20 (Consultations and Dispute Settlement) shall apply, except that:

(a) if the disputing Parties agree, each panellist shall meet the qualifications in paragraph 3; and

(b) in any other case:

(i) each disputing Party shall select panellists that meet the qualifications set out in either paragraph 3 or Article 20.8 (Establishment and Reconvening of Panels) of Chapter 20 (Consultations and Dispute Settlement); and

(ii) if the responding Party indicates an intention to invoke or invokes Article 10.5 prior to a Party's request for the establishment of a panel, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

3. In addition to the requirements set out in Article 20.8 (Establishment and Reconvening of Panels) of Chapter 20 (Consultations and Dispute Settlement), panellists shall have expertise or experience in financial services law or practice, which may include the regulation of financial services.

4. A Party may request the establishment of a panel in accordance with Chapter 20 (Consultations and Dispute Settlement) to consider whether and to what extent Article 10.5 is a valid defence to a claim. The panel shall present its interim and final reports in accordance with Article 20.10 (Panel Procedures) of Chapter 20 (Consultations and Dispute Settlement). The final report of the panel shall be binding on any tribunal established in accordance with Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) to consider the same measure, and any decision or award issued by such a tribunal must be consistent with the final report of the panel.

5. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 20.14 (Compensation and Suspension of Concessions or other Obligations) of Chapter 20 (Consultations and Dispute Settlement), shall seek the views of financial services experts, as necessary.

## **Article 10.12: Investment Disputes in Financial Services**

1. If an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) challenging a measure relating to regulation or supervision of financial services, markets or instruments, the expertise or experience of any particular candidate with respect to financial services law or practice shall be taken into account in the appointment of arbitrators to the tribunal.

2. If an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment), and the disputing Party invokes Article 10.5 as a defence, the following provisions of this Article shall apply:

(a) the disputing Party shall, no later than the date the tribunal fixes for the disputing Party to submit its counter-memorial, or in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the disputing Party to submit its response to the amendment, submit in writing to the authorities responsible for financial services of the Party of the disputing investor, as set out in Annex 10-A, a request for a joint determination by the authorities of the Parties on the issue of whether and to what extent Article 10.5 is a valid defence to the claim. The disputing Party shall promptly provide the tribunal, if constituted, a copy of the request. The arbitration may proceed with respect to the claim only as provided in paragraphs 3 and 4. Any applicable timeframes under Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) shall be suspended for the duration of the 180 day period established under paragraph 2(d) and the duration of any Chapter 20 (Consultations and Dispute Settlement) proceedings conducted under paragraph 2(d);

(b) the authorities of the Parties shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties, the Investment Committee and, if constituted, to the tribunal. The determination shall be binding on the tribunal and any decision or award issued by the tribunal must be consistent with that determination;

(c) if a panel has made findings, rulings or recommendations under Article 20.9 (Functions of Panels) of Chapter 20 (Consultations and Dispute Settlement) with respect to the same measure which is the subject of a disputing investor's claim under Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment), the Parties shall transmit the final report to the disputing parties and the tribunal. The panel report shall be

binding on the tribunal, and any decision or award issued by the tribunal must be consistent with the panel report; and

(d) if the authorities referred to in subparagraphs (a) and (b) have not made a determination within 180 days of the date of receipt of the disputing Party's written request for a determination under subparagraph (a), either Party may request the establishment of a panel under Chapter 20 (Consultations and Dispute Settlement) to consider whether and to what extent Article 10.5 is a valid defence to the claim. The panel established under Article 20.8 (Establishment and Reconvening of Panels) of Chapter 20 (Consultations and Dispute Settlement) shall be constituted in accordance with Article 10.11. Further to Article 20.10 (Panel Procedures) of Chapter 20 (Consultations and Dispute Settlement), the panel shall transmit its final report to the disputing parties and to the tribunal.

3. If a panel is established under paragraph 2(d), a tribunal established under Article 14.25 (Submission of a Claim) of Chapter 14 (Investment) may only proceed with respect to the claim once it has received the final report of the panel. The final report of panel referred to in paragraph 2(d) shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with the final report.

4. If no request for the establishment of a panel in accordance with paragraph 2(d) has been made within 10 days of the expiration of the 120 day period referred to in paragraph 2(d), the tribunal established under Article 14.25 (Submission of a Claim) of Chapter 14 (Investment) may proceed with respect to the claim.

(a) The tribunal shall draw no inference regarding the application of Article 10.5 from the fact that the authorities have not made a determination as described in paragraphs 2(a), (b) and (d).

(b) The Party of the disputing investor may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 10.5 is a valid defence to the claim. Unless it makes such a submission, the Party of the disputing investor shall be presumed, for the purposes of the arbitration, to take a position on Article 10.5 that is not inconsistent with that of the disputing Party.

5. For the purposes of this Article, the definitions of the following terms set out in Article 14.1 (Definitions) of Chapter 14 (Investment) are incorporated, *mutatis mutandis*: 'disputing investor', 'disputing parties', 'disputing party' and 'disputing Party'.

## ANNEX 10-A

### AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authorities for each Party responsible for financial services are:

- (a) for Australia, the Treasury and the Department of Foreign Affairs and Trade; and
- (b) for Indonesia, the Ministry of Finance, Financial Services Authority, Bank Indonesia, Ministry of Trade, and Ministry of Foreign Affairs.

## CHAPTER 11

### TELECOMMUNICATIONS

#### Article 11.1: Definitions

For the purposes of this Chapter:

**cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services<sup>26</sup>;

**end-user** means a final consumer of or subscriber to a public telecommunications service, including an enterprise other than a supplier of public telecommunications services;

**enterprise** means an enterprise as defined in Article 1.4 (General Definitions) of Chapter 1 (Initial Provisions and Definitions), and a branch of an enterprise;

**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 supply a service;

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

**international mobile roaming service** means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user's home public telecommunications network is located;

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<sup>26</sup> For Indonesia, a reasonable profit shall not apply for interconnection rates.

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

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

**major supplier** means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for the supply of public telecommunications networks or services, or parts thereof, as a result of:

- (i) control over essential facilities; or
- (ii) use of its position in the market;

**network element** means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

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

**physical co-location** means access to space in order to install, maintain or repair equipment at premises owned or controlled and used by a supplier to supply public telecommunications networks or services;

**public telecommunications network** means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

**public telecommunications service** means any telecommunications service offered to the public generally. These services may include telephone and data transmission typically involving transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;

**reference interconnection offer** means an interconnection offer extended by a major supplier and filed with, approved by or determined by a telecommunications regulatory body that sufficiently details the terms, rates and conditions for interconnection so that a supplier of public

telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

**resale** means the supply, by a supplier of public telecommunications services (the first supplier), of public telecommunications services purchased from another supplier of public telecommunications services (the second supplier) and which the second supplier also provides at retail to end-users, without significant alteration to these services;

**standard interconnection offer** means an interconnection offer extended by a major supplier, which is neither filed with, or approved by a telecommunications regulatory body, but is published and sufficiently details the terms, rates and conditions for interconnection so that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

**telecommunications** means the transmission and reception of signals by any electromagnetic means, including by photonic means;

**telecommunications regulatory body** means a body or bodies responsible for the regulation of telecommunications. For greater certainty, Ministers or the Cabinet of a Party shall not constitute such a body or bodies; and

**user** means an end-user or a supplier of public telecommunications networks or services.

## **Article 11.2: Scope**

1. This Chapter shall apply to:
  - (a) any measure relating to access to and use of public telecommunications networks or services;
  - (b) any measure relating to obligations regarding suppliers of public telecommunications networks or services; and
  - (c) any other measure relating to telecommunications networks or services.
2. This Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except that:

(a) Article 11.4.1 shall apply with respect to access to and use of public telecommunications networks or services by a service supplier of broadcast or cable distribution of radio or television programming; and

(b) Article 11.22 shall apply to any measure relating to broadcast or cable distribution of radio or television programming, to the extent that the measure also affects public telecommunications networks or services.

3. Nothing in this Chapter shall be construed to:

(a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate or provide a telecommunications network or service not offered to the public generally;<sup>27</sup>

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting a person who operates a private network from using its private network to supply a public telecommunications network or service to third persons.

### **Article 11.3: Approaches to Regulation**

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications networks or services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition or if a service is new to a market. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognise that a Party may:

(a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;

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<sup>27</sup> For greater certainty, nothing in this Chapter shall be construed to require a Party to authorise an enterprise of the other Party to establish, construct, acquire, lease, operate or supply public telecommunications networks or services.

(b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities; or

(c) use any other appropriate means that benefit the long-term interest of end-users.

#### **Article 11.4: Access to and Use of Public Telecommunications Networks and Services**

1. Each Party shall ensure that any enterprise of the other Party is accorded access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that any enterprise of the other Party is permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

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

(c) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;

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

(e) use operating protocols of their choice other than as necessary to interface with public telecommunications networks and services.

3. Each Party shall ensure that an enterprise of either Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party or any non-party which is a party to the WTO Agreement.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of messages and to protect the privacy of personal data of end-users of public telecommunications networks or services, provided that those 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 and services, other than as necessary to:

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

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

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

(a) a requirement to use a specified technical interface, including an interface protocol, for connection with those networks or services;

(b) a requirement, if necessary, for the interoperability of those networks and services;

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

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the laws or regulations of a Party.

7. The Parties recognise this Article does not prohibit either Party from requiring an enterprise to obtain a licence to supply any public telecommunications service within its territory.

#### **Article 11.5: Obligations Relating to Suppliers of Public Telecommunications Networks or Services**

##### *Interconnection*

1. Each Party shall provide its telecommunications regulatory body with the authority to require that suppliers of public telecommunications networks or services in its territory provide, directly or indirectly within the same territory, interconnection

with suppliers of public telecommunications services of the other Party in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications networks or services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

#### *Access to Numbers*

3. Each Party shall ensure that suppliers of public telecommunications services of the other Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

#### **Article 11.6: International Mobile Roaming**

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.

2. A Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates, such as ensuring that information regarding retail rates is easily accessible to consumers.

3. Each Party shall ensure that suppliers of public telecommunications services in its territory or its telecommunications regulatory body make publicly available retail rates for international mobile roaming services, for voice, data and text messages.

4. The Parties recognise that a Party, if it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring such rates are reasonable. If a Party considers it appropriate, it may cooperate on and implement mechanisms with the other Party to facilitate the implementation of such measures, including by entering into arrangements with the other Party.

5. If a Party (the first Party) chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of the other Party (the second Party) has access to the

regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances where<sup>28</sup>:

- (a) the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of the Parties;<sup>29</sup> or
- (b) in the absence of an arrangement of the type referred to in paragraph (a), the supplier of public telecommunications services of the second Party, of its own accord:
  - (i) makes available to suppliers of public telecommunications services of the first Party wholesale international mobile roaming services at rates or conditions that are reasonably comparable to the regulated rates or conditions,<sup>30</sup> and
  - (ii) meets any additional requirements that the first Party imposes with respect to the availability of the regulated rates or conditions.<sup>31</sup>

A Party may require suppliers of the other Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

6. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 5 shall be deemed to be in compliance with its obligations under Article 9.4 (Most-Favoured Nation Treatment) of Chapter 9 (Trade in Services), Article 11.4, and Article 11.7 with respect to international mobile roaming services.

7. For greater certainty, nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

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<sup>28</sup> For greater certainty, no Party may, solely on the basis of any obligations owed to it by the regulating Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

<sup>29</sup> For greater certainty, access under paragraph 5(a) to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in subparagraph (a). The telecommunications regulatory body of the first Party shall, in the case of a disagreement, determine whether the rates or conditions are reasonably comparable.

<sup>30</sup> "Reasonably comparable rates or conditions" means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of the first Party.

<sup>31</sup> For greater certainty, such additional requirements may include, for example that the rates provided to the supplier of the second Party reflect the reasonable cost of supplying international mobile roaming services by a supplier of the first Party to a supplier of the second Party, as determined through the methodology of the first Party.

### **Article 11.7: Treatment by Major Suppliers of Public Telecommunications Networks or Services**

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications networks or services of the other Party treatment no less favourable than that major supplier accords in like circumstances to its subsidiaries, its affiliates or non-affiliated service suppliers regarding:<sup>32</sup>

- (a) the availability, provisioning, rates or quality of like public telecommunications networks or services; and
- (b) the availability of technical interfaces necessary for interconnection.

### **Article 11.8: Competitive Safeguards**

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services who, alone or together, are a major supplier in its territory, from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include, but are not limited to:

- (a) engaging in anti-competitive cross-subsidisation;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available, on a timely basis, to other suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

3. For greater certainty, nothing in this Article shall prevent a Party from maintaining measures for the purpose of preventing anti-competitive practices by suppliers of public telecommunications networks or services who are not major suppliers.

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<sup>32</sup> This article shall apply to Indonesia no later than 31 December 2020.

### **Article 11.9: Resale**

1. No Party shall introduce or maintain laws or regulations that prohibit the resale of any public telecommunications service<sup>33</sup>.
2. Each Party shall endeavour to promote resale of public telecommunication services subject to its laws and regulations.
3. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by suppliers of public telecommunications services, based on the need to promote competition or to benefit the long-term interests of end-users.
4. Where a Party requires resale in accordance with paragraph 3, each Party shall ensure that any supplier of public telecommunications services in its territory:
  - (a) offers for resale at, reasonable rates that are transparent and non-discriminatory, to suppliers of public telecommunications services of the other Party, public telecommunications services that the supplier provides at retail to end-users; and
  - (b) does not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

### **Article 11.10: Unbundling of Network Elements**

1. Subject to paragraph 2, each Party shall ensure that suppliers of public telecommunications networks or services in its territory offer to other suppliers of public telecommunications networks or services access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent, for the supply of public telecommunications services.
2. Each Party may determine, in accordance with its laws and regulations, the network elements in its territory to which it requires access under paragraph 1. When a Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such network elements can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

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<sup>33</sup> For greater certainty, paragraph 1 does not limit the right for the Parties to otherwise regulate resale.

## **Article 11.11: Interconnection with Major Suppliers**

### *General Terms and Conditions*

1. Each Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party:

- (a) at any technically feasible point in the major supplier's network;
- (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
- (c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
- (d) in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers are not required to pay for network components or facilities that they do not require for the service to be provided; and
- (e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

### *Options for Interconnecting with Major Suppliers*

2. Each Party shall ensure that any major supplier in its territory provides suppliers of public telecommunications services of the other Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through at least one of the following options:

- (a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services;
- (b) the terms and conditions of an interconnection agreement that is in effect; or
- (c) the terms and conditions set by a Party's telecommunications regulatory body or other competent body.

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

*Public Availability of Interconnection Offers*

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

5. Each Party shall provide means for suppliers of the other Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring:

- (a) the public availability of rates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body or other competent body; or
- (b) the public availability of a reference interconnection offer.

Services for which those rates, terms and conditions are made publicly available do not have to include all interconnection-related services offered by a major supplier, as determined by a Party under its laws and regulations.

**Article 11.12: Provisioning and Pricing of Leased Circuits Services by Major Suppliers**

Each Party shall, unless it is not technically feasible, ensure that major suppliers in its territory make leased circuits services (that are public telecommunications services) available to suppliers of public telecommunications networks or services of the other Party in a timely manner and on terms and conditions (including technical standards and specifications), and at rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.<sup>34</sup>

**Article 11.13: Co-Location by Major Suppliers**

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications networks or services of the other Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements, on a timely basis, and

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<sup>34</sup> This article shall apply to Indonesia no later than 31 December 2020.

on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory cooperates with suppliers of public telecommunications networks or services of the other Party to find and implement a practical and commercially viable alternative solution.

3. Each Party may determine, in accordance with its laws and regulations, the locations at which it requires major suppliers in its territory to provide the physical co-location or the practical and commercially viable alternative solutions referred to in paragraphs 1 and 2. When a Party makes this determination, it shall take into account factors such as the state of competition in the market where co-location is required, whether those premises can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

4. If a Party does not require that a major supplier offer co-location at certain premises, it nonetheless shall allow service suppliers to request that those premises be offered for co-location in accordance with paragraph 1.

#### **Article 11.14: Access to Facilities Owned or Controlled by Major Suppliers**

1. Each Party shall ensure that a major supplier in its territory provides access to poles, ducts, conduits, and towers, or any other structures as determined by the Party, and the sites on which these are located, owned or controlled by the major supplier, to suppliers of public telecommunications networks or services of the other Party in that Party's territory on a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory and transparent, subject to technical feasibility.

2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, and towers, or any other structures and the sites on which these are located to which it requires major suppliers in its territory to provide access in accordance with paragraph 1. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

## **Article 11.15: International Submarine Cable Systems**

1. Each Party shall provide its telecommunications regulatory body with the authority to require that, where suppliers of telecommunications networks or services operate submarine cable systems to provide public telecommunications networks or services in a Party's territory, those suppliers provide reasonable and non-discriminatory access to those systems to suppliers of public telecommunications networks or services of the other Party, in accordance with its laws and regulations.

2. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party can apply to land a submarine cable in its territory and that such applications are administered in a reasonable, objective and impartial manner in accordance with its laws and regulations.

3. The Parties recognise the importance of international submarine cable systems, and the expeditious and efficient installation, maintenance and repair of these systems, to national, regional and global telecommunications connectivity.

4. Each Party shall ensure that, where it requires a permit for a vessel registered in the territory of the other Party or a non-party to undertake installation, maintenance or repairs of submarine cable systems that are operated, owned or controlled by suppliers of public telecommunications networks or services of the other Party:

(a) the circumstances where any such vessel permit is required, the procedure for applying for any such permit and for renewal of a permit, including any relevant application documents, and the criteria for assessing an application are publicly available;

(b) the procedures for applying for any such permit and, if granted, the permit and the procedures for renewal of a permit are administered in a reasonable, objective and impartial manner;

(c) within a reasonable period of time after the submission of an application for any such permit and for renewal of a permit that is considered complete under its laws and regulations, it informs the applicant of the decision concerning the application; and

(d) any fee charged by any of its relevant bodies to obtain, maintain or renew any such permit is reasonable, transparent and is limited in amount to the approximate cost of services rendered by that Party in respect of any such fee.

5. If a Party (the first Party) considers that a measure of the other Party creates a material impediment to the ability of suppliers of public telecommunications

networks or services of the first Party to expeditiously and efficiently install, maintain or repair submarine cable systems, it may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

#### **Article 11.16: Independent Regulatory Bodies and Government Ownership**

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications networks or services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest<sup>35</sup> or maintain an operating or management role in any supplier of public telecommunications networks or services.

2. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body are impartial with respect to all market participants.

3. Neither Party shall accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of the other Party on the basis that the supplier receiving more favourable treatment is owned by the national government of the Party.

4. Each Party shall ensure that any supplier of public telecommunications networks or services of the other Party that is aggrieved, or whose interests are adversely affected by a determination or decision of a telecommunications regulatory body of the first Party, may obtain review of the determination or decision by an administrative, arbitral or judicial tribunal or authority or according to administrative, arbitral or judicial procedures. If such procedures are not independent of the telecommunications regulatory body, the first Party shall ensure that the procedures in fact provide for an objective and impartial review.

#### **Article 11.17: Universal Service**

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations, including any cross subsidisation policy provided for under the laws and regulations of each Party, shall not be regarded as anti-

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<sup>35</sup> This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications networks or services.

competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner, and are not more burdensome than necessary for the kind of universal service defined by the Party.

#### **Article 11.18: Licensing Process**

1. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public telecommunications transport networks or services in its territory are published or, if publication is not practicable, otherwise made publicly available, including:

- (a) circumstances in which a licence is required;
- (b) licence application procedures;
- (c) criteria used to assess licence applications;
- (d) standard terms and conditions applicable to licences;
- (e) the period of time normally required to reach a decision concerning a licence application;
- (f) the cost or fees of applying for or obtaining a licence; and
- (g) the period of validity of a licence.

2. Each Party shall ensure that, on request, an applicant or a licensee receives the reasons for the:

- (a) denial of a licence;
- (b) imposition of supplier-specific conditions on a licence;
- (c) revocation of a licence; or
- (d) refusal to renew a licence.

#### **Article 11.19: Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of frequency bands allocated to specific uses but retains the right not to provide detailed identification of frequencies that are allocated or assigned for specific government uses.

3. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not *per se* inconsistent with Article 9.5 (Market Access) of Chapter 9 (Trade in Services). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party shall have the authority to use mechanisms such as auctions, if appropriate, to assign spectrum for commercial use.

#### **Article 11.20: Enforcement**

Each Party shall provide its telecommunications regulatory body with the authority to enforce the Party's measures relating to the obligations provided for under Article 11.4, Article 11.5, Article 11.7, Article 11.8, Article 11.9, Article 11.10, Article 11.11, Article 11.12, Article 11.13, Article 11.14 and Article 11.15. That authority shall include the ability to impose, or seek from administrative or judicial bodies, effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension or revocation of licences.

#### **Article 11.21: Resolution of Telecommunications Disputes**

1. Further to Article 19.4 (Administrative Proceedings) and Article 19.5 (Review and Appeal) of Chapter 19 (Transparency), each Party shall ensure that:

##### *Recourse*

- (a) enterprises, including suppliers of public telecommunications networks or services, have recourse to a telecommunications regulatory body or other

relevant body of the Party<sup>36</sup> to resolve disputes with other enterprises, including suppliers of public telecommunications networks or services, regarding the Party's measures relating to matters set out in Article 11.4, Article 11.5, Article 11.6, Article 11.7, Article 11.8, Article 11.9, Article 11.10, Article 11.11, Article 11.12, Article 11.13, Article 11.14 and Article 11.15;

(b) if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, on request, provide a written explanation for its decision within a reasonable period of time; and

(c) suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable period of time after the supplier requests interconnection, by its telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions and rates for interconnection with that major supplier.

#### *Judicial Review*

2. No Party shall permit the making of an application for judicial review by enterprises, including suppliers of public telecommunications networks or services, to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

#### **Article 11.22: Transparency**

1. Further to Article 19.2 (Publication) of Chapter 19 (Transparency), each Party shall ensure that when its telecommunications regulatory body seeks input<sup>37</sup> for a proposal for a regulation, that body shall:

- (a) make the proposal public or otherwise available to any interested persons;
- (b) include an explanation of the purpose of and reasons for the proposal;
- (c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;
- (d) to the extent practicable, make publicly available all relevant comments filed with it; and

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<sup>36</sup> For greater certainty, another relevant body of a Party may include a judicial body.

<sup>37</sup> For greater certainty, seeking input does not include internal governmental deliberations.

(e) to the extent practicable, respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.<sup>38</sup>

2. Further to Article 19.2 (Publication) of Chapter 19 (Transparency), each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

(a) tariffs or tariff formulas and other terms and conditions of service, if these are regulated;

(b) technical standards, including specifications of technical interfaces;

(c) conditions for attaching terminal or other equipment to the public telecommunications network, if applicable;

(d) licensing, permit, registration or notification requirements, if any;

(e) general procedures relating to resolution of telecommunications disputes provided for in Article 11.21; and

(f) measures of bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use that are, to the extent required, endorsed under the laws or regulations of a Party.

3. To the extent possible, each Party shall allow a reasonable period of time between publication of a measure of general application relating to this Chapter, proposed or final in accordance with its legal system, and its effective date.

4. Each Party shall publish the names and addresses of the competent authorities responsible for measures related to the operation of this Chapter.

5. On request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any actual or proposed measures materially affecting the operation of this Chapter.

6. Each Party shall ensure that, where information is required to be published in accordance with this Chapter, such information is published on the internet.

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<sup>38</sup> For greater certainty, a Party may consolidate its responses to the comments received from interested persons.

### **Article 11.23: Flexibility in the Choice of Technology**

1. Neither Party shall prevent suppliers of public telecommunications services from choosing the technologies they wish to use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting those measures shall do so in accordance with Article 11.22.

2. When a Party finances the development of advanced networks, including broadband networks, it may make its financing conditional on the use of technologies that meet its specific public policy interests.

### **Article 11.24: Relation to Other Chapters**

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, this Chapter shall prevail to the extent of the inconsistency.

### **Article 11.25: Relation to International Organisations**

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services and undertake to promote those standards through the work of relevant international organisations.

## CHAPTER 12

### MOVEMENT OF NATURAL PERSONS

#### Article 12.1: Definitions

For the purposes of this Chapter:

**immigration formality** means a visa, permit, pass or other document or electronic authority granting a natural person of one Party the right to temporarily enter, reside or work or establish commercial presence in the territory of the granting Party;

**immigration measure** means any measure affecting the entry and stay of foreign nationals; and

**temporary entry** means entry into the territory of a Party by a natural person of the other Party who does not intend to establish permanent residence.

#### Article 12.2: Scope

1. This Chapter shall apply, as set out in each Party's schedule of specific commitments in Annex 12-A, to measures affecting the temporary entry of natural persons of a Party into the territory of the other Party.
2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.
3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that those measures are not applied in such a manner as to nullify or impair the benefits accruing to either Party under this Chapter.
4. The sole fact that a Party requires natural persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to either Party under this Chapter.

### **Article 12.3: Application Procedures**

1. After receipt of a completed application for an immigration formality, each Party shall promptly make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.
2. Each Party shall, on request and within a reasonable period after a complete application by a natural person of the other Party covered by this Chapter requesting temporary entry is lodged, notify the applicant, either directly or through their authorised representative, of:
  - (a) receipt of the application;
  - (b) the status of the application; and
  - (c) if a decision has been made, the decision concerning the application, including, if approved, the period of stay and other conditions.
3. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality are reasonable and in accordance with its laws and regulations.
4. Each Party shall endeavour, to the extent possible, to provide facilities for online lodgement and processing of immigration formalities.

### **Article 12.4: Grant of Temporary Entry**

1. Each Party shall set out in Annex 12-A the commitments it makes with regard to temporary entry of natural persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of natural person specified by that Party.
2. A Party shall grant temporary entry or extension of temporary stay to natural persons of the other Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those natural persons:
  - (a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and
  - (b) meet all relevant eligibility requirements for temporary entry or extension of temporary stay.

3. The sole fact that a Party grants temporary entry to a natural person of the other Party pursuant to this Chapter shall not be construed to exempt that natural person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

#### **Article 12.5: Business Travel**

The Parties affirm their APEC commitments to each other to enhance the mobility of natural persons and their support for efforts to enhance the APEC Business Travel Card programme.

#### **Article 12.6: Provision of Information**

Further to Article 19.2 (Publication) and Article 19.3 (Provision of Information) of Chapter 19 (Transparency), each Party shall:

- (a) promptly publish online if possible or otherwise make publicly available, in a consolidated manner, information on:
  - (i) current requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable interested persons of the other Party to become acquainted with those requirements; and
  - (ii) the typical timeframe within which a complete application for an immigration formality is processed; and
- (b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter.

#### **Article 12.7: Relation to Other Chapters**

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 18 (Institutional Provisions), Chapter 20 (Consultations and Dispute Settlement), Chapter 21 (Final Provisions), Article 19.2 (Publication) and Article 19.3 (Provision of Information) no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.<sup>39</sup>

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<sup>39</sup> For greater certainty, Chapter 17 (General Provisions and Exceptions) applies to this Chapter.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

**Article 12.8: Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 20 (Consultations and Dispute Settlement) regarding a refusal to grant temporary entry unless:

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

**Article 12.9: Future Work Program on Contractual Service Suppliers**

Unless the Parties otherwise agree, the Parties may decide to commence negotiations within three years of entry into force of this Agreement with a view to making mutually advantageous commitments on contractual service suppliers. The Parties shall make their best endeavours to complete the negotiations within two years of initiating them.

**CHAPTER 13**  
**ELECTRONIC COMMERCE**

**Article 13.1: Definitions**

For the purposes of this Chapter:

**computing facilities** means computer servers and storage devices for processing or storing information for commercial use;

**covered person** means:

- (i) a service supplier of the other Party within the meaning of Chapter 9 (Trade in Services);
- (ii) an investor of a Party as defined in Chapter 14 (Investment), excluding an investor in a financial institution; or
- (iii) a covered investment as defined in Chapter 1 (Initial Provisions and General Definitions),

but does not include a “financial institution” or a “financial service supplier” as defined in Chapter 10 (Financial Services), or a credit reporting body;

**electronic authentication** means the process of testing an electronic statement or claim in order to establish a level of confidence in the statement’s or claim’s reliability;

**electronic transmission** or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means;<sup>40</sup>

**electronic version of a document** means a document in an electronic format prescribed by a Party, including a document sent by facsimile transmission;

**personal information** means any information, including data or opinions, about an identified or identifiable natural person;

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<sup>40</sup> This definition is without prejudice to whether electronic transmissions should be characterised as goods or services.

**trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods; and

**unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

### **Article 13.2: Scope and General Provisions**

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of facilitating its use and development.
2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.
3. This Chapter shall not apply to government procurement.
4. Article 13.11, Article 13.12, and Article 13.13 shall not apply to information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.
5. For greater certainty, this Chapter may apply to a measure that is also subject to Chapter 9 (Trade in Services), Chapter 14 (Investment) or Chapter 10 (Financial Services).
6. To the extent that such a measure is adopted or maintained in accordance with Article 9.7 (Non-Conforming Measures) of Chapter 9 (Trade in Services) or Article 14.14 (Non-Conforming Measures) of Chapter 14 (Investment) or an exception in Chapter 9 (Trade in Services), Chapter 10 (Financial Services) or Chapter 14 (Investment), it shall not give rise to a violation of Article 13.11, Article 13.12 or Article 13.13.

### **Article 13.3: Cooperation**

1. Recognising the global nature of electronic commerce, each Party shall endeavour to:

- (a) work together to assist micro, small and medium-sized enterprises<sup>41</sup> to overcome obstacles to its use;
- (b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, for example:
  - (i) personal information protection;
  - (ii) online consumer protection, including means for consumer redress and building consumer confidence;
  - (iii) unsolicited commercial electronic messages;
  - (iv) security in electronic communications;
  - (v) authentication; and
  - (vi) e-government service delivery;
- (c) exchange information and share views on consumer access to products and services offered online;
- (d) participate actively in regional and multilateral fora to promote the development of electronic commerce, including in relation to the development and application of international standards for electronic commerce; and
- (e) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

2. In relation to cyber security, each Party recognises the importance of:

- (a) building and maintaining the capabilities of their national entities responsible for computer security incident response, including through exchange of best practices; and
- (b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

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<sup>41</sup> As defined by each Party.

#### **Article 13.4: Paperless Trading**

1. Each Party shall endeavour to make electronic versions of its trade administration documents publicly available.
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 13.5: Electronic Authentication and Electronic Signatures**

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. Each Party shall adopt or maintain measures based on international norms for electronic authentication that:
  - (a) permit participants in electronic transactions to determine the appropriate authentication technologies and implementation models for their electronic transactions;
  - (b) do not limit the recognition of authentication technologies and implementation models; and
  - (c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with the Party's laws and regulations.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.
4. The Parties shall encourage the use of interoperable electronic authentication.

### **Article 13.6: Online Consumer Protection**

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities, when they engage in electronic commerce.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:

(a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of misled consumers;

(b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or

(c) a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

4. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare and affirm that the cooperation under Article 16.5 of Chapter 16 (Competition) includes cooperation with respect to online commercial activities.

### **Article 13.7: Protection of Personal Information**

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.

3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

4. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

#### **Article 13.8: Unsolicited Commercial Electronic Messages**

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;

(b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained in accordance with paragraph 1.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

#### **Article 13.9: Domestic Regulatory Frameworks**

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce 1996* or the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York, November 23, 2005.

2. Each Party shall endeavour to:
  - (a) avoid any unnecessary regulatory burden on electronic transactions; and
  - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

#### **Article 13.10: Transparency**

1. Each Party recognises that transparent regulations and policies are important for trade facilitation, creating a conducive environment for electronic commerce and promoting cross-border electronic commerce.
2. Each Party shall publish information on the rights of, and protections it provides for, users of electronic commerce, including information on:
  - (a) how individuals can pursue remedies; and
  - (b) how businesses can comply with legal requirements.
3. Each Party shall encourage enterprises to publish, including on the internet, their policies and procedures related to protection of personal information.
4. Each Party shall publish the names and addresses of the competent authorities responsible for measures related to electronic commerce.
5. Each Party shall ensure that, where information is required to be published in accordance with provisions of this Chapter, such information will be published on the internet.

#### **Article 13.11: Cross-Border Transfer of Information by Electronic Means**

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.
3. Nothing in this Article shall prevent a Party from adopting or maintaining:

(a) measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

(b) any measure that it considers necessary for protection of its essential security interests.

#### **Article 13.12: Location of Computing Facilities**

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. Neither Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory, except where such a measure exists at the date of entry into force of this Agreement. A Party may promptly renew a measure in existence at the date of entry into force of this Agreement or amend such a measure to make it less trade restrictive, at any time. Where a Party amends such a measure to make it less trade restrictive, it shall not subsequently amend that measure to make it more trade restrictive than it was immediately before that amendment.

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

(a) measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

(b) any measure that it considers necessary for the protection of its essential security interests.

#### **Article 13.13: Source Code**

1. Neither Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include

software used for critical infrastructure, or software that is specifically made for use by a Party.

3. Nothing in this Article shall preclude:

(a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or

(b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

5. Nothing in this Article shall prevent a Party from adopting or maintaining any measures that it considers necessary for the protection of its essential security interests.

## CHAPTER 14

### INVESTMENT

#### Section A

##### Article 14.1: Definitions

For the purposes of this Chapter:

**enterprise** means an enterprise as defined in Article 1.4 (General Definitions) of Chapter 1 (Initial Provisions and General Definitions), and a branch of such an enterprise;

**enterprise of a Party** means an enterprise constituted or organised in accordance with the laws of a Party, and carrying out business activities there;

**freely usable currency** means “freely usable currency” as determined by the International Monetary Fund under its Articles of Agreement;

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

**investment**<sup>4243</sup> means every asset that an investor owns or controls, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit or the assumption of risk. Forms that an investment may take include:

- (i) an enterprise;
- (ii) shares, stocks and other forms of equity participation in an enterprise;

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<sup>42</sup> The term “investment” does not include an order or judgment entered in a judicial or administrative action or an arbitral award made in an arbitral proceeding.

<sup>43</sup> For the purpose of the definition of investment in this Article, 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;

- (iii) bonds, debentures and other debt instruments and loans;<sup>4445</sup>
- (iv) intellectual property rights;
- (v) claims to money or to any contractual performance related to a business and having financial value;<sup>46</sup>
- (vi) turnkey, construction, management, production concession, revenue-sharing and other similar contracts;
- (vii) licences, authorisations, permits and similar rights conferred in accordance with the Party's laws;<sup>47</sup> and
- (viii) other tangible or intangible, moveable or immovable property, and related property rights, such as leases, mortgages, liens and pledges.

**investor of a Party** means a Party, or a natural person of a Party or an enterprise of a Party, that seeks to make,<sup>48</sup> is making, or has made an investment in the territory of the other Party; and

**investor of a non-Party** means, with respect to a Party, an investor that seeks to make, is making, or has made an investment in the territory of that Party, that is not an investor of the other Party; and

**TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights* in Annex 1C to the WTO Agreement.

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<sup>44</sup> Some forms of debt, such as bonds, debentures and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

<sup>45</sup> A loan issued by one Party to the other Party is not an investment.

<sup>46</sup> For greater certainty, investment does not mean claims to money that arise solely from:

- (a) commercial contracts for sale of goods or services; or
- (b) the extension of credit in connection with such commercial contracts.

<sup>47</sup> Whether a particular type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

<sup>48</sup> For greater certainty, the Parties understand that an investor that "seeks to make" an investment refers to an investor of the other Party that has taken active steps to make an investment. Where a notification or approval process is required for making an investment, an investor that "seeks to make" an investment refers to an investor of the other Party that has initiated such notification or approval process.

## **Article 14.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party;
  - (b) covered investments; and
  - (c) for Article 14.6, all investments in the territory of that Party.
2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:
  - (a) central, regional or local governments and authorities; and
  - (b) any person, including a state-owned enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.<sup>49</sup>
3. This Chapter shall not apply to:
  - (a) government procurement; or
  - (b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. For greater certainty, this Chapter shall not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.

## **Article 14.3: Relation to Other Chapters**

1. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 9 (Trade in Services) or Chapter 10 (Financial Services).
2. Notwithstanding paragraph 1, the following provisions shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party within the meaning of Chapter

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<sup>49</sup> For greater certainty, governmental authority is delegated under a Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

9 (Trade in Services) and Chapter 10 (Financial Services) to the extent that the measure falls within the scope of this Chapter:

- (a) Articles 14.4 through 14.16;
- (b) Section B (Investor-State Dispute Settlement); and
- (c) Annex 14-A, Annex 14-B, Annex 14-C and Annex 14-D.

3. Further to paragraph 2, for the purposes of the application of Article 14.14 to measures affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party, an entry in a Party's Schedule to Annex I (Trade in Services and Investment Schedules) or Annex II (Trade in Services and Investment Schedules) in respect of Article 9.3 (National Treatment) and Article 9.4 (Most-Favoured-Nation Treatment) of Chapter 9 (Trade in Services), shall also be considered an entry in that Party's Schedule in respect of the corresponding obligation in this Chapter.

4. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency, except that, where paragraphs 1 through 3 apply, this Chapter shall prevail over Chapter 9 (Trade in Services).

5. A requirement of a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

#### **Article 14.4: National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than it accords, in like circumstances,<sup>50</sup> to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

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<sup>50</sup> For greater certainty, whether treatment is accorded in "like circumstances" under Article 14.4 or Article 14.5 depends on the totality of the circumstances, including the relevant economic or business sector or sectors concerned and whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives or on the basis of nationality. Where treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives, that treatment is not inconsistent with Article 14.4 or Article 14.5.

2. Each Party shall accord to covered investments treatment no less favourable than it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

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

#### **Article 14.5: Most-Favoured Nation Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than it accords, in like circumstances, to investors and their investments of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

3. For greater certainty, the treatment referred to in this Article shall not encompass international dispute resolution procedures or mechanisms, such as those included in Section B (Investor-State Dispute Settlement).

#### **Article 14.6: Prohibition of Performance Requirements<sup>515253</sup>**

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement:

- (a) to export a given level or percentage of goods or services;

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<sup>51</sup> This Article shall not preclude enforcement of any requirement between private parties, if a Party did not impose the requirement. For the purposes of this Article, private parties include designated monopolies or state enterprises, if such entities are not exercising delegated governmental authority.

<sup>52</sup> For greater certainty, paragraphs 1 and 2 shall not apply to any requirement other than those set out in those paragraphs.

<sup>53</sup> This Article shall not be subject to Section B (Investor-State Dispute Settlement).

- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced in its territory or to purchase goods from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, a production process or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific region or to the world market.

2. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its territory or to purchase goods from persons in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train

or employ workers, construct or expand particular facilities, or carry out research and development in its territory, provided that it is consistent with paragraph 1(f).

4. Paragraph 1(f) shall not apply:

(a) if a Party authorises use of an intellectual property right in accordance with the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(b) if the requirement is imposed or the commitment or undertaking enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under that Party's competition laws and regulations.<sup>54</sup>

5. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities or carry out research and development in its territory.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), 1(c), 1(f), 2(a) and 2(b) shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) related to the conservation of living and non-living exhaustible natural resources.

7. Paragraphs 1(a), 1(b), 1(c), 2(a) and 2(b) shall not apply to qualification requirements for goods and services with respect to export promotion and foreign aid programs.

8. Paragraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

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<sup>54</sup> The Parties recognise that a patent does not necessarily confer market power.

#### **Article 14.7: Minimum Standard of Treatment**

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security.
2. For greater certainty:
  - (a) “fair and equitable treatment” requires each Party to not deny justice in any legal or administrative proceedings;
  - (b) “full protection and security” requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment; and
  - (c) the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under the customary international law minimum standard of treatment,<sup>55</sup> and do not create additional substantive rights.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

#### **Article 14.8: Treatment in Case of Armed Conflict or Civil Strife**

1. Each Party shall accord to investors of the other Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife, treatment no less favourable than that it accords, in like circumstances, to:
  - (a) its own investors and their investments; and
  - (b) investors of a non-Party and their investments.

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<sup>55</sup> “Customary international law” results from a general and consistent practice of states that they follow from a sense of legal obligation. The customary international law referred to in this Article refers to relevant customary international law principles that protect the investments of aliens.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

- (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
- (b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor with restitution, compensation or both, as appropriate, for such loss.<sup>56</sup>

#### **Article 14.9: Transfers**

1. Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) contributions to capital, including the initial contribution;
- (b) profits, capital gains, dividends, royalties, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;
- (c) proceeds from the total or partial sale or liquidation of any covered investment;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made in accordance with Article 14.8 and Article 14.11;
- (f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the parties to the dispute; and
- (g) earnings and other remuneration of personnel engaged from abroad in connection with that investment.

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<sup>56</sup> For greater certainty, when providing (i) restitution, (ii) compensation or (iii) both restitution and compensation, the value shall not exceed the loss suffered.

2. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws and regulations 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 the proceeds of crime;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
- (f) taxation;
- (g) social security, public retirement, or compulsory savings schemes; and
- (h) severance entitlements of employees.

#### **Article 14.10: Senior Management and Boards of Directors**

1. Neither Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.

2. A Party may require that a majority or less than a majority of the board of directors, or any committee thereof of an enterprise of that Party that is a covered investment be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## Article 14.11: Expropriation and Compensation<sup>57</sup>

1. A Party shall not expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation (expropriation), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate and effective compensation; and
- (d) in accordance with due process of law.

2. The compensation referred to in paragraph 1(c) shall:

- (a) be paid without delay;<sup>58</sup>
- (b) be equivalent to the fair market value of the expropriated investment at the time when or immediately before the expropriation was publicly announced, or when the expropriation occurred, whichever is applicable;
- (c) not reflect any change in value because the intended expropriation had become known earlier; and
- (d) be effectively realisable and freely transferable between the territories of the Parties.

3. The compensation referred to in paragraph 1(c) shall include appropriate interest. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party or, if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely useable currency, the compensation referred to in paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement or to the revocation, limitation or creation of intellectual property rights, to the extent that

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<sup>57</sup> This Article shall be interpreted in accordance with Annex 14-B.

<sup>58</sup> The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

the issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.<sup>59</sup>

#### **Article 14.12: Subrogation**

1. If a Party or designated agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

2. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.<sup>60</sup>

#### **Article 14.13: Denial of Benefits<sup>61</sup>**

A Party may deny the benefits of this Chapter:

(a) to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if:

(i) persons of a non-Party or the denying Party own or control the enterprise; and

(ii) the enterprise has no substantial business activities in the territory of the other Party;

(b) to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if:

(i) persons of a non-Party own or control the enterprise; and

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<sup>59</sup> For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights and the term "limitation" of intellectual property rights includes exceptions to those rights.

<sup>60</sup> This, however, does not necessarily imply recognition of the latter Party of the merits of any case or the amount of any claims arising therefrom.

<sup>61</sup> For greater certainty, the benefits of this Chapter may be denied at any time before or after an investment is made, including after an investor has submitted a claim to arbitration under Article 14.25.

- (ii) the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments; or
- (c) to an investor of the other Party if a person of a non-Party owns or controls the enterprise and the denying Party does not maintain diplomatic relations with that non-Party.

#### **Article 14.14: Non-Conforming Measures**

1. Article 14.4, Article 14.5, Article 14.6 and Article 14.10 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central level of government, as set out by that Party in its Schedule to Annex I (Trade in Services and Investment Schedules); or
    - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I (Trade in Services and Investment Schedules); or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of the Party's Schedule to Annex I (Trade in Services and Investment Schedules), with Article 14.4, Article 14.5, Article 14.6 or Article 14.10.
2. Article 14.4, Article 14.5, Article 14.6 and Article 14.10, shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II (Trade in Services and Investment Schedules).
3. Article 14.4 and Article 14.5 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception

to, or derogation from, the obligations under Article 3 or Article 4 of the TRIPS Agreement.

#### **Article 14.15: Special Formalities and Disclosure of Information**

1. Nothing in Article 14.4 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a residency requirement for registration or a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of the other Party and covered investments in accordance with this Chapter.

2. Notwithstanding Article 14.4, a Party may require an investor of the other Party, or its covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor or its covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

#### **Article 14.16: Promotion of Regulatory Objectives**

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, public morals, social welfare, consumer protection or the promotion and protection of cultural diversity or other regulatory objectives.

#### **Article 14.17: Corporate Social Responsibility**

Each Party reaffirms the importance of encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

#### **Article 14.18: Committee on Investment**

1. The Parties hereby establish a Committee on Investment (Investment Committee) consisting of representatives of the Parties.
2. The Investment Committee shall meet within two years from the date of entry into force of this Agreement and thereafter as agreed by the Parties. Meetings may be conducted in person, or by any other means as determined by the Parties.
3. The Investment Committee's functions shall be:
  - (a) to monitor and review the implementation of this Chapter;
  - (b) to consider any other matters related to this Chapter identified by the Parties;
  - (c) to report to the Joint Committee as required; and
  - (d) to consider and recommend to the Joint Committee any amendments to this Chapter.

### **Section B: Investor-State Dispute Settlement**

#### **Article 14.19: Definitions**

For the purposes of this Section:

**Appointing Authority** means:

- (i) In the case of arbitration under Article 14.25, the Secretary General of ICSID;
- (ii) In the case of arbitration under Article 14.25, the Secretary General of the Permanent Court of Arbitration; or
- (iii) Any person as agreed between the disputing parties;

**disputing investor** means an investor of a Party that makes a claim against another Party;

**disputing parties** means a disputing investor and a disputing Party;

**disputing Party** means a Party against which a claim is made under this Section;

**disputing party** means a disputing investor or a disputing Party;

**ICSID** means the International Centre for Settlement of Investment Disputes;

**ICSID Additional Facility Rules** means *the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

**ICSID Convention** means the *Convention of the Settlement of Investment Disputed between States and National of other States*, done at Washington on 18 March 1965;

**New York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958; and

**Non-disputing Party** means the Party of the disputing investor;

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on the International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

#### **Article 14.20: Scope**

1. This Section shall apply to disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former under Section A which causes loss or damage to the covered investment of the investor ("investment dispute").
2. This Section shall not apply to investment disputes which have occurred prior to the date of entry into force of this Agreement.
3. A natural person possessing the nationality or citizenship of a Party may not pursue a claim against that Party under this Section.

#### **Article 14.21: Exclusion of Claims**

1. Without prejudice to the scope of any applicable exceptions, non-conforming measures, principles of international law or the disputing Party's ability to rely upon

such exceptions, non-conforming measures or principles of international law during the proceedings, no claim may be brought under this Section:

- (a) alleging a breach of, or otherwise invoking, Article 14.5 on the basis that another international agreement contains more favourable rights or obligations. For greater certainty, this shall not prevent a claim challenging measures of a Party, including measures taken in accordance with another international agreement, on the basis that those measures breach Article 14.5 and have resulted in loss or damage to the disputing investor;
- (b) in relation to a measure that is designed and implemented to protect or promote public health<sup>62</sup>;
- (c) in relation to an investment that has been established through illegal conduct including fraudulent misrepresentation, concealment or corruption. For greater certainty, this exclusion does not apply to investments established through minor or technical breaches of law; or
- (d) if the claim is frivolous or manifestly without merit.

2. If the disputing Party considers that a claim brought under this Section is covered by paragraph 1, it may submit an objection on that basis as a preliminary question in accordance with Article 14.30, without prejudice to its ability to raise such an objection at another stage in the proceedings.

#### **Article 14.22: Consultations**

1. In the event of an investment dispute referred to in Article 14.20, the disputing parties shall as far as possible resolve the dispute through consultation, with a view towards reaching an amicable settlement. Such consultations shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.

2. With the objective of resolving an investment dispute through consultations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations, with information regarding the legal and factual basis for the

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<sup>62</sup> For greater certainty:

- 1. for Australia, such measures include measures that comprise or relate to the:
  - (i) Pharmaceutical Benefits Scheme;
  - (ii) Medicare Benefits Scheme;
  - (iii) Therapeutic Goods Administration; and
  - (iv) Office of the Gene Technology Regulator.
- 2. for Indonesia, such measures include measures that comprise or relate to the Indonesia Health Service Scheme.

investment dispute.

3. For greater certainty, the initiation of consultations shall not be construed as recognition of the jurisdiction of the tribunal.

#### **Article 14.23: Conciliation**

1. If the dispute cannot be resolved within 180 days from the date of receipt by the disputing Party of the written request for consultations, the disputing Party may initiate a conciliation process, which shall be mandatory for the disputing investor, with a view towards reaching an amicable settlement. Such a conciliation process shall be initiated by a written request delivered by the disputing Party to the disputing investor.

2. The conciliation process under this Article can only be initiated by a written request delivered by the disputing Party within 180 days from the date of receipt by the disputing Party of the written request for consultations.

3. Expenses incurred in relation to the conciliation process shall be borne equally by the disputing parties. Each disputing party shall bear its own legal expenses.

#### **Article 14.24: Claim by an Investor of a Party**

1. If an investment dispute has not been resolved by consultations in accordance with Article 14.22 or conciliation in accordance with Article 14.23, in accordance with the timeframes in Article 14.26.2(a) or Article 14.26.2(b) respectively;

(a) the disputing investor, on his or her own behalf, may submit to arbitration under this Section a claim:

(i) that the disputing Party has breached an obligation under Article 14.4, Article 14.5 and Articles 14.7 through 14.12 of Section A; and

(ii) that the disputing investor has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the disputing investor, on behalf of an enterprise<sup>63</sup> of the disputing Party that the disputing investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

(i) that the disputing Party has breached an obligation under Article 14.4, Article 14.5 and Article 14.7 through Article 14.12 of Section A; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

#### **Article 14.25: Submission of a Claim**

1. A disputing investor may submit a claim referred to in Article 14.24 to one of the following fora:

(a) if Indonesia is the disputing Party, to the courts or tribunals of that Party, provided that such court or tribunal has jurisdiction over such claim;

(b) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings;

(c) under the ICSID Additional Facility Rules;

(d) under the UNCITRAL Arbitration Rules; or

(e) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules.

2. A claim shall be deemed submitted to arbitration under this Article when the disputing investor's notice or of request for arbitration made in accordance with this Section ("notice of arbitration") is received under the applicable arbitration rules.

3. The arbitration rules applicable under paragraphs 1(a) through (e), as in effect on the date the claim or claims were submitted to arbitration under this Article, shall govern the arbitration except to the extent modified by this Section.

4. In the event that an investment dispute has been submitted for resolution under one of the fora provided for in paragraph 1 of this Article, the same investment

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<sup>63</sup> For greater certainty, an enterprise may not itself submit a claim against that Party in which it is established.

dispute shall not be submitted under any other fora provided for in paragraph 1 of this Article.

5. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established in accordance with this Section, and on individual arbitrators serving on such tribunals.

6. The disputing investor shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the disputing investor appoints; or
- (b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

#### **Article 14.26: Conditions and Limitations on Submission of a Claim**

1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the breach alleged under Article 14.24 and knowledge that the disputing investor (for claims brought under Article 14.24(1)(a) or the enterprise (for claims brought under Article 14.24(1)(b)) has incurred loss or damage.

2. No claim shall be submitted to arbitration under this Section unless:

- (a) if the disputing Party has not initiated a conciliation process in accordance with Article 14.23, at least 180 days have elapsed since the date of the receipt by the disputing Party of a request for consultations and the disputing investor has provided written notice to the disputing Party of its intent to submit the investment dispute to arbitration at least 90 days before the claim is submitted under Article 14.24; or
- (b) if the disputing Party has initiated a conciliation process Article 14.23, at least 120 days has elapsed since the initiation of the conciliation and the disputing investor has provided written notice to the disputing Party of its intent to submit the investment dispute to arbitration at least 60 days before the claim is submitted under Article 14.24; and
- (c) a notice of intent referred to in subparagraphs (a) and (b) briefly summarises the alleged breach of the disputing Party (including the articles or provisions alleged to have been breached) and the loss or damaged allegedly caused to the disputing investor or a covered investment.

3. No claim shall be submitted to arbitration under this Section unless:
  - (a) the disputing investor consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
  - (b) the notice of arbitration is accompanied by:
    - (i) for claims under Article 14.24(1)(a), the disputing investor's written waiver; and
    - (ii) for claims under Article 14.24(1)(b), the disputing investor's and the enterprise's written waiver

of any right to initiate or continue before any court or administrative tribunal under the law of either Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 14.24.

4. Notwithstanding paragraph 3(b), neither Party shall prevent the disputing investor from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving its rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

5. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which has been 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.

6. A disputing Party shall not assert, as a defence counter-claim, right of set off or otherwise, that the disputing investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

#### **Article 14.27: Selection of Arbitrators**

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators:
  - (a) one arbitrator appointed by each of the disputing parties; and

(b) a third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties, shall be a national of a non-Party which has diplomatic relations with the disputing Party and non-disputing Party, and shall not have permanent residence in either the disputing Party or non-disputing Party.

2. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules and be independent of, and not be affiliated with or take instructions from the disputing Party, the non-disputing Party or disputing investor.

3. The Appointing Authority shall serve as appointing authority for arbitration under this Article.

4. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

5. The disputing parties may establish rules relating to expenses incurred by the tribunal, including the arbitrators' remuneration.

6. If any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor 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.

7. Arbitrators appointed under this Section shall comply with Annex 14-A (Code of Conduct of Arbitrators).

#### **Article 14.28: Security for Costs**

1. For greater certainty, on request of the disputing Party, the tribunal may order the disputing investor to provide security for all or a part of the costs if there are reasonable grounds to believe that the claimant risks not being able to honour a possible decision on costs issued against it.

2. If the security for costs is not provided in full within 30 days after the tribunal's order or within any other time period set by the tribunal, the tribunal shall so inform the disputing parties and thereafter the tribunal may order the suspension or termination of the proceedings.

#### **Article 14.29: Consolidation**

Where two or more claims have been submitted separately to arbitration under Article 14.24 and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

#### **Article 14.30: Conduct of the Arbitration**

1. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, a tribunal shall decide the matter before proceeding to the merits.

2. A disputing Party may, no later than 60 days after the constitution of the tribunal, file as a preliminary objection that a claim is excluded under Article 14.20. A disputing Party may also file an objection that a claim is otherwise outside of the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection. This is without prejudice to a disputing Party's ability to raise such an objection at another stage of the proceedings.

3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is excluded under Article 14.20, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

4. In the event that the disputing Party so requests within 60 days after the tribunal is constituted, the tribunal shall decide on an expedited basis any preliminary objection raised under this Article. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefore, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

5. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

#### **Article 14.31: Transparency of Arbitral Proceedings**

1. Subject to paragraphs 2 and 3, the disputing Party shall make publicly available all awards and decisions produced by the tribunal.
2. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.
3. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.
4. A disputing party may disclose to persons directly connected with the arbitral proceeding such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.
5. The tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.
6. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Party. The disputing Party shall notify the other Party of the receipt of the notice of arbitration within 30 days thereof.

#### **Article 14.32: Third Party Funding**

1. If there is third party funding, the disputing investor benefiting from it shall notify to the disputing Party and to the tribunal, or where the tribunal is not established, to the Appointing Authority of the tribunal, the name and address of the third party funder.
2. Such notification shall be made at the time of submission of a claim, or, where the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as such agreement is concluded or the donation or grant is made.
3. If a disputing investor fails to disclose third party funding under this Article, the tribunal may order the suspension or termination of the proceedings.

### **Article 14.33: Governing Law**

1. Subject to paragraphs 2 and 3, when a claim is submitted under Article 14.24, the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, any relevant rules of international law applicable in the relations between the Parties and, if applicable, any relevant domestic law of the disputing Party.
2. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. Without prejudice to paragraph 3, if the Parties fail to issue such a decision within 60 days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.
3. A joint decision of the Parties, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal and any decision or award issued by a tribunal must be consistent with that joint decision.

### **Article 14.34: Awards**

1. If a tribunal makes a final award against either of the disputing parties, the tribunal may award, separately or in combination only:
  - (a) Monetary damages and any applicable interest; and
  - (b) Restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.
2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.
3. If the tribunal determines that a claim is brought in contravention of Article 14.21 the tribunal shall make an award requiring the disputing investor to pay all costs and attorney's fees incurred by the disputing Party to respond to the claim, unless the tribunal considers that there are exceptional circumstances that warrant the disputing parties to bear costs in other specified proportions.
4. A tribunal may not award punitive damages.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 14.24.1(b) and an award is made in favour of the enterprise:

(a) an award of restitution of property shall provide that restitution be made to the enterprise; and

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise.

6. An award made by a tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

7. Subject to paragraph 8 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

8. A disputing party may not seek enforcement of a final award until:

(a) In the case of a final award under the ICSID Convention:

(i) 120 days has elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; or

(b) In the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected in accordance with Article 14.25:

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

9. Each Party shall provide for the enforcement of an award in its territory.

#### **Article 14.35: Service of Documents**

1. Notices and other documents in disputes under this Section shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade  
R.G. Casey Building  
John McEwen Crescent  
Barton ACT 0221  
Australia

2. Notices and other documents in disputes under this Section shall be served on Indonesia by delivery to:

Directorate General of Legal Affairs and International Treaties  
Ministry of Foreign Affairs  
Jalan Taman Pejambon 6  
10110 DKI Jakarta  
Indonesia

## ANNEX 14-A

### CODE OF CONDUCT OF ARBITRATORS

#### *Responsibilities to the Process*

1. Every arbitrator shall avoid impropriety and the appearance of impropriety, be independent and impartial, avoid direct and indirect conflicts of interests and observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved. Former arbitrators shall comply with the obligations in paragraphs 16, 17, 18 and 19.

#### *Disclosure Obligations*

2. Prior to confirmation of his or her selection as an arbitrator under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

3. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 2 and shall disclose them by communicating them in writing to the disputing parties. The obligation to disclose is a continuing duty, which requires an arbitrator to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

#### *Performance of Duties by Arbitrators*

4. An arbitrator shall comply with the provisions of this Chapter and the applicable rules of procedure.

5. On selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the proceeding.

7. An arbitrator shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

8. An arbitrator shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with, paragraphs 1, 2, 3, 18, 19 and 20.

9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

10. An arbitrator shall not communicate matters concerning actual or potential violations by another arbitrator unless the communication is to both disputing parties or is necessary to ascertain whether that arbitrator has violated or may violate this Annex.

#### *Independence and Impartiality of Arbitrators*

11. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

12. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or a disputing party or fear of criticism.

13. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.

14. An arbitrator shall not use his or her position on the arbitral tribunal to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator. An arbitrator shall make every effort to prevent or discourage others from representing themselves as being in such a position.

15. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgment.

16. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.

#### *Duties in Certain Situations*

17. An arbitrator or former arbitrator shall avoid actions that may create the appearance that the arbitrator was biased in carrying out his or her duties or would benefit from the decision or award of the arbitral tribunal.

*Maintenance of Confidentiality*

18. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.

19. An arbitrator shall not disclose an arbitral tribunal award or parts thereof prior to its publication.

20. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitral tribunal, or any arbitrator's view, except as required by legal or constitutional requirements.

## ANNEX 14-B

### EXPROPRIATION AND COMPENSATION

1. An action or a series of related actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.
2. Article 14.11.1 of this Chapter addresses two situations.
  - (a) the first situation is direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
  - (b) the second situation is where an action or series of related actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in paragraph 2(b) requires a case-by-case, fact-based inquiry that considers, among other factors:
  - (a) the economic impact of the government action, although the fact that an action or series of related actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an indirect expropriation has occurred;
  - (b) whether the government action breaches the government's prior binding written commitment to the investor whether by contract, license or other legal document; and
  - (c) the character of the government action, including, its objective and whether the action is disproportionate to the public purpose<sup>64</sup>.
4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety and the environment do not constitute expropriation of the type referred to in paragraph 2(b).

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<sup>64</sup> "Public purpose" shall be read with reference to Article 24.11.1(a).

## ANNEX 14-C

### FOREIGN INVESTMENT POLICY

1. A decision under Australia's Foreign Investment Framework, which comprises: Australia's Foreign Investment Policy, the *Foreign Acquisition and Takeovers Act 1975* (Cth); *Foreign Acquisitions and Takeovers Regulations 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* (Cth); *Financial Sector (Shareholdings) Act 1998* (Cth); and Ministerial Statements shall not be subject to the dispute settlement provisions of Section B (Investor-State Dispute Settlement) or Chapter 20 (Consultations and Dispute Settlement).
2. If, in the future, Indonesia establishes a foreign investment screening mechanism equivalent to Australia's Foreign Investment Review Board, a decision made under that mechanism shall also not be subject to the dispute settlement provisions of Section B (Investor-State Dispute Settlement) or Chapter 20 (Consultations and Dispute Settlement).

## ANNEX 14-D

### ANNEX ON PUBLIC DEBT

1. The Parties recognise that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award shall be made in favour of a claimant for a claim under Article 14.25 with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Section A, including an uncompensated expropriation in accordance with Article 14.11.

2. No claim that a restructuring of debt issued by a Party breaches an obligation under Section A shall be submitted to, or if already submitted continue in, arbitration under Section B (Investor-State Dispute Settlement) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after that submission, except for a claim that the restructuring violates Article 14.4 or Article 14.5.

3. Notwithstanding Article 14.25, and subject to paragraph 2, an investor of a Party shall not submit a claim under Section B (Investor-State Dispute Settlement) that a restructuring of debt issued by a Party breaches an obligation under Section A, other than Article 14.4 and Article 14.5, unless:

- (a) 270 days have elapsed from the date of receipt by the respondent of the written request for consultations in accordance with Article 14.22; or
- (b) 120 days have elapsed from the date of initiation of conciliation in accordance with Article 14.23, provided that such conciliation was made after a request for consultation under subparagraph (a).

## CHAPTER 15

### ECONOMIC COOPERATION

#### Article 15.1: Objectives

1. Economic cooperation under this Chapter shall be built upon a common understanding between the Parties to support the implementation of this Agreement, with the objective of maximising its benefits, supporting pathways to trade and investment facilitation, and further improving market access and openness to contribute to the sustainable inclusive economic growth and prosperity of the Parties.
2. The Parties reaffirm the importance of economic cooperation activities between them and shall seek, if possible, to minimise duplication of ongoing efforts and utilisation of resources, particularly under other trade agreements and economic cooperation programs.

#### Article 15.2: Scope

Economic cooperation under this Chapter shall support the effectiveness and efficiency of the implementation and utilisation of this Agreement through activities that relate to trade and investment as specified in the Annual Work Program.

#### Article 15.3: Committee on Economic Cooperation

1. For the purpose of effective implementation of this Chapter, and to achieve better coordination of economic cooperation activities with efficient and effective allocation and use of resources, a Committee on Economic Cooperation (the Committee) is hereby established.
2. Australia and Indonesia shall jointly chair the Committee. The membership of the Committee shall include representatives from the Committee on Trade in Goods, Committee on Trade in Services and Committee on Investment.
3. Members of the Committee shall be familiar with the scope of economic cooperation activities conducted under this Agreement and promote coherence between these activities and the work undertaken through the broader bilateral economic partnership.
4. The Committee shall meet within one year of the date of entry into force of this Agreement and, unless the Parties otherwise agree, once every year after that.

5. The functions of the Committee shall include, but not be limited to, the following:

- (a) developing medium-term objectives as a guideline for the development of an annual work program of economic cooperation activities (“Annual Work Program”) for consideration and approval by the Joint Committee;
- (b) developing an Annual Work Program for consideration and approval by the Joint Committee, including coordinating and prioritising proposals for economic cooperation activities from the Committee on Trade in Goods, the Committee on Trade in Services and the Committee on Investment as well as their subsidiary bodies;
- (c) conducting a review of the Annual Work Program from the previous year and providing a report to the Joint Committee;
- (d) overseeing and reviewing the implementation of the Annual Work Program to assess its overall effectiveness and contribution to the implementation of this Agreement;
- (e) working with other Committees and subsidiary bodies to establish and maintain effective communication and coordination on economic cooperation activities; and
- (f) resolving issues and concerns about the implementation of the Annual Work Program as agreed by the Parties.

#### **Article 15.4: Formulation of Annual Work Program**

1. Each activity in an Annual Work Program developed under this Chapter shall:

- (a) be guided by the medium-term objectives, as agreed in Article 15.3.5(a);
- (b) be related to trade or investment and support the implementation of this Agreement;
- (c) involve both Parties;
- (d) address the mutual priorities of the Parties;
- (e) avoid duplicating existing economic cooperation activities; and

(f) take into consideration the economic cooperation needs as proposed and identified by other Committees.

2. In developing the Annual Work Program, the Committee shall take into account the Annual Work Program review under Article 15.3.5(c).

3. The Joint Committee may modify the Annual Work Program, taking into account the Annual Work Program review under Article 15.3.5(c), any recommendations from the Committee and available resources. The Joint Committee may modify the Annual Work Program out of session if agreed by the Parties.

4. The first Annual Work Program will be developed in accordance with the medium-term objectives attached to the exchange of letters constituting an agreement on economic cooperation signed between Australia and Indonesia in connection with the signing of this Agreement.

#### **Article 15.5: Contact Points**

Each Party shall designate a contact point to facilitate communication between the Parties on all matters relating to the implementation of the Annual Work Program and shall update the other Party on any changes to the details of the contact points.

#### **Article 15.6: Resources**

1. Resources for economic cooperation under this Chapter shall be provided in a manner as agreed by the Parties and in accordance with the laws and regulations of the Parties.

2. The Parties, on the basis of mutual benefit, shall consider cooperation with, and contributions from, external parties to support the implementation of the Annual Work Program.

#### **Article 15.7: Non-Application of Chapter 20 (Consultations and Dispute Settlement)**

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

**Article 15.8: Relation to Other Chapters**

This Chapter shall apply to all economic cooperation activities under this Agreement.

## CHAPTER 16

### COMPETITION

#### Article 16.1: Definitions

For the purposes of this Chapter,

**competition laws** means:

- (i) for Australia, the *Competition and Consumer Act 2010* (Cth), and any regulations relating to Parts IV and XI A; and provisions of other Parts in so far as they relate to Part IV, but not including Part X, including their amendments and replacements; and
- (ii) for Indonesia, *Undang-undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat* (Law No. 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition), and its related regulations, including their amendments and replacements.

#### Article 16.2: Objectives

The objectives of this Chapter are to promote fair competition in markets and enhance economic efficiency and consumer welfare, through the adoption and maintenance of laws to proscribe anti-competitive practices, to help secure the benefits of this Agreement and promote cooperation between the Parties on competition law enforcement.

#### Article 16.3: Basic Principles

Acknowledging each Party's rights and obligations under this Chapter, the Parties recognise the sovereign rights of each Party to develop, set, administer and enforce its own competition laws and regulations, and the differences in legal systems, capacity, and level of development in the area of competition policy and law.

#### **Article 16.4: Application of Competition Laws and Regulations<sup>65</sup>**

1. Each Party shall adopt or maintain competition laws and regulations that proscribe anti-competitive practices and shall enforce them accordingly.<sup>66</sup>
2. Each Party shall maintain authorities responsible for the enforcement of its competition laws and regulations.
3. Each Party shall ensure independence in decision-making by its authorities in relation to enforcement of competition laws and regulations.
4. Each Party shall apply and enforce its competition laws and regulations in a manner which does not discriminate on the basis of nationality.
5. Each Party shall apply its competition laws and regulations to all economic sectors and all entities engaged in commercial activities,<sup>67</sup> subject to exclusions and exemptions as provided for under its competition laws and regulations. Such exclusions and exemptions shall be transparent and undertaken on the grounds of public policy or public interests.

#### **Article 16.5: Cooperation**

The Parties agree to cooperate in a manner compatible with their respective laws, regulations, important interests, and available resources. Such cooperation may include:

- (a) assistance in providing information related to competition law enforcement that involves one or both Parties, including to foster understanding or to facilitate effective competition law enforcement;
- (b) discussion between the Parties on enforcement activities of interest to both Parties, or related anti-competitive activities;
- (c) assistance in enforcement and litigation activities of interest to both Parties;

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<sup>65</sup> For greater certainty, this article applies to all entities engaged in commercial activities regardless of their ownership.

<sup>66</sup> Anticompetitive practices may include:

1. horizontal arrangements;
2. vertical restraints;
3. abuse of dominant position or market power; and
4. mergers and acquisitions that would substantially lessen competition.

<sup>67</sup> For greater certainty, nothing in paragraph 5 shall be construed to preclude a Party from applying its competition laws to commercial activities outside its borders that have anticompetitive effects within its jurisdiction.

- (d) facilitation of regular dialogue between competition authorities to foster effective implementation of respective competition laws and policies;
- (e) consultation on any matter relating to competition law that substantially affects the interests of the other Party. Such consultation shall not affect the ability of each Party to independently administer or enforce its competition law; and
- (f) relevant matters of mutual interest related to consumer protection.

#### **Article 16.6: Notifications**

Each Party shall, as promptly as reasonably possible, notify the competition authority of the other Party of competition enforcement activities that may affect the interests of the other Party.

#### **Article 16.7: Transparency**

1. The Parties recognise the value of making their competition law enforcement policies as transparent as possible. Each Party shall endeavour to maintain and update its information in competition law enforcement policies, including regulations, guidelines, and practices through their website.

2. On request of a Party, the other Party shall make available to the requesting Party public information on exclusions and exemptions provided by its competition laws and regulations, provided that the request specifies the particular good, service, or market of concern and includes information explaining how the exclusions or exemptions may hinder economic relations between the Parties.

#### **Article 16.8: Procedural Fairness**

1. In applying competition law, each Party shall implement administrative and judicial procedures in a transparent and fair manner.

2. Each Party shall ensure that before sanction or remedy is imposed on any person or entity for breaching its competition law, that person or entity is provided the reasons for the allegations and a fair opportunity to be heard and to present evidence.

3. Each Party shall ensure that any person or entity subject to the imposition of a sanction or a remedy under its competition law has access to an independent review or appeal of that sanction or remedy.

4. Each Party shall endeavour to handle competition cases in a timely manner.

#### **Article 16.9: Confidentiality of Information**

1. This Chapter shall not require the sharing of information by a Party, which is contrary to the Party's laws, regulations or important interests.

2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the providing Party with:

- (a) the purpose of the request;
- (b) use of the requested information; and
- (c) any laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the providing Party.

3. If information shared under this Chapter is shared on a confidential basis then, except to comply with laws and regulations, the Party receiving that information shall:

- (a) maintain the confidentiality of the information received;
- (b) use it only for the purpose disclosed at the time of the request, unless otherwise authorised by the Party providing the information;
- (c) not disclose it to any other authority, entity or person that is not authorised by the Party providing the information; and
- (d) comply with any other conditions required by the Party providing the information.

#### **Article 16.10: Consumer Protection**

1. Each Party recognises the importance of consumer protection laws and enforcement as well as cooperation between the Parties on matters related to consumer protection, in order to achieve the objectives set out in Article 16.2.

2. Each Party shall adopt or maintain laws and regulations to proscribe the use in trade of misleading practices, or false or misleading descriptions.
3. Each Party also recognises the importance of improving awareness of, and access to, consumer redress mechanisms.

#### **Article 16.11: Review**

Unless the Parties otherwise agree, the Parties shall review this Chapter as part of the General Review under Article 21.5 (General Review of the Agreement) of Chapter 21 (Final Provisions), with a view to improving the provisions in relation to all entities regardless of their ownership. The Parties shall consult each other on the need to modify this Chapter as necessary through the Joint Committee established under Chapter 18 (Institutional Provisions).

#### **Article 16.12: Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 20 (Consultations and Dispute Settlement) for any matter arising under this Chapter.

## CHAPTER 17

### GENERAL PROVISIONS AND EXCEPTIONS

#### Article 17.1: Confidentiality of Information

1. Nothing in this Agreement shall require a Party to furnish or allow access to information that would be contrary to its law or impede law enforcement, or otherwise be contrary to the public interest or that would prejudice the legitimate commercial interests of any particular enterprises, public or private.
2. Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except where the disclosure of information is for the purposes of complying with the legal requirements of a Party.

#### Article 17.2: General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Non-Tariff Measures), Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures), Chapter 6 (Trade Facilitation), Chapter 7 (Sanitary and Phytosanitary Measures) and Chapter 8 (Technical Barriers to Trade), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources and that Article XX(f) of GATT 1994 applies to measures imposed for the protection of national treasures of artistic, historic or archaeological value.
2. For the purposes of Chapter 9 (Trade in Services), Chapter 10 (Financial Services), Chapter 11 (Telecommunications), Chapter 12 (Movement of Natural Persons) and Chapter 13 (Electronic Commerce), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

3. For the purposes of Chapter 14 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investments or between investors where like conditions prevail, or a disguised restriction on international trade or investment, nothing in Chapter 14 (Investment) shall be construed to prevent a Party from adopting or enforcing measures:

- (a) necessary to protect public morals or to maintain public order<sup>68</sup>;
- (b) necessary to protect human, animal or plant life or health<sup>69</sup>;
- (c) necessary to ensure compliance with laws and regulations that are not inconsistent with this Agreement, 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;
  - (iii) safety;
- (d) imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (e) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.<sup>70</sup>

4. For the purposes of Chapter 9 (Trade in Services) and Chapter 14 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, or between investors or between investments, where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of

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<sup>68</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.

<sup>69</sup> For greater certainty, the measures referred to subparagraph (b) include environmental measures to protect human, animal or plant life or health.

<sup>70</sup> For greater certainty, the measures referred to in subparagraph (e) include environmental measures relating to the conservation of living and non-living exhaustible natural resources.

historical or archaeological value, or measures necessary to support creative arts of national value.<sup>71</sup>

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 9 (Trade in Services) and Chapter 14 (Investment) if requested by a Party affected by the measures referred to in paragraph 4.

6. Nothing in this Agreement shall be construed to prevent a Party from implementing the suspension of obligations, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO or resulting from a decision by a dispute settlement panel under a free trade agreement to which the Parties are party.

### **Article 17.3: Security Exceptions**

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it 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 materials or the materials from which they are derived;

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

(iii) taken so as to protect critical public infrastructure<sup>72</sup> which may include communications, power and water infrastructures;

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<sup>71</sup> "Creative arts" includes the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

<sup>72</sup> For clarity, this includes critical public infrastructures whether publicly or privately owned.

(iv) taken in time of national emergency or 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 17.4: Taxation Measures**

1. For the purposes of this Article:

**competent authorities** means:

(i) with respect to Australia, the Secretary to the Treasury or an authorised representative of the Secretary; and

(ii) with respect to Indonesia, the Minister of Finance or his or her authorised representative.

**tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement to which the Parties are party; and

**taxation measures** do not include any import or customs duties.

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

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

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

(b) they are granted or imposed under Article 14.6 (Prohibition of Performance Requirements) of Chapter 14 (Investment);

(c) they are granted or imposed under Article 14.9 (Transfers) of Chapter 14 (Investment); or

(d) they are granted or imposed under Article 14.11 (Expropriation and Compensation) of Chapter 14 (Investment).

4. Where paragraph 3(c) or (d) applies, Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) shall also apply in respect of taxation measures.

5. Where an investor claims that the disputing Party has breached Article 14.9 (Transfers) of Chapter 14 (Investment) or Article 14.11 (Expropriation and Compensation) of Chapter 14 (Investment) by the adoption or enforcement of a taxation measure, the competent authorities of the disputing Party may request consultations with the competent authorities of the non-disputing Party at the time that the disputing Party receives the investor's notice of intent under Article 14.25 (Submission of a Claim) of Chapter 14 (Investment). The competent authorities of the Parties shall hold consultations with a view to determining whether Article 14.9 (Transfers) of Chapter 14 (Investment) has been breached or whether the taxation measure in question has an effect equivalent to expropriation. Any tribunal established in accordance with Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) to consider the measure, shall accept as binding the decision of the competent authorities under this paragraph.

6. If the competent authorities of the Parties fail to determine whether Article 14.9 (Transfers) of Chapter 14 (Investment) has been breached or whether the taxation measure has an effect equivalent to expropriation within 360 days of the date of receipt of the request for consultations by the non-disputing Party, the investor may submit its claim to arbitration under Article 14.25 (Submission of a Claim) of Chapter 14 (Investment).

7. The time period under Article 14.26 (Conditions and Limitations on Submission of a Claim) of Chapter 14 (Investment) shall be suspended during the 360 day period under paragraph 6. For greater certainty, this time period shall not be counted as part of the time limit in Article 14.26.1 (Conditions and Limitations on Submission of a Claim) of Chapter 14 (Investment).

8. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall be done by the competent authorities.

9. If an issue arises as to whether any inconsistency exists between this Agreement and any applicable tax convention in the context of proceedings under Chapter 20 (Consultations and Dispute Settlement) or Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment), the issue shall be referred to the competent authorities of the Parties. The competent authorities of the Parties shall have 180 days from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If the competent authorities agree,

such a period may be extended. No procedure concerning the measure giving rise to the issue may continue under Chapter 20 (Consultations and Dispute Settlement) or Chapter 14 (Investment) until the expiry of the 180 day period, or such other period as may have been agreed by the competent authorities. Any panel or tribunal established under this Agreement to consider a dispute which may contain any inconsistency between this Agreement and any applicable tax convention shall accept as binding a determination of the competent authorities of the Parties made under this paragraph.

10. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any tax convention by which the Party is bound.

#### **Article 17.5: Measures to Safeguard the Balance of Payments**

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the *Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement, adopt restrictive import measures;

(b) in the case of trade in services, where a Party is in serious balance of payments and external financial difficulties or under threat thereof or if, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for macroeconomic management, adopt or maintain restrictions on payments or capital movements related to trade in services;

(c) in the case of investments, where a Party is in serious balance of payments and external financial difficulties or under threat thereof or if, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for macroeconomic management, adopt or maintain restrictions on payments or capital movements related to covered investments as defined in Article 2.4 of Chapter 2 (Initial Provisions and General Definitions).

2. Restrictions adopted or maintained under paragraphs 1(b) and 1(c) 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 paragraph 1;
- (d) be temporary and phased out progressively as the situation specified in paragraph 1 improves;
- (e) be applied on a national treatment basis;
- (f) ensure that the other Party is treated as favourably as any non-Party;
- (g) not constitute a dual or multiple exchange rate practice; and
- (h) not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the Articles of Agreement of the International Monetary Fund.

3. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party.

4. A Party adopting or maintaining any restrictions under paragraph 1 shall:

- (a) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, if requested, promptly commence consultations with the other Party;
- (b) in the case of investment, respond to the other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement.

## CHAPTER 18

### INSTITUTIONAL PROVISIONS

#### **Article 18.1: Establishment of the Joint Committee**

1. The Parties hereby establish the Joint Committee (Joint Committee) consisting of representatives of each Party.
2. The Joint Committee shall meet at the level of Ministers, unless the Parties otherwise agree.
3. Further to paragraph 2, if the Joint Committee meets at the level of Ministers, it shall be preceded by a Senior Officials level meeting.

#### **Article 18.2: Functions of the Joint Committee**

1. The Joint Committee shall:
  - (a) consider any matter related to the implementation and operation of this Agreement;
  - (b) consider any proposals to amend this Agreement;
  - (c) review this Agreement five years after the date of entry into force of this Agreement and then every five years thereafter, in accordance with Article 21.5 (General Review of the Agreement) of Chapter 21 (Final Provisions);
  - (d) supervise the work of all committees and any other subsidiary bodies established under this Agreement;
  - (e) consider ways to further enhance trade and investment between the Parties; and
  - (f) carry out any other functions as the Parties may agree.
2. The Joint Committee may:
  - (a) refer matters to, or consider matters referred to it by, committees and subsidiary bodies established under this Agreement;

- (b) develop implementing arrangements for the implementation of this Agreement;
- (c) seek to resolve differences that may arise regarding the interpretation or application of this Agreement;
- (d) seek expert advice on any matter falling within the Joint Committee's responsibilities; and
- (e) take any other action as the Parties may agree.

### **Article 18.3: Committees and Subsidiary Bodies**

1. The following Committees are established under this Agreement:
  - (a) Committee on Trade in Goods, in accordance with Article 2.11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods);
  - (b) Committee on Trade in Services, in accordance with Article 9.14 (Committee on Trade in Services) of Chapter 9 (Trade in Services);
  - (c) Committee on Investment, in accordance with Article 14.18 (Committee on Investment) of Chapter 14 (Investment); and
  - (d) Committee on Economic Cooperation, in accordance with Article 15.3 (Committee on Economic Cooperation) of Chapter 15 (Economic Cooperation).
2. The following Sub-Committees are established under this Agreement.
  - (a) Sub-Committee on Trade Facilitation, in accordance with Article 6.8 (Trade Facilitation Sub-Committee) of Chapter 6 (Trade Facilitation);
  - (b) Sub-Committee on Sanitary and Phytosanitary Matters, in accordance with Article 7.11 (SPS Sub-Committee) of Chapter 7 (Sanitary and Phytosanitary Measures); and
  - (c) Sub-Committee on Technical Barriers to Trade, in accordance with Article 8.13 (TBT Sub-Committee) of Chapter 8 (Technical Barriers to Trade).
3. The Joint Committee may establish additional committees or subsidiary bodies, including *ad hoc* bodies, as it determines necessary to address issues arising under, and assist with the implementation of, this Agreement.

4. Unless otherwise provided, any committee or subsidiary body shall:
  - (a) be composed of representatives of the Parties;
  - (b) be chaired jointly by the Parties;
  - (c) by agreement, take decisions on any matter within its functions; and
  - (d) meet annually or as determined by the Parties. Meetings may be conducted in person or by any other means as determined by the Parties.

#### **Article 18.4: Rules of Procedure**

1. The Joint Committee shall take decisions on any matter by agreement.
2. The Joint Committee shall establish its rules of procedure at its first meeting.

#### **Article 18.5: Meetings of the Joint Committee**

1. The Joint Committee shall meet within one year of the date of entry into force of this Agreement and then every year after that, or as otherwise agreed by the Parties. Sessions of the Joint Committee shall be chaired jointly by the Parties, or as otherwise agreed by the Parties.
2. Meetings of the Joint Committee may be conducted in person or by any other means as agreed by the Parties.
3. The Parties may invite, by agreement, representatives of other relevant entities, including from the private sector, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Joint Committee.

#### **Article 18.6: Contact Points**

Each Party shall designate an overall contact point to facilitate communications between the Parties on any matter relating to this Agreement, including its implementation, and notify its contact point to the other Party in writing within 30 days of the date of entry into force of this Agreement.

## CHAPTER 19

### TRANSPARENCY

#### Article 19.1: Definitions

For the purposes of this Chapter:

**administrative rulings of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct, but does not include:

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

#### Article 19.2: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published, including on the internet where feasible, or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent practicable each Party shall:

(a) publish, including on the internet where feasible, in advance any such laws, regulations, and where appropriate, procedures and administrative rulings of general application that it proposes to adopt; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment on any such proposed laws, regulations, procedures and administrative rulings of general application with a view to considering the comments received.

3. Without prejudice to paragraphs 1 and 2, when introducing or changing its laws and regulations that significantly affect the implementation and operation of this Agreement, each Party shall endeavour to take appropriate measures to enable

interested persons to become acquainted with such introduction or change, which may include providing a reasonable period between the date when those laws and regulations, proposed or final in accordance with its legal system, are made publicly available and the date when they enter into force.

#### **Article 19.3: Provision of Information**

1. Each Party shall, to the extent practicable, provide notification to the other Party with respect to proposed or actual laws, regulations, procedures and administrative rulings of general application which it considers may materially affect the operation of this Agreement. For greater certainty, a Party may notify specific application of such measures where it considers appropriate.
2. Regardless of whether a measure has been notified under paragraph 1, a Party shall, on request of the other Party, respond promptly to specific questions from, and provide information to, the requesting Party, with respect to any actual or proposed laws, regulations, procedures and administrative rulings of general application which the requesting Party considers might materially affect the operation of this Agreement.
3. Any notification, request or information under this Article shall be provided to the other Party through the contact points established under Article 18.6 (Contact Points) of Chapter 18 (Institutional Provisions).
4. Any notification or information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

#### **Article 19.4: Administrative Proceedings**

1. Each Party shall ensure that all laws, regulations, procedures and administrative rulings of general application to which this Agreement applies are administered in a consistent, impartial, objective and reasonable manner.
2. With a view to administering in a consistent, impartial, objective and reasonable manner its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying such measures to a particular person, good or service of the other Party in specific cases that:
  - (a) wherever possible, a person of the other Party that is directly affected by a proceeding is provided reasonable notice, in accordance with its domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issue in question;

(b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) it follows its procedures in accordance with its laws and regulations.

#### **Article 19.5: Review and Appeal**

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

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

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

(b) a decision based on the evidence and submissions of record or, where required by its laws and regulations, the record compiled by the administrative authority.

## CHAPTER 20

### CONSULTATIONS AND DISPUTE SETTLEMENT

#### Section A: Introductory Provisions

##### Article 20.1: Definitions

For the purposes of this Chapter, the following definitions shall apply, unless the context otherwise provides:

**Complaining Party** means the Party that requests consultations under Article 20.5;

**dispute arising under this Agreement** means a complaint made by the Complaining Party concerning any measure affecting the operation, implementation or application of this Agreement whereby any benefit accruing to the Complaining Party directly or indirectly under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations<sup>73</sup> under this Agreement<sup>74</sup>; and

**Responding Party** means the Party to which the request for consultations is made under Article 20.5.

##### Article 20.2: Scope

1. This Chapter shall apply to the avoidance or settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 7 (Sanitary and Phytosanitary Measures), Chapter 8 (Technical Barriers to Trade) or Chapter 15 (Economic Cooperation).
2. This Chapter shall apply subject to any special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

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<sup>73</sup> A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with its obligations under this Agreement.

<sup>74</sup> Non-violation complaints are not permitted under this Agreement.

### **Article 20.3: General Provisions**

1. A panel established under this Chapter shall interpret this Agreement in accordance with the customary rules of treaty interpretation of public international law. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body.
2. All notifications, requests and replies made in accordance with this Chapter shall be in writing.
3. The Parties are encouraged at every stage of a dispute to make every effort to reach a mutually agreed solution to the dispute.
4. Any time periods provided for in this Chapter may be modified by agreement between the Parties.

### **Article 20.4: Choice of Forum**

1. Except as provided in this Article, this Chapter is without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is a party.
2. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which the Parties are party, the Complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter. However, this paragraph shall not apply if substantially separate and distinct rights or obligations are in dispute.
3. For the purposes of this Article, the Complaining Party shall be deemed to have selected a forum in which to settle the dispute when it has requested the establishment of a panel in accordance with Article 20.7 or requested the establishment of, or referred a matter to, a dispute settlement panel or arbitral tribunal under another international agreement.
4. Notwithstanding paragraph 2, a Party may initiate an adjudication proceeding in the other forum if the first forum selected fails for procedural or jurisdictional reasons to make findings on the merits of the claim.
5. This Article does not apply where the Parties agree in writing that this Article shall not apply to a particular dispute.

## Section B: Consultation Provisions

### Article 20.5: Consultations

1. Either Party may request consultations with respect to any dispute arising under this Agreement. The Responding Party shall accord due consideration to a request for consultations made by the Complaining Party and shall accord adequate opportunity for such consultations.
2. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.
3. The Responding Party shall, unless the Parties otherwise agree, reply to the request within seven days of the date of its receipt and shall enter into consultations no later than:
  - (a) 10 days after the date of receipt of the request in cases of urgency, including those which concern perishable goods; or
  - (b) 30 days after the date of receipt of the request for all other matters.
4. The Parties shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties shall:
  - (a) provide sufficient information to enable a full examination of the matter including how the measures at issue might affect the implementation or application of this Agreement;
  - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
  - (c) endeavour to make available for the consultations personnel of its government agencies or other regulatory bodies who have responsibility for, or expertise in, the matter under consultation.
5. The consultations shall be confidential and without prejudice to the rights of the Parties to the dispute in any further or other proceedings.

## **Article 20.6: Good Offices, Conciliation, Mediation**

1. The Parties may agree at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation. Procedures for such alternative methods of dispute resolution may begin at any time and may be terminated at any time by either Party.
2. If the Parties agree, the procedures referred to in paragraph 1 may continue while the matter is being examined by a panel established or reconvened under this Chapter.
3. Proceedings involving procedures referred to in paragraph 1, and positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

## **Section C: Adjudication Provisions**

### **Article 20.7: Request for Establishment of Panels**

1. The Complaining Party may request the establishment of a panel to consider a dispute arising under this Agreement if:
  - (a) the Responding Party does not reply to a request for, or enter into, consultations in accordance with Article 20.5.3; or
  - (b) the consultations fail to resolve a dispute within:
    - (i) 20 days of the date of receipt of the request for consultations in cases of urgency, including those which concern perishable goods;
    - (ii) 60 days of the date of receipt of the request for consultations for all other matters; or
    - (iii) such other period as the Parties may agree.
2. A request made in accordance with paragraph 1 shall identify the specific measure at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the panel) sufficient to present the problem clearly.

3. The Responding Party shall immediately acknowledge receipt of the request made in accordance with paragraph 1, indicating the date on which the request was received.

4. If a request is made in accordance with paragraph 1, a panel shall be established in accordance with Article 20.8.

5. Notwithstanding paragraphs 1 and 2, a panel shall not be established to review a proposed measure.

#### **Article 20.8: Establishment and Reconvening of Panels**

1. A panel requested in accordance with Article 20.7 shall be established in accordance with this Article.

2. Unless the Parties otherwise agree, the panel shall consist of three panellists. All appointments and nominations of panellists under this Article shall conform fully with the requirements in paragraphs 9 and 10.

3. Within five days of the date of the receipt of a request under Article 20.7, the Parties shall enter into consultations with a view to reaching agreement on the procedures for composing the panel, taking into account the factual, technical and legal circumstances of the dispute. Any procedures for composing the panel which are agreed under this paragraph shall be used for the composition of the panel and shall also be used for the purposes of paragraphs 12 and 13.

4. If the Parties are unable to reach agreement on the procedures for composing the panel within 15 days of the date of the receipt of the request referred to in paragraph 3, either Party may, at any time thereafter, notify the other Party that it wishes to use the procedures set forth in paragraphs 5 through 7. Where such a notification is made, the panel shall be composed in accordance with paragraphs 5 through 7.

5. The Complaining Party shall appoint one panellist within 10 days of the date of the receipt of the notification referred to in paragraph 4. The Responding Party shall appoint one panellist within 20 days of the date of the receipt of the notification referred to in paragraph 4.

6. Following the appointment of the panellists in accordance with paragraph 5, the Parties shall agree on the appointment of the third panellist who shall serve as the chair of the panel. To assist in reaching this agreement, a Party may provide to the other Party a list of up to three nominees for appointment as the chair of the panel.

7. If any of the three panellists have not been appointed within 45 days of the date of the receipt of the notification referred to in paragraph 4, either Party may request the Director-General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under paragraph 6 shall also be provided to the Director-General of the WTO and may be used in making the required appointments.<sup>75</sup> In the event that the Director-General of the WTO is a natural person of a Party, the Deputy Director-General or the officer next in seniority who is not a natural person of a Party shall be requested to make the required appointments.

8. The date of establishment of the panel shall be the date on which the last panellist is appointed.

9. All panellists shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgement;
- (c) be independent of, and not be affiliated with or take instructions from, either Party;
- (d) not have dealt with the matter before the panel in any capacity;
- (e) disclose, to the Parties, information which may give rise to justifiable doubts as to their independence or impartiality; and
- (f) comply with the code of conduct as set out in Annex 20-B (Code of Conduct).

10. Unless the Parties otherwise agree, a panellist shall not be a natural person of a Party. In addition, the chair of the panel shall not have his or her usual place of residence in the territory of a Party.

11. Panellists shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. The Parties shall not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

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<sup>75</sup> For greater certainty, where both Parties have provided a list of nominees under paragraph 6, both lists shall be provided to the Director-General of the WTO.

12. If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner used to appoint the original panellist and shall have all the powers and duties of the original panellist. The work of the panel, including any applicable time periods, shall be suspended until the successor panellist has been appointed.

13. If a panel is reconvened under Article 20.13, Article 20.14 or Article 20.15 the reconvened panel shall, if possible, have the same panellists as the original panel. If this is not possible, the successor panellist(s) shall be appointed in the same manner as prescribed for the appointment of the original panellist(s), and shall have all the powers and duties of the original panellist(s).

#### **Article 20.9: Functions of Panels**

1. A panel shall make an objective assessment of the matter before it, including an objective assessment of:

- (a) the facts of the case;
- (b) the applicability of the provisions of this Agreement cited by the Parties; and
- (c) whether the Responding Party has failed to carry out its obligations under this Agreement.

2. A panel shall have the following terms of reference unless the Parties otherwise agree within 20 days of the date of the establishment of a panel:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of a panel made in accordance with Article 20.7, and to make such findings provided for in this Agreement."

3. A panel shall only make the findings, rulings and recommendations provided for in this Agreement.

4. The panel shall set out in its report:

- (a) a descriptive section summarising the arguments of the Parties;
- (b) its findings on the facts of the case and on the applicability of the provisions of this Agreement;

(c) its findings on whether the Responding Party has failed to carry out its obligations under this Agreement; and

(d) its reasons for its findings in subparagraphs (b) and (c).

5. In addition to paragraph 4, a panel shall include in its report any other findings jointly requested by the Parties. The panel may recommend ways in which the Responding Party could implement the panel's findings if the Parties so agree.

6. Unless the Parties otherwise agree, a panel shall base its report solely on the relevant provisions of this Agreement, the submissions and arguments of the Parties and any information or advice put before it under Article 20.10.15.

7. The findings of the panel shall not add to or diminish the rights and obligations provided in this Agreement.

8. The panel shall consult the Parties regularly and provide adequate opportunities for the development of a mutually satisfactory solution to the dispute.

9. A panel reconvened under this Chapter shall also carry out functions with regard to compliance review under Article 20.13, review of level of suspension of concessions or other obligations under Article 20.14 and post-suspension review under Article 20.15. Paragraphs 1 through 3 shall not apply to a panel reconvened under Article 20.13 and Article 20.14.

10. A panel shall make its findings by consensus. If a panel is unable to reach consensus, it may make its findings by majority vote.

#### **Article 20.10: Panel Procedures**

1. A panel established in accordance with Article 20.8 shall adhere to this Chapter. The panel shall also apply the rules of procedure set out in Annex 20-A (Rules of Procedure) unless the Parties otherwise agree. On request of a Party, or on its own initiative, the panel may, after consulting the Parties, adopt additional rules of procedure which do not conflict with the provisions of this Chapter or with Annex 20-A (Rules of Procedure).

2. A panel reconvened under Article 20.13, Article 20.14 or Article 20.15 may establish its own procedures which do not conflict with this Chapter or Annex 20-A (Rules of Procedure), in consultation with the Parties, drawing as it deems appropriate from this Chapter or Annex 20-A (Rules of Procedure).

### *Timetable*

3. After consulting the Parties, a panel shall, as soon as practicable and if possible within 15 days of the establishment of the panel, fix the timetable for the panel process. The panel process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of 270 days.

4. Similarly, a Compliance Review Panel reconvened in accordance with Article 20.13 or Article 20.15 shall, as soon as practicable and if possible within 15 days of reconvening, fix the timetable for the compliance review process taking into account any time periods specified in Article 20.13 or Article 20.15.

### *Preliminary Rulings*

5. Any request by a Party for a preliminary ruling from the panel, including on jurisdictional issues, shall be submitted as early as possible, and in any event no later than the required date of delivery of a Party's first written submission. Exceptions to this paragraph may be granted upon showing good cause.

### *Panel Proceedings*

6. Panel proceedings shall provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the panel process.

7. Panel deliberations shall be confidential. The Parties shall be present only when invited by the panel to appear before it. There shall be no *ex parte* communications with the panel concerning matters under consideration by it.

### *Submissions*

8. Each Party shall have an opportunity to set out in writing the facts of its case, its arguments and counterarguments. The timetable fixed by the panel shall include precise deadlines for submissions by the Parties.

### *Hearings*

9. The timetable fixed by the panel shall provide for at least one hearing for the Parties to present their cases to the panel. As a general rule, the timetable shall not provide more than two hearings unless the panel determines in consultation with the Parties that there are special circumstances to justify additional hearings. All presentations and statements made at hearings shall be made in the presence of the Parties.

10. The venue for hearings shall be decided by agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first hearing to be held in the capital of the Responding Party.

11. A panel shall hold its hearings in closed session unless the Parties otherwise agree.

#### *Confidentiality*

12. A Party shall treat as confidential any information submitted to the panel by the other Party. Neither Party shall be precluded from disclosing its own information submitted to the Panel or from making statements of its own position available to the public, subject to protection of confidential information of the other Party. A Party shall, on request of the other Party, provide a non-confidential summary of its own information that may be disclosed to the public.

13. The panel shall treat as confidential all information submitted by the Parties.

#### *Additional Information and Technical Advice*

14. The Parties shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate.

15. A panel may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so, the panel shall seek the views of the Parties. If the Parties agree that the panel should not seek the additional information or technical advice, the panel shall not proceed. The panel shall provide the Parties with any information or technical advice it receives and an opportunity to provide comments.

#### *Report*

16. The panel shall provide to the Parties an interim report which complies with the requirements specified in Article 20.9.4.

17. The interim report shall be provided at least 28 days before the deadline for completion of the final report. The panel shall accord adequate opportunity to the Parties to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties in its final report.

18. The interim and final reports of the panel shall be drafted without the presence of the Parties. Opinions expressed in any report of the panel by its individual members shall be anonymous.

19. The panel shall present its final report to the Parties within 180 days of the date of its establishment. In cases of urgency, including those relating to perishable goods, the panel shall aim to present its report to the Parties within 90 days of the date of its establishment. If the panel considers that it cannot present its final report within 180 days or, in cases of urgency, within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its report.

20. A Party may, seven days after the final report of the panel is presented to the Parties or at any time thereafter, make the report publicly available, subject to the protection of any information contained in the report which the Parties have designated as confidential in accordance with paragraph 12.

#### **Article 20.11: Suspension and Termination of Proceedings**

1. The Parties may agree that the panel suspend its work at any time for a period not exceeding 365 days after the date of such agreement. Within this period, the suspended panel proceeding shall be resumed on the request of either Party. If the work of the panel has been continuously suspended for more than 365 days, the authority for establishment of the panel shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of a panel in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the panel presents its final report to the Parties, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

### **Section D: Implementation Provisions**

#### **Article 20.12: Implementation**

1. If a panel finds that the Responding Party has failed to carry out its obligations under this Agreement, the Responding Party shall bring itself into conformity with its obligations under this Agreement.

2. Within 30 days of the date of the presentation of the panel's final report to the Parties, the Responding Party shall notify the Complaining Party:

(a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligation in paragraph 1;

- (b) whether such implementation can take place immediately; and
- (c) if it is impracticable for such implementation to take place immediately, the reasonable period of time the Responding Party considers it would need to implement the findings and, if it deems appropriate, any recommendations contained in the final report.

3. If the Responding Party makes a notification under paragraph 2(c) that it is impracticable to immediately comply with the obligation in paragraph 1, it shall have a reasonable period of time to do so.

4. If a reasonable period of time is required, it shall, if possible, be agreed between the Parties. If the Parties are unable to agree on the reasonable period of time within 45 days of the date of the presentation of the panel's final report to the Parties, either Party may request that the chair of the panel determine the reasonable period of time. Unless the Parties otherwise agree, such requests shall be made no later than 120 days after the date of the presentation of the panel's final report to the Parties.

5. If a request is made in accordance with paragraph 4, the chair of the panel shall present the Parties with a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request.

6. As a guideline, the reasonable period of time determined by the chair of the panel should not exceed 455 days from the date of the presentation of the panel's final report to the Parties. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

7. If the Responding Party considers that it has fully complied with the obligation in paragraph 1, it shall so notify the Complaining Party. The Responding Party shall include a description of any measures it has taken to comply and the text of the measure, if any.

#### **Article 20.13: Compliance Review**

1. If the Parties disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in Article 20.12.1, such dispute shall be decided through recourse to a panel reconvened for this purpose (Compliance Review Panel).<sup>76</sup> Unless otherwise specified in this Chapter, a Compliance Review Panel may be convened at the request of either Party.

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<sup>76</sup> Consultations under Article 20.5 are not required for these procedures.

2. Such request may only be made after the earlier of either:
  - (a) the expiry of the reasonable period of time; or
  - (b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in Article 20.12.1.
3. A Compliance Review Panel shall make an objective assessment of the matter before it, including an objective assessment of:
  - (a) the factual aspects of any implementation action taken by the Responding Party; and
  - (b) whether the Responding Party has complied with the obligation in Article 20.12.1.
4. The Compliance Review Panel shall set out in its report:
  - (a) a descriptive section summarising the arguments of the Parties;
  - (b) its findings on the factual aspects of the case;
  - (c) its findings on whether the Responding Party has complied with the obligation in Article 20.12.1; and
  - (d) its reasons for its findings in subparagraphs (b) and (c).
5. The Compliance Review Panel shall, if possible, provide its interim report to the Parties within 75 days of the date it reconvenes and its final report 15 days thereafter. If the Compliance Review Panel considers that it cannot provide either report within the relevant 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 the report.
6. If a panel is requested to reconvene in accordance with paragraph 1, it shall reconvene within 15 days of the date of the request. The period from the date of the request for the panel to reconvene to the submission of the panel's final report shall not exceed 120 days, unless Article 20.8.12 applies or the Parties otherwise agree.

## **Article 20.14: Compensation and Suspension of Concessions or other Obligations**

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with the obligation in Article 20.12.1. However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation in Article 20.12.1. Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. If any of the following circumstances exist:

(a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation in Article 20.12.1;

(b) the Responding Party fails to provide a notification in accordance with Article 20.12.2; or

(c) a failure to comply with the obligation in Article 20.12.1 has been established in accordance with Article 20.13,

the Responding Party shall, if so requested by the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If the Parties have:

(a) been unable to agree on compensation within 30 days of the date of receipt of the request made under paragraph 2; or

(b) agreed on compensation but the Complaining Party considers that the Responding Party has failed to observe the terms of the agreement,

the Complaining Party may at any time thereafter notify the Responding Party that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification or impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of receipt of such notification. Without prejudice to its right to begin suspending concessions or other obligations, if the Complaining Party makes a notification in the circumstances referred to in paragraph (b), it shall afford the Responding Party an opportunity to demonstrate that it has complied with the terms of the agreement.

4. The right to suspend concessions or other obligations arising under paragraph 3 shall not be exercised if:

- (a) a review is being undertaken in accordance with paragraph 8; or
- (b) a mutually agreed solution has been reached.

5. A notification made under paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) to which the concessions or other obligations are related.

6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:

- (a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector(s) as that affected by the measure; and
- (b) the Complaining Party may suspend concessions or other obligations in other sectors if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s).

7. The level of the suspension of concessions or other obligations shall be equivalent to the level of nullification and impairment.

8. Within 30 days of the date of receipt of a notification made under paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the principles set forth in paragraph 6 have not been followed, the Responding Party may request the panel to reconvene to make findings on the matter. The panel shall provide its findings to the Parties within 30 days of the date it reconvenes. If a panel is requested to reconvene in accordance with this paragraph, it shall reconvene within 15 days of the date of the request, unless Article 20.8.12 applies.

#### **Article 20.15: Post-Suspension Review**

1. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in Article 20.12.1 has been complied with or a mutually satisfactory solution is reached.

2. If the right to suspend concessions or other obligations has been exercised under Article 20.14, and if the Responding Party considers that:

- (a) the level of concessions or other obligations actually suspended by the Complaining Party exceeds the level authorised under Article 20.14.8; or
- (b) it has complied with the obligation in Article 20.12.1,

it may request the Compliance Review Panel to reconvene to examine the matter.<sup>77</sup>

3. Paragraphs 3 through 5 of Article 20.13 shall apply if the Compliance Review Panel reconvenes in accordance with paragraph 2.

4. If the Compliance Review Panel reconvened in accordance with paragraph 2 finds that the Responding Party has complied with the obligation in Article 20.12.1, the Complaining Party shall stop the suspension of concessions or other obligations.

## **Section E: Final Provisions**

### **Article 20.16: Expenses**

1. Unless the Parties otherwise agree, each Party to a dispute shall bear the costs of its appointed panellist and its own expenses and legal costs.

2. Unless the Parties otherwise agree, the costs of the chair of the panel and other expenses associated with the conduct of the proceedings shall be borne in equal parts by the Parties to the dispute.

### **Article 20.17: Transmission of Documents**

Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party through its designated contact point, in accordance with Article 18.6 (Contact Points) of Chapter 18 (Institutional Provisions), who shall provide confirmation of receipt of such documents in writing.

### **Article 20.18: Language**

1. All proceedings pursuant to this Chapter shall be conducted in the English language.

2. Any document submitted for use in any proceedings pursuant to this Chapter shall be in the English language. If any original document is not in the English

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<sup>77</sup> If a Compliance Review Panel is reconvened to consider the Responding Party's compliance, it may also, on request, assess whether the level of any existing suspension of concessions is still appropriate and, if not, assess an appropriate level.

language, a Party submitting it for use in the proceedings shall provide an English language translation of that document.

## ANNEX 20-A

### RULES OF PROCEDURE

#### *Panel Proceedings*

1. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.
2. Unless otherwise provided in this Annex, the panel may conduct its business by any means, including by telephone, electronic mail, video conference or any other means of electronic communication.
3. The panel may, in consultation with the Parties, retain such number of assistants or staff, including interpreters, translators or designated note takers, as may be required for the proceeding and permit them to be present during its deliberations. For greater certainty, any such arrangements established by the panel may be modified by the agreement of the Parties.

#### *Written submissions, communications and other documents*

4. Unless the panel otherwise decides, the Complaining Party shall deliver its first written submission to the panel and the Responding Party no later than 30 days after the date of appointment of the final panellist. The Responding Party shall deliver its first written submission to the panel and the Complaining Party no later than 30 days after the date of delivery of the Complaining Party's first written submission. Each Party shall have an opportunity to submit written rebuttal submissions after both Parties have submitted first submissions.
5. Within 20 days of the date of conclusion of the hearing, each Party may deliver to the panel and the other Party a supplementary written submission responding to any matter that arose during the hearing.
6. Each Party shall also provide a copy of its first written submission, and any subsequent submissions, to the other Party at the same time as it is delivered to the panel.
7. If an original version of an exhibit is not in English, the Party submitting the exhibit shall submit the exhibit in its original language with an English translation.
8. Written submissions, communications and other documents shall be delivered by electronic means wherever practicable.

9. A Party may at any time correct minor errors of a clerical nature in any written submission, communication or other document related to the panel proceeding by delivering a new document to the panel and the other Party clearly indicating the changes. The panel shall, after consulting the Parties, resolve any difference of views as to whether or not the correction is of a clerical nature.

#### *Hearings*

10. The hearing shall be conducted by the panel in a manner ensuring that the Complaining Party and the Responding Party are afforded equal time to present their case. The Chair may set time limits for oral arguments to ensure that each Party is afforded equal time.

11. The Parties shall make available to the panel written versions of their oral statements and responses to questions made in hearings with the panel.

12. The panel may direct questions to either Party at any time during the proceedings. If the question is in writing, each Party shall also provide a copy of its response to such questions to the other Party at the same time as it is delivered to the panel. Each Party shall be given the opportunity to provide written comments on the response of the other Party.

13. All panellists shall be present at each hearing.

#### *Expenses*

14. The panel shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants or staff that it retains in accordance with Rule 3.

## ANNEX 20-B

### CODE OF CONDUCT

#### *Definitions*

1. For the purposes of Chapter 20 (Consultations and Dispute Settlement):

**assistant** means a person who, under the terms of appointment of a panellist, conducts research or provides support for the panellist;

**panellist** means a member of a panel established under Article 20.7 (Request for Establishment of Panels);

**proceeding**, unless otherwise provided, means a panel proceeding under Chapter 20 (Consultations and Dispute Settlement); and

**staff**, in respect of a panellist, means persons under the direction and control of the panellist, other than an assistant.

#### *Responsibilities to the Process*

2. Each panellist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interest and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved. Former panellists must comply with the obligations in paragraphs 15, 16, 17 and 18.

#### *Disclosure Obligations*

3. Prior to confirmation of his or her selection as a panellist under Article 20.8 (Establishment and Reconvening of Panels), a panellist shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a panellist shall make all reasonable efforts to become aware of any such interests, relationships or matters.

4. Once selected, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 and shall disclose them. The obligation to disclose is a continuing duty which requires a panellist to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. A panellist shall disclose such

interests, relationships or matters by communicating them in writing to the Joint Committee for consideration by the Parties.

*Duties*

5. Upon selection, a panellist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding.

6. A panellist shall carry out all duties fairly and diligently.

7. A panellist shall consider only those issues raised in the proceeding and necessary for rendering a decision and shall not delegate the duty to decide to any other person unless otherwise provided under the Rules of Procedure.

8. A panellist shall take all reasonable steps to ensure that the panellist's staff and assistants comply with this Annex.

9. A panellist shall promptly report to both Parties matters concerning actual or potential violations of this Annex by another panellist.

*Independence and Impartiality of Panellists*

10. A panellist shall be independent and impartial. A panellist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.

11. A panellist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.

12. A panellist shall not use his or her position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence him or her.

13. A panellist shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgment.

14. A panellist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.

*Obligations of Former Panellists*

15. All former panellists must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the findings, rulings or recommendations of the panel.

*Confidentiality*

16. A panellist or former panellist shall not at any time disclose or use any confidential or non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.

17. A panellist or former panellist shall not disclose a report or parts thereof prior to its publication.

18. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view except as required by law.

## CHAPTER 21

### FINAL PROVISIONS

#### **Article 21.1: Annexes, Appendices and Footnotes**

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

#### **Article 21.2: Amendments**

1. This Agreement may be amended by written agreement between the Parties.
2. Such amendments shall enter into force in accordance with the same procedure as provided for in Article 21.4 (Entry into Force), or as otherwise agreed by the Parties.
3. The Parties understand that, without prejudice to the necessary internal requirements of each Party, amendments relating only to Appendix 4-A (Procedures for Issuing Certificates of Origin) and Appendix 4-B (Procedures for Making Declarations of Origin) may be made by diplomatic notes exchanged between the Parties.

#### **Article 21.3: Amendment of International Agreements**

If any international agreement, or a provision therein, referred to in this Agreement or incorporated into this Agreement is amended, the Parties shall, on request, consult on whether it is necessary to amend this Agreement, unless this Agreement provides otherwise.

#### **Article 21.4: Entry into Force**

This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications through diplomatic channels that they have completed their respective necessary internal requirements, or on such other date as the Parties may agree.

### **Article 21.5: General Review of the Agreement**

1. In accordance with Article 18.2.1 (c) (Functions of the Joint Committee) of Chapter 18 (Institutional Provisions), the Joint Committee shall undertake a general review of this Agreement five years after the date of entry into force of this Agreement, and then every five years after that, with a view to updating and enhancing this Agreement to further its objectives, through negotiations, as appropriate. The review shall include, but not be limited to, consideration of deepening liberalisation, reducing or eliminating remaining discrimination and further expanding market access.

2. In conducting a review under this Article, the Joint Committee shall take into account:

- (a) the work of all committees and subsidiary bodies established under this Agreement;
- (b) relevant developments in international fora; and
- (c) as appropriate, input from experts.

### **Article 21.6: Termination**

Either Party may terminate this Agreement by giving 180 days advance notice in writing to the other Party.

### **Article 21.7: Authentic Texts**

This Agreement is done in duplicate in the Indonesian and English languages. Both texts of this Agreement shall be equally authentic.

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

**DONE** at Jakarta, on this 4th day of March in the year 2019, in duplicate in the English and Indonesian languages.

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF INDONESIA**



**ENGGARTIASTO LUKITA**  
Minister of Trade

**FOR THE GOVERNMENT OF  
AUSTRALIA**



**SIMON BIRMINGHAM**  
Minister for Trade, Tourism and  
Investment