

**FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF  
AUSTRALIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC  
OF CHINA**

## PREAMBLE

The Governments of Australia (“Australia”) and the People’s Republic of China (“China”), hereinafter referred to collectively as “the Parties”:

**Inspired** by their longstanding friendship and growing bilateral economic and trade relationship since the establishment of diplomatic relations in 1972;

**Recalling** the *Trade and Economic Cooperation Framework between the People’s Republic of China and Commonwealth of Australia* adopted on 24 October 2003 with the objective of strengthening the comprehensive and stable economic and trade relationship between the Parties;

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

**Mindful** of their commitment to the Asia-Pacific Economic Cooperation (“APEC”) goals and principles, and in particular the efforts of all APEC economies to meet the APEC Bogor Goals of free and open trade and the actions subscribed to in the *Osaka Action Agenda*;

**Upholding** the rights of their governments to regulate in order to meet national policy objectives, and to preserve their flexibility to safeguard public welfare;

**Desiring** to strengthen their economic partnership and further liberalise bilateral trade and investment to bring economic and social benefits, to create new opportunities for employment and to improve the living standards of their peoples;

**Resolved** to create an expanded market for goods and services in their territories through establishing clear rules governing their trade which will ensure a predictable, transparent and consistent commercial framework for business operations; and

**Recognising** that the strengthening of their economic partnership through a free trade agreement, which removes barriers to the trade of goods and services and investment flows, will produce mutual benefits for the Parties;

**Have agreed as follows:**

## CHAPTER 1 INITIAL PROVISIONS AND DEFINITIONS

### ARTICLE 1.1: ESTABLISHMENT OF A FREE TRADE AREA

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

### ARTICLE 1.2: RELATION TO OTHER AGREEMENTS

1. The Parties affirm their existing rights and obligations with respect to each other under multilateral and bilateral agreements to which both Parties are party, including the WTO Agreement.
2. Nothing in this Agreement shall derogate from the existing rights and obligations of a Party under the WTO Agreement or any other multilateral or bilateral agreement to which both Parties are party.
3. In the event of any inconsistency between this Agreement and any other multilateral or bilateral agreement to which both Parties are party, the Parties shall immediately consult with a view to finding a mutually satisfactory solution.

### ARTICLE 1.3: GENERAL DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

- (a) **customs duty** means any customs or import duty and a charge of any kind, including any form of surtax 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 the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Party or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;
  - (ii) anti-dumping or countervailing duty applied pursuant to a Party's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Anti-Dumping, and the Agreement on Subsidies and Countervailing Measures; or
  - (iii) fees or other charges commensurate with the cost of services rendered;

- (b) **days** means calendar days;
- (c) **existing** means in effect on the date of entry into force of this Agreement;
- (d) **GATS** means the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement;
- (e) **GATT 1994** means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;
- (f) **measure** includes any law, regulation, procedure, requirement or practice;
- (g) **national** means a natural person who:
  - (i) for Australia, is an Australian citizen, or has the right of permanent residence in Australia; and
  - (ii) for China, has the nationality of China according to the laws of China;
- (h) **person** means either a natural person or juridical person;
- (i) **territory** means:
  - (i) for Australia, the territory of Australia:
    - (A) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and
    - (B) including Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law; and
  - (ii) for China, the entire customs territory of the People's Republic of China, including land, airspace, internal waters, territorial sea, and areas beyond the territorial sea within which China exercises sovereign rights or jurisdiction in accordance with international law and its domestic law;
- (j) **WTO** means the World Trade Organization; and

- (k) **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: SCOPE

This Chapter applies to trade in goods of a Party.

### ARTICLE 2.2: DEFINITIONS

For the purposes of this Chapter:

- (a) **Agreement on Import Licensing Procedures** means the *Agreement on Import Licensing Procedures* contained in Annex 1A to the WTO Agreement;
- (b) **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;
- (c) **existing** means in effect on the date of entry into force of this Agreement;
- (d) **export subsidy** means a subsidy as defined by Article 3 of the Agreement on Subsidies and Countervailing Measures and includes export subsidies listed in Article 9 of the *Agreement on Agriculture*, contained in Annex 1A to the WTO Agreement;
- (e) **Harmonized System (HS)** means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes, as adopted and administered by the World Customs Organization; and
- (f) **measure** includes any law, regulation, procedure, requirement or practice.

### ARTICLE 2.3: 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 is incorporated into and made part of this Agreement, *mutatis mutandis*.

#### ARTICLE 2.4: ELIMINATION OF CUSTOMS DUTIES

1. Each Party shall eliminate its customs duties on originating goods of the other Party in accordance with its Schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)).
2. Neither Party shall increase any existing customs duty or introduce a new customs duty on imports of an originating good of the other Party other than in accordance with this Agreement.

#### ARTICLE 2.5: CLASSIFICATION OF GOODS

The classification of goods traded between the Parties shall be in conformity with the Harmonized System, as adopted and implemented by the Parties in their respective tariff laws.

#### ARTICLE 2.6: CUSTOMS VALUATION

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

#### ARTICLE 2.7: NON-TARIFF MEASURES

1. Unless otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction or measure having equivalent effect, including quantitative restrictions, on the importation of a good originating in the territory of the other Party, or on the exportation or sale for export of a good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994. To this end, Article XI of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. A Party shall not adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its rights and obligations under the WTO Agreement or this Agreement.
3. Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 2 and shall ensure that any such measures are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

4. The Committee on Trade in Goods, established in accordance with Article 2.15, shall review non-tariff measures within the scope of this Chapter with a view to ensuring that they do not constitute unnecessary obstacles to trade between the Parties. Either Party may nominate measures for consideration by the Committee on Trade in Goods.

#### ARTICLE 2.8: IMPORT LICENSING

1. Each Party shall ensure that import licensing regimes applied to goods originating in the other Party are applied in accordance with the WTO Agreement, and in particular, with the provisions of the Agreement on Import Licensing Procedures.

2. Neither Party shall apply import licensing to goods traded between the Parties unless such licensing is:

- (a) used to administer a quantitative restriction on imports in conformity with this Agreement or with the WTO Agreement;
- (b) used for purposes other than the implementation of quantitative restrictions in conformity with this Agreement, the WTO Agreement or other international obligations; or
- (c) automatic within the meaning of Article 2.1 of the Agreement on Import Licensing Procedures.

3. Promptly after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing import licensing regimes and related licensing procedures. Thereafter each Party shall notify the other Party of any new import licensing procedure 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 procedure. A notification provided in accordance with this Article shall include the information specified in paragraphs 2 through 4 of Article 5 of the Agreement on Import Licensing Procedures.

4. Each Party shall answer within 30 days all reasonable enquiries from the other Party with regard to criteria employed by its respective licensing authorities in granting or denying import licences.

#### ARTICLE 2.9: ADMINISTRATIVE FEES AND FORMALITIES

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article

III:2 of GATT 1994, and antidumping and countervailing duties applied in accordance with Article VI and XVI of the GATT 1994, the Agreement on the Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures), imposed on or in connection with importation or exportation, are limited in amount to the approximate cost of services rendered and do not represent indirect protection of domestic products or a taxation of imports or exports for fiscal purposes.

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

3. Each Party shall make available on the internet details of fees and charges it imposes in connection with importation and exportation.

#### ARTICLE 2.10: ADMINISTRATION OF TRADE REGULATIONS

1. In accordance with Article X of GATT 1994, each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use.

2. In accordance with Article VIII of GATT 1994, neither Party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation, which is easily rectified and obviously made without fraudulent intent or gross negligence, shall be greater than necessary to serve merely as a warning.

#### ARTICLE 2.11: EXPORT SUBSIDIES

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

#### ARTICLE 2.12: TRANSPARENCY AND REVIEW OF NON-TARIFF MEASURES

The Committee on Trade in Goods may refer for consideration measures falling within the scope of Chapter 5 (Sanitary and Phytosanitary Measures) or Chapter 6 (Technical Barriers to Trade) to the Committee on Sanitary and Phytosanitary Measures or the Committee on Technical Barriers to Trade as appropriate. The Committee on Sanitary and Phytosanitary Measures or the Committee on Technical Barriers to Trade, as appropriate, shall report the results of such consideration to the Committee on Trade in Goods.

#### ARTICLE 2.13: COUNTRY SPECIFIC TARIFF QUOTA

1. For products in respect of which China establishes a Country Specific Tariff Quota (“CSTQ”) in its Schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)), China shall grant duty-free treatment to imports of such products of Australian origin up to the quantity for each year as specified in Annex 2-A after entry into force of this Agreement.
2. Imports of such products of Australian origin in excess of the specified quantity in Annex 2-A in any given calendar year shall be subject to the most-favoured-nation (“MFN”) applied rate.
3. The quantities of the CSTQ beyond the last stage specified in Annex 2-A shall remain at the same level as the last stage.

#### ARTICLE 2.14: SPECIAL AGRICULTURAL SAFEGUARD MEASURES

1. China may apply a special agricultural safeguard measure to agricultural products specified in Annex 2-B in accordance with this Article.
2. If, during any given calendar year, the volume of imports by China from Australia of the originating products listed in Annex 2-B exceeds the trigger level for the products in that calendar year as set out in Annex 2-B, China may apply a special agricultural safeguard measure to the products in the form of an additional customs duty.
3. The sum of the additional customs duty applied under paragraph 2 and any other customs duties applied to the products in question shall not exceed the lesser of the MFN applied rate of customs duty in effect on the date on which the special agricultural safeguard measure is applied, or the base rate.
4. China may maintain a special agricultural safeguard measure applied under paragraph 2 only until the end of the calendar year in which China applies the measure.
5. Supplies of the products in question which were en route to China on the basis of a contract settled before the special agricultural safeguard measure is applied under paragraph 2 shall be exempted from such additional customs duty, provided that they shall be counted in the volume of imports of the products in question during the following calendar year for the purposes of a determination under paragraph 2 in that calendar year.
6. Any special agricultural safeguard measure shall be applied in a transparent manner. China shall ensure that the volume of imports is published regularly in a manner which is readily accessible to Australia, and shall give notice in writing,

including relevant data, to Australia as far in advance as may be practicable, and in any event within 10 days of the implementation of such measure.

7. China may not apply or maintain, with respect to the same products, a special agricultural safeguard measure and, at the same time, apply or maintain a measure under Article XIX of GATT 1994, the Agreement on Safeguards or Chapter 7 (Trade Remedies) of this Agreement.

8. In the last stage of the application of a trigger level for the respective products as set out in Annex 2-B, the Committee on Trade in Goods will conduct a review of the special agricultural safeguard measure. If the review concludes that imports from Australia of the products covered by the special agricultural safeguard measure have not caused serious injury to the corresponding Chinese domestic industry, then the special agricultural safeguard measure for the products will no longer apply. If the Committee determines that serious injury has occurred, then a further review, as specified above, will take place six years later, and every six years thereafter as required.

#### ARTICLE 2.15: COMMITTEE ON TRADE IN GOODS

1. The Parties hereby establish a Committee on Trade in Goods (hereinafter referred to in this Article as the “Committee”) comprising representatives of each Party.

2. The Committee shall meet on request of a Party or the FTA Joint Commission to consider the operation and implementation of this Chapter, Chapter 7 (Trade Remedies), Chapter 3 (Rules of Origin and Implementation Procedures) or Chapter 4 (Customs Procedures and Trade Facilitation).

3. The Committee’s functions shall include:

- (a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate; and
- (b) addressing tariff and non-tariff barriers to trade in goods between the Parties and, if appropriate, referring such matters to the FTA Joint Commission for its consideration.

4. The Committee shall submit to the FTA Joint Commission an initial progress report on its work relating to non-tariff measures under Article 2.7, including any recommendations, within one year of the date of entry into force of this Agreement.

5. The Committee shall review the implications of each periodic Harmonized System amendment and promptly recommend to the FTA Joint Commission any necessary amendments to Annex I (Schedules in relation to Article 2.4 (Elimination of

Customs Duties)) and Annex II (Product Specific Rules of Origin) to reflect the Harmonized System amendment.

ARTICLE 2.16: DISPUTE SETTLEMENT

The dispute settlement provisions in Chapter 15 (Dispute Settlement) shall apply to any matter arising under this Chapter.

**ANNEX 2-A**  
**COUNTRY SPECIFIC TARIFF QUOTA**

1. Table 1 specifies the products in respect of which China establishes a Country Specific Tariff Quota (CSTQ) in its Schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)).

2. For the products specified in Table 1, the quantity of the CSTQ to which China shall grant duty-free treatment for each complete calendar year is specified in Table 2. In the year of entry into force of this Agreement, where there will remain more than nine calendar months, the Stage 1 quantity shall apply, prorated for the percentage of the year remaining from the date of entry into force. In that case China shall have three full calendar months from the date of entry into force to prepare for opening the quantity for application. In the year of entry into force of this Agreement, where there will remain less than nine calendar months, the Stage 1 quantity shall not apply until the start of the first complete calendar year after entry into force of this Agreement, and the quantities in subsequent years shall be the full quantities for subsequent stages specified in Table 2.

3. China shall operate the CSTQ in a transparent manner and, on request of Australia, provide information on the quantity of the CSTQ issued. Unless otherwise agreed, the rules applying to the administration of the CSTQ for the products of Australian origin will be consistent with the *Detailed Rules for Implementation of Administration on Import Tariff Quotas of Wool and Wool Tops in 2015* (Ministry of Commerce Announcement No. 65 of 2014) or any successor rules in force in any given calendar year.

**Table 1: Products**

	<b>HS Code</b>	<b>Description of Product</b>
1	51011100	Greasy shorn wool, not carded or combed
2	51011900	Greasy wool (excl. shorn), not carded or combed
3	51012100	Degreased shorn wool, not carbonised, not carded or combed
4	51012900	Degreased wool (excl. shorn), not carbonised, not carded or combed
5	51013000	Carbonised wool, not carded or combed
6	51031010	Noils of wool, not garnetted stock

**Table 2: Quantity of the Country Specific Tariff Quota**

<b>Stage</b>	<b>Quantity of the Country Specific Tariff Quota (tonnes)</b>
1	30,000
2	31,500
3	33,075
4	34,729

<b>Stage</b>	<b>Quantity of the Country Specific Tariff Quota (tonnes)</b>
5	36,465
6	38,288
7	40,203
8	42,213
9	44,324

Note: The specified quantities are expressed in terms of clean equivalent weight.

**ANNEX 2-B**  
**SPECIAL AGRICULTURAL SAFEGUARD MEASURES**

**Part I Beef**

1. Table 1 specifies the products that may be subject to a special agricultural safeguard measure under Article 2.14.
2. The trigger level in the calendar year in which this Agreement enters into force shall be the Stage 1 level specified in Table 2, prorated for the percentage of that year for which this Agreement is in force.
3. The trigger level in subsequent years shall be the full trigger level specified in Table 2, with the continuation of the final trigger level subject to paragraph 8 of Article 2.14.

**Table 1: Products**

	<b>HS code</b>	<b>Description of Product</b>
1	02011000	Fresh or chilled bovine carcasses & half carcasses
2	02012000	Fresh or chilled bovine meat (excl. carcasses) with bone in
3	02013000	Fresh or chilled boneless bovine meat
4	02021000	Frozen bovine carcasses & half carcasses
5	02022000	Frozen bovine meat (excl. carcasses) with bone in
6	02023000	Frozen boneless bovine meat

**Table 2: Quantity Trigger Level**

<b>Stage</b>	<b>Trigger Level (tonnes)</b>
1	170,000
2	170,000
3	170,000
4	170,000
5	174,454
6	179,687
7	185,078
8	190,630
9	196,349
10	202,240
11	208,307
12	214,556
13	220,993
14	227,623

<b>Stage</b>	<b>Trigger Level (tonnes)</b>
15	234,451
16	241,485
17	248,729

## **Part II Milk Powder**

1. Table 3 specifies the products that may be subject to a special agricultural safeguard measure under Article 2.14.
2. The trigger level in the calendar year in which this Agreement enters into force shall be the Stage 1 level specified in Table 4, prorated for the percentage of that year for which this Agreement is in force.
3. The trigger level in subsequent years shall be the full trigger level specified in Table 4, with the continuation of the final trigger level subject to paragraph 8 of Article 2.14.

**Table 3: Products**

	<b>HS code</b>	<b>Description of Product</b>
1	04022100	Milk & cream in solid forms of >1.5% fat, unsweetened
2	04022900	Milk & cream in solid forms of >1.5% fat, sweetened

**Table 4: Quantity Trigger Level**

<b>Stage</b>	<b>Trigger Level (tonnes)</b>
1	17,500
2	18,375
3	19,294
4	20,258
5	21,271
6	22,335
7	23,452
8	24,624
9	25,855
10	27,148
11	28,506
12	29,931
13	31,427
14	32,999
15	34,649

**CHAPTER 3**  
**RULES OF ORIGIN AND IMPLEMENTATION PROCEDURES**

**Section A: Rules of Origin**

ARTICLE 3.1: DEFINITIONS

For the purposes of this Chapter:

- (a) **authorised body** means any Government authority or other entity authorised under the laws and regulations of a Party or recognised by a Party as competent to issue a Certificate of Origin;
- (b) **Certificate of Origin** means a form issued by an authorised body of the exporting Party, identifying the goods being consigned between the Parties and certifying that the goods to which the Certificate relates are originating in a Party in accordance with the provisions of this Chapter;
- (c) **CIF value** means the value of the good imported inclusive of the cost, insurance and freight up to the port or place of entry in the country of importation;
- (d) **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* contained in Annex 1A to the WTO Agreement;
- (e) **Declaration of Origin** means a statement as to the origin of the goods made by the exporter or producer of those goods, identifying the goods being consigned between the Parties and declaring that the goods to which the Declaration relates are originating goods;
- (f) **FOB** means the value of the good free on board inclusive of the cost of transport, including the insurance, up to the port or site of final shipment for export;
- (g) **generally accepted accounting principles** means the recognised consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;
- (h) **material** means any matter or substance used in the production of a good and physically incorporated into that good;

- (i) **originating material** means a material that qualifies as originating in accordance with this Chapter;
- (j) **producer** means a person who engages in the production of a good; and
- (k) **production** means methods of obtaining goods, including growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

#### ARTICLE 3.2: ORIGINATING GOODS

Unless otherwise indicated in this Chapter, a good shall be considered as originating in a Party when:

- (a) the good is wholly obtained or produced in the territory of a Party in accordance with Article 3.3;
- (b) the good is produced entirely in the territory of one or both Parties, exclusively from originating materials; or
- (c) the good is produced in the territory of one or both of the Parties, using non-originating materials, complies with the applicable product specific rule contained in Annex II (Product Specific Rules of Origin), and meets the other applicable provisions of this Chapter.

#### ARTICLE 3.3: WHOLLY OBTAINED GOODS

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

- (a) live animals born and raised in the territory of a Party;
- (b) goods obtained from live animals referred to in subparagraph (a) in the territory of a Party;
- (c) goods obtained directly from hunting, trapping, fishing, aquaculture, gathering, or capturing conducted in the territory of a Party;
- (d) plants and plant products<sup>1</sup> harvested, picked or gathered in the territory of a Party;

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<sup>1</sup> The Parties understand that “plant” in subparagraph (d) refers to all plant life, including fungi and algae.

- (e) mineral and other naturally occurring substances, not included in paragraphs (a) to (d) above, extracted or taken in the territory of a Party;
- (f) goods, other than fish, shellfish, plant and other marine life, extracted or taken from the waters, seabed or subsoil beneath the seabed outside the territory of that Party, provided that the Party has the right to exploit such waters, seabed or subsoil beneath the seabed in accordance with international law and the domestic law of the Party;
- (g) goods (fish, shellfish, plant and other marine life) taken from the high seas by a vessel registered with a Party and flying its flag;
- (h) goods obtained or produced from the goods referred to in subparagraph (g) on board factory ships registered with a Party and flying its flag;
- (i) waste and scrap derived from:
  - (i) production in the territory of a Party; or
  - (ii) used goods collected in the territory of a Party; provided that such goods are fit only for the recovery of raw materials; and
- (j) goods produced entirely in the territory of a Party exclusively from goods referred to in subparagraph (a) through (i).

#### ARTICLE 3.4: CHANGE IN TARIFF CLASSIFICATION

A change in tariff classification requirement under Annex II (Product Specific Rules of Origin) requires that the non-originating materials used in the production of the goods undergo a change of tariff classification as a result of that production in the territory of one or both Parties.

#### ARTICLE 3.5: REGIONAL VALUE CONTENT

1. Where the Regional Value Content (RVC) is referred to in Annex II (Product Specific Rules of Origin), the RVC shall be calculated as follows:

$$RVC = \frac{V - VNM}{V} \times 100$$

where:

“RVC” is the regional value content, expressed as a percentage;

“V” is the value of the good, as determined in accordance with the provisions of the Customs Valuation Agreement, adjusted on an FOB basis; and

“VNM” is the value of the non-originating materials, including materials of undetermined origin, as determined in accordance with paragraph 2.

2. The value of the non-originating materials shall be:
  - (a) the CIF value of imported materials, determined in accordance with the Customs Valuation Agreement; or
  - (b) the value determined in accordance with the Customs Valuation Agreement when the non-originating materials are acquired within the territory of that Party, not including freight, insurance, packing costs and any other costs incurred in transporting, within the Party’s territory, the non-originating materials to the location of the producer.
3. For the purpose of calculating the regional value content of a good in accordance with paragraph 1, no account shall be taken of the non-originating materials used to produce originating materials that are subsequently used in the production of the good.

#### ARTICLE 3.6: CUMULATION

Originating material from the territory of a Party used in the production of a good in the territory of the other Party shall be considered to originate in the territory of the other Party.

#### ARTICLE 3.7: DE MINIMIS

1. A good that does not satisfy a change in tariff classification requirement in accordance with Annex II (Product Specific Rules of Origin) will nonetheless be an originating good if:
  - (a) the value of all non-originating materials used in the production of the good that does not undergo the required change in tariff classification does not exceed 10 percent of the value of the good as determined in accordance with Article 3.5; and
  - (b) the good meets all other applicable provisions of this Chapter.
2. The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.

#### ARTICLE 3.8: ACCESSORIES, SPARE PARTS AND TOOLS

1. Accessories, spare parts or tools presented and classified with an originating good that form part of the standard accessories, spare parts, or tools for that good shall be treated as originating goods and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, or tools are classified and invoiced with the goods and are included in the price of the goods;
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the originating goods; and
- (c) if the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

2. Paragraph 1 does not apply where the accessories, spare parts or tools have been added solely for the purpose of artificially raising the regional value content of the goods.

#### ARTICLE 3.9: FUNGIBLE MATERIALS

1. The determination of whether fungible materials are originating materials shall be made either by physical separation of each of the materials or by the use of an inventory management method recognised in the generally accepted accounting principles of the exporting Party.

2. **Fungible materials** means materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination.

#### ARTICLE 3.10: PACKING, PACKAGES AND CONTAINERS

1. Containers and packing materials used for the transport of a good shall not be taken into account in determining the origin of the good.

2. Where a good is subject to a change in tariff classification requirement in Annex II (Product Specific Rules of Origin), the origin of the packaging materials and containers in which the good is packaged for retail sale shall be disregarded in

determining the origin of the good, provided that the packaging materials and containers are classified with the good.

3. Where a good is subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials, as the case may be, when determining the origin of the good.

#### ARTICLE 3.11: NEUTRAL ELEMENTS

1. In determining whether a good is an originating good, any neutral elements as defined in paragraph 2 shall be treated as originating.

2. **Neutral element** means a good used in the production of another good but not physically incorporated into that other good, or a good used in the operation of equipment associated with the production of another good, including:

- (a) fuel and energy;
- (b) tools, dies, and moulds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment, and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the goods;
- (g) catalysts and solvents; and
- (h) 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.

#### ARTICLE 3.12 : MINIMAL OPERATIONS OR PROCESSES

1. A good shall not be considered to be originating only by reason of having undergone one or more of the following operations or processes:

- (a) operations or processes to ensure preservation of goods in good condition for the purposes of transport or storage;

- (b) packaging and repackaging;
- (c) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (d) placing in bottles, cans, flasks, bags, cases or boxes, fixing on cards or boards, and other simple packaging operations;
- (e) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging; or
- (f) disassembly of goods.

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

#### ARTICLE 3.13: DIRECT CONSIGNMENT

1. An originating good shall retain its originating status provided that the good is directly transported to the importing Party without passing through the territory of a non-party.

2. Notwithstanding paragraph 1, an originating good transported through one or more non-parties, with or without trans-shipment or temporary storage in such non-parties, shall retain its originating status, provided that:

- (a) the good remains under customs control in those non-parties;
- (b) the good does not undergo any operation there other than unloading and reloading, repacking, re-labelling for the purpose of satisfying the requirements of the importing Party, temporary storage or any operation required to keep them in good condition; and
- (c) in cases where the good is temporarily stored in the territory of a non-party, as provided in paragraph 2 of this Article, stay of the good in that non-party shall not exceed 12 months from the date of its entry.

3. Consignments of originating goods may be split up in non-parties for further transport, subject to the fulfilment of the conditions listed in paragraph 2.

4. The customs administration of the importing Party may require the importer to submit documentary evidence to confirm compliance with the conditions listed in paragraph 2.

## Section B: Implementation Procedures

### ARTICLE 3.14: CERTIFICATE OF ORIGIN

1. For the purposes of obtaining preferential tariff treatment in the other Party, a Certificate of Origin shall be issued by an authorised body of the exporting Party.
2. Each Party shall inform the customs administration of the other Party of the names and addresses of the authorised bodies issuing the Certificates of Origin and shall provide specimen impressions of official seals used by such authorised bodies. Any change in names, addresses or official seals shall be promptly notified to the customs administration of the other Party.
3. A Certificate of Origin shall be issued before or at the time of exportation when the goods have been determined to be originating in the exporting Party in accordance with the provisions of this Chapter. The exporter or producer shall submit an application for the Certificate of Origin together with appropriate supporting documents proving that the goods qualify as originating.
4. The Certificate of Origin, based on the template in Annex 3-A, shall be completed in the English language and shall be duly signed and stamped. A Certificate of Origin shall be applicable to one or more goods under one consignment unless the Parties otherwise agree and shall remain valid for 12 months from the date of issue.
5. Notwithstanding paragraph 3, in exceptional cases where a Certificate of Origin has not been issued before or at the time of exportation due to *force majeure*, or involuntary errors, omissions or other valid reasons, a Certificate of Origin may be issued within 12 months from the date of shipment, bearing the remark “ISSUED RETROSPECTIVELY”, and remain valid for 12 months from the date of shipment.
6. In cases of theft, loss or accidental destruction of a Certificate of Origin, the exporter or producer may, within the term of validity of the original Certificate of Origin, make a written request to the authorised body that issued the original certificate for a certified copy, provided that the original Certificate of Origin had not been used. The certified copy shall bear the words “CERTIFIED TRUE COPY of the original Certificate of Origin number \_\_\_ dated \_\_\_”. The certified copy shall have the same term of validity as the original Certificate of Origin.

### ARTICLE 3.15: DECLARATION OF ORIGIN

1. A Declaration of Origin shall be accepted in place of a Certificate of Origin for any consignment of goods covered by an advance ruling issued by the importing Party in accordance with Article 4.9 (Advance Rulings) of Chapter 4 (Customs Procedures

and Trade Facilitation) that deems the good to qualify as originating, so long as the facts and circumstances on which the ruling was based remain unchanged and the ruling remains valid.

2. A Declaration of Origin shall be completed in the English language and duly signed by the exporter or producer in a format based on the template in Annex 3-B. The Declaration shall cover the goods presented under a single import customs declaration and shall remain valid for 12 months from the date of issue.

#### ARTICLE 3.16: CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

1. Except as otherwise provided in Article 3.22, each Party shall grant preferential tariff treatment to a good that qualifies as an originating good of the exporting Party provided that the importer:

- (a) makes a claim for preferential tariff treatment, either by written or electronic means before or at the time of importation, or otherwise in accordance with the importing Party's laws and regulations, on the grounds that the good qualifies as an originating good;
- (b) possesses a valid Certificate or Declaration of Origin for the imported good;
- (c) submits, if required by the importing customs administration, the original or copy of the Certificate or Declaration of Origin and such other documentation relating to the importation of the good; and
- (d) submits, if required by the importing customs administration, evidence to prove that the consignment criteria specified in Article 3.13 have been met.

2. Where a Certificate or Declaration of Origin is not provided at the time of importation of a good, the importing customs administration may impose the non-preferential import customs duty or payment of a deposit equivalent to the non-preferential duty on that good. In such a case the importer may apply for a refund of any excess import customs duty or deposit paid within one year from the date of importation, or any longer period if provided for by the importing Party in its laws and regulations, provided that the requirements in paragraph 1 are fulfilled.

#### ARTICLE 3.17: MINOR ERRORS OR DISCREPANCIES

Where the origin of an imported good is not in doubt, minor transcription errors in a Certificate of Origin or discrepancies in documentation, or the absence of overleaf instructions in a Certificate of Origin, will not of themselves render the Certificate of

Origin invalid if it does in fact correspond to the good. However, this does not prevent the customs administration of the importing Party from initiating a verification process in accordance with Article 3.21.

#### ARTICLE 3.18: WAIVER OF CERTIFICATE OF ORIGIN OR DECLARATION OF ORIGIN

1. For the purpose of granting preferential tariff treatment under this Chapter, a Party shall waive the requirements for the presentation of a Certificate of Origin or Declaration of Origin and grant preferential tariff treatment to:

- (a) any consignment of originating goods of a customs value not exceeding 1,000 Australian dollars for Australia or 6,000 RMB for China, or such higher amount as each Party may establish; or
- (b) other originating goods as provided under its laws and regulations.

2. Waivers provided for in paragraph 1 shall not be applicable when it is established by the customs administration of the importing Party that the importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the submission of a Certificate of Origin or Declaration of Origin.

#### ARTICLE 3.19: AMENDMENTS TO CERTIFICATES OR DECLARATIONS OF ORIGIN

1. Neither erasures nor superimpositions shall be permitted on any Certificate or Declaration of Origin. Any amendment to a Certificate of Origin or Declaration of Origin shall be made by striking out the erroneous information and making any addition which might be required. Any such alterations shall be endorsed by the person who made them and, for a Certificate of Origin, certified by the authorised body which issued the Certificate of Origin.

2. Any empty space on a Certificate of Origin or Declaration of Origin shall be crossed out or otherwise marked to prevent subsequent additions.

#### ARTICLE 3.20: RETENTION OF ORIGIN DOCUMENTS

1. Each Party shall require its producers, exporters, and importers to retain the Certificate of Origin, Declaration of Origin and any other documentary evidence sufficient to substantiate the origin of the goods as defined in this Chapter for 3 years or such longer period in accordance with that Party's laws and regulations.

2. Each Party shall ensure that its authorised bodies retain copies of Certificates of Origin and any other documentary evidence sufficient to substantiate the origin of the goods

#### ARTICLE 3.21: VERIFICATION OF ORIGIN

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

- (a) requesting the assistance of the customs administration of the exporting Party;
- (b) written requests for information from the exporter or producer in the territory of the exporting Party;
- (c) written requests to the authorised body of the exporting Party that issued the Certificate of Origin to verify the validity of the Certificate; or
- (d) such other procedures as the customs administrations of the Parties may jointly decide.

2. A verification action under paragraph 1 shall only be initiated when there are reasonable grounds to doubt the accuracy or authenticity of a Certificate of Origin or Declaration of Origin, the origin status of the goods concerned or the fulfilment of any other requirements under this Chapter.

3. In taking verification action pursuant to paragraph 1(a), the customs administration of the importing Party shall:

- (a) specify the reasons for the verification action and provide any relevant documents and information obtained to the customs administration of the exporting Party;
- (b) limit such requests using a risk management approach; and
- (c) endeavour to complete any verification action within six months of the commencement of such action and promptly provide written advice of its decision to all relevant parties.

4. In taking verification action pursuant to paragraph 1(a), the customs administration of the exporting Party shall:

- (a) subject to paragraph 4(b), respond promptly to the request and reply not later than three months after its receipt; and

- (b) endeavour to provide assistance to the extent permitted by its laws, regulations and policies, but may nevertheless deny or limit assistance on the basis of resource availability.

5. If all verification actions under paragraph 1 have been exhausted and have failed to resolve the concern of the customs administration of the importing Party, a verification visit may be conducted of the premises of the exporter or producer with the prior consent and assistance of the customs administration of the exporting Party, according to procedures jointly decided by the customs administrations of the Parties.

6. This Article shall not affect the rights of customs administrations of the Parties to undertake verification or compliance activities within their territories in accordance with their laws and regulations.

#### ARTICLE 3.22: DENIAL OF PREFERENTIAL TARIFF TREATMENT

1. A Party may deny preferential tariff treatment to a good where:
  - (a) the importer fails to make a claim for preferential tariff treatment before or at the time of importation in accordance with the importing Party's laws and regulations;
  - (b) the name of the relevant authorised body or the specimen impressions of official seals used by such authorised body, or advice of any change in the above information, have not been provided to the customs administration of the importing Party;
  - (c) action taken under Article 3.21 failed to verify the eligibility of the good for preferential tariff treatment, including where:
    - (i) the customs administration of the exporting Party is unable for any reason to respond to the request to the satisfaction of the customs administration of the importing Party; or
    - (ii) the exporter or producer, as appropriate, fails to provide information which the importing Party has requested within three months of the date of request.
  - (d) notwithstanding Article 3.18.1, an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purposes of circumventing the requirements of this Chapter; or

- (e) the good does not or did not comply with the other requirements of this Chapter, including where:
  - (i) the Certificate or Declaration of Origin has not been duly completed and signed;
  - (ii) the good does not qualify as an originating good; or
  - (iii) the data provided under the Certificate or Declaration of Origin does not correspond to those of the supporting documents submitted.

2. In the event that preferential tariff treatment is denied, the customs administration of the importing Party shall provide to the exporter, importer or producer, as the case may be, the reasons for that decision in writing.

#### ARTICLE 3.23: GOODS TRANSPORTED EN ROUTE AFTER EXPORTATION

1. The customs administration of the importing Party shall grant preferential treatment for an originating good of the exporting Party which is in the process of being transported from the exporting Party to the importing Party on the date of entry into force of this Agreement.

2. The importer shall make a claim for preferential tariff treatment under paragraph 1 within six months from the date of entry into force of this Agreement and comply with the requirements of Article 3.16.

#### ARTICLE 3.24: REVIEW

The Parties shall commence a joint review of origin documentary requirements within 3 years following entry into force of this Agreement. The review will consider the development of an electronic origin data exchange system to ensure the effective and efficient implementation of this Chapter, as well as the introduction of additional trade facilitative measures including broadening the use of Declarations of Origin.

**ANNEX 3-A**  
**CERTIFICATE OF ORIGIN**

**(SAMPLE ONLY- ORIGINALS TO BE SUPPLIED BY AUTHORISED BODIES)**

1. Exporter's name, address and country:			<b>Certificate No.:</b>  <b>CERTIFICATE OF ORIGIN</b> <b>Form for China-Australia Free Trade Agreement</b>  Issued in: _____			
2. Producer's name and address (if known):						
3. Importer's name, address and country (if known):			For official use only:			
4. Means of transport and route (if known) Departure date: Vessel/Flight/Train/Vehicle No.: Port of loading: Port of discharge:			5. Remarks:			
6. Item number (max. 20)	7. Marks and numbers on packages (optional)	8. Number and kind of packages; description of goods	9. HS code (6-digit code)	10. Origin criterion	11. Gross or net weight or other quantity (e.g. Quantity Unit, litres, m <sup>3</sup> .)	12. Invoice number and date
13. Declaration by the exporter or producer The undersigned hereby declares that the above-stated information is correct and that the goods exported to  _____ (Importing Party)  comply with the origin requirements specified in the China-Australia Free Trade Agreement.   _____ Place, date and signature of authorised person			14. Certification On the basis of the control carried out, it is hereby certified that the information herein is correct and that the described goods comply with the origin requirements of the China-Australia Free Trade Agreement.  _____ Place, date, and signature and stamp of the Authorised Body  Tel: _____ Fax: _____  Address: _____			

## Overleaf Instruction

- Box 1: State the full legal name and address of the exporter in Australia or China.
- Box 2: State the full legal name and address (including country) of the producer, if known. If more than one producer's good is included in the certificate, list the additional producers, including names and addresses (including country). If the exporter or the producer wish the information to be confidential, it is acceptable to state "Available to the competent authority or authorised body upon request". If the producer and the exporter are the same, please complete the box with "SAME". If the producer is unknown, it is acceptable to state "UNKNOWN".
- Box 3: State the full legal name and address of the importer in Australia or China, if known.
- Box 4: Complete the means of transport and route and specify the departure date, transport vehicle number, and port of loading and discharge, if known.
- Box 5: The Customer's Order Number, Letter of Credit Number, among others, may be included. If the invoice is issued by a non-Party operator, information such as the name, address and country of the operator issuing the invoice shall be indicated herein.
- Box 6: State the item number; item number shall not exceed 20.
- Box 7: State the shipping marks and numbers on packages, when such marks and numbers exist.
- Box 8: The number and kind of packages shall be specified. Provide a full description of each good. The description should be sufficiently detailed to enable the products to be identified by the Customs Officers examining them and relate it to the invoice description and to the HS description of the good. If the goods are not packed, state "in bulk". When the description of the goods is finished, add "\*\*\*" (three stars) or "\ " (finishing slash).
- Box 9: For each good described in Box 8, identify the HS tariff classification (a six-digit code).
- Box 10: For each good described in Box 8, state which criterion is applicable, according to the following instructions. The rules of origin are contained in Chapter 3 (Rules of Origin and Implementation Procedures) and Annex II (Product Specific Rules of Origin) of the China-Australia Free Trade Agreement.

Origin Criterion	Insert in Box 10
The good is "wholly obtained" in the territory of a Party in accordance with Article 3.3 (Wholly Obtained Goods).	WO
The good is produced entirely in the territory of one or both Parties, exclusively from materials whose origin conforms to the provisions of Chapter 3 (Rules of Origin and Implementation Procedures).	WP
The good is produced in the territory of one or both Parties, using non-originating materials that comply with the applicable product specific rule; and meets the other applicable provisions of Chapter 3 (Rules of Origin and Implementation Procedures).	PSR

- Box 11: State gross or net weight in kilograms or other units of measurement for each good described in Box 8. Other units of measurement (e.g. volume or number of items) which would indicate exact quantities may be used where customary.
- Box 12: The invoice number and date should be shown here.
- Box 13: The box must be completed by the exporter or producer. Insert the place, date and the signature of a person authorised by the exporter or producer.
- Box 14: The box must be completed, signed, dated and stamped by the authorised person of the authorised body. The telephone number, fax and address of the authorised body should be given.

(SAMPLE ONLY- ORIGINALS TO BE SUPPLIED BY AUTHORISED BODIES)

Continuation Sheet

Certificate of Origin – Form for China-Australia Free Trade Agreement

Certificate No.:

6. Item number (max. 20)	7. Marks and numbers on packages (Optional)	8. Number and kind of packages; description of goods	9. HS code (6-digit code)	10. Origin criterion	11. Gross or net weight or other quantity (e.g. Quantity Unit, litres, m <sup>3</sup> .)	12. Invoice number and date
<p>13. Declaration by the exporter or producer The undersigned hereby declares that the above-stated information is correct and that the goods exported to</p> <p>_____</p> <p>(Importing Party)</p> <p>comply with the origin requirements specified in the China-Australia Free Trade Agreement.</p> <p>_____</p> <p>Place, date and signature of authorised person</p>			<p>14. Certification On the basis of the control carried out, it is hereby certified that the information herein is correct and that the described goods comply with the origin requirements of the China-Australia Free Trade Agreement.</p> <p>_____</p> <p>Place, date, and signature and stamp of the Authorised Body</p> <p>Tel: _____ Fax: _____</p> <p>Address: _____</p>			

**ANNEX 3-B**  
**DECLARATION OF ORIGIN**  
China-Australia Free Trade Agreement

On behalf of

\_\_\_\_\_  
\_\_\_\_\_, being the

(print exporter's or producer's name and address)

**EXPORTER / PRODUCER / EXPORTER AND PRODUCER,**

(strike out those which do not apply)

I hereby declare that the goods described below are originating goods from

**AUSTRALIA / CHINA**

(strike out that which does not apply)

in accordance with the rules of origin requirements of the China-Australia Free Trade Agreement.

I am legally responsible for the truthfulness and authenticity of what is declared in this document.

Item No.	Description of goods	Harmonised system code six (6) digits	Number and date of invoice	Reference number of advance ruling	Origin-conferring criteria

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Note: This declaration must be printed and presented as a separate document accompanying the commercial invoice. The maximum number of items covered by this declaration should not exceed 20.

## CHAPTER 4 CUSTOMS PROCEDURES AND TRADE FACILITATION

### ARTICLE 4.1: SCOPE

This Chapter applies to customs procedures applied to the goods traded and to the movement of means of transport between the Parties.

### ARTICLE 4.2: DEFINITIONS

For the purposes of this Chapter:

- (a) **customs administration** means:
  - (i) in relation to Australia, the Australian Customs and Border Protection Service or its successor; and
  - (ii) in relation to China, the General Administration of Customs;
- (b) **customs laws** means the statutory, regulatory and administrative provisions relating to the importation, exportation, movement or storage of goods, the administration or enforcement of which are specifically charged to the customs administration, and any regulations made by the customs administration under its statutory powers; and
- (c) **customs procedures** means the treatment applied by the customs administration of each Party.

### ARTICLE 4.3: CUSTOMS PROCEDURES AND FACILITATION

1. Each Party shall ensure that its customs procedures conform, where possible and to the extent permitted by its laws, regulations, and, where applicable, administrative rules or procedures, to international standards and recommended practices established by the World Customs Organization.
2. Each Party shall ensure that its customs procedures:
  - (a) are administered in an impartial, uniform and reasonable manner; and
  - (b) avoid arbitrary and unwarranted procedural obstacles.
3. The customs administration of each Party shall periodically review its customs procedures with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangements to facilitate international trade.

4. Each Party shall ensure that goods are released within a time period no longer than that required to ensure compliance with its customs laws.

#### ARTICLE 4.4: COOPERATION

1. To the extent permitted by their laws and regulations, the customs administrations of both Parties shall endeavour to assist each other, in relation to:

- (a) the implementation and operation of this Chapter; and
- (b) such other issues as the Parties mutually determine.

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

#### ARTICLE 4.5: RISK MANAGEMENT

Each Party shall work to further enhance the use of risk management techniques in the administration of its customs procedures so as to facilitate the clearance of low-risk goods and allow resources to focus on high-risk goods.

#### ARTICLE 4.6: APPLICATION OF 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 4.7: TRANSPARENCY

1. Each Party shall promptly publish, including on the internet, its laws, regulations and, where applicable, administrative rules or procedures of general application relevant to trade in goods between the Parties.
2. Each Party shall designate one or more enquiry points to address enquiries from interested persons on customs matters, and shall make available on the internet information concerning procedures for making such enquiries.
3. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall publish, in advance on the internet, draft laws and regulations of general application relevant to trade between the Parties, with a view to affording the public, especially interested persons, an opportunity to provide comment.
4. Each Party shall ensure, to the extent possible, that a reasonable interval is provided between the publication of new or amended laws and regulations of general application relevant to trade between the Parties and their entry into force.
5. Each Party shall administer, in a uniform, impartial and reasonable manner, its laws and regulations of general application relevant to trade between the Parties.

#### ARTICLE 4.8: REVIEW AND APPEAL

Each Party shall ensure the availability of processes for administrative and judicial review of decisions taken by its customs administration. Such review shall be independent from the official or office that made the decision.

#### ARTICLE 4.9: ADVANCE RULINGS

1. Each Party shall provide for written advance rulings to be issued to a person described in paragraph 2(a) concerning tariff classification, whether a good is originating under this Agreement, and other matters the Parties may agree.
2. Each Party shall adopt or maintain procedures for issuing written advance rulings, which shall:
  - (a) provide that an exporter, importer or any person with a justifiable cause, or a representative thereof, may apply for an advance ruling. A Party may require that an applicant have legal representation or registration in its territory;
  - (b) include a detailed description of the information required to process a request for an advance ruling;

- (c) allow its customs administration, at any time during the course of an evaluation of an application for an advance ruling, to request that the applicant provide additional information necessary to evaluate the request;
- (d) ensure that an 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; and
- (e) provide that the ruling be issued, in the national language of the issuing customs administration, to the applicant expeditiously within 60 days on receipt of all necessary information.

3. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the basis for its decision to decline to issue the advance ruling.

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

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

6. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory through any port of entry for three years or such longer period as a Party may decide, beginning on the date it issues the ruling or on any other date specified in the ruling. The Party shall ensure the same treatment of all importations of a good subject to the ruling during the validity period regardless of the importer or exporter involved, where the facts and circumstances are identical in all material respects.

7. A Party may modify or revoke an advance ruling, consistent with this Agreement, where:

- (a) there is a change in its laws or regulations;
- (b) incorrect information is provided or relevant information is withheld;
- (c) there is a change in a material fact; or
- (d) there is a change in the circumstances on which the ruling was based.

#### ARTICLE 4.10: RELEASE OF GOODS

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good where 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 as rapidly as possible after arrival, provided all other regulatory requirements have been met; and
  - (b) as appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods.
3. Each Party shall endeavour to adopt and maintain a system under which goods in need of urgent clearance can obtain prompt customs clearance.

#### ARTICLE 4.11: 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:
  - (a) provide for the release of perishable goods under normal circumstances within the shortest possible time; and
  - (b) provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs administration 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. Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. Each Party shall, where practicable and consistent with its laws, on request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

#### ARTICLE 4.12: TEMPORARY ADMISSION OF GOODS

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

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

2. A Party shall not apply any import duties or taxes on containers, pallets or packing material used in the transportation of goods.

#### ARTICLE 4.13: ACCEPTANCE OF COPIES

1. Each Party shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for imported goods.

2. A Party shall not require an original or copy of export declarations submitted to the customs administration of the exporting Party as a requirement for importation.

#### ARTICLE 4.14: CONSULTATION

1. The customs administration of a Party may at any time request consultations with the customs administration of the other Party on any matter arising from the implementation or operation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within 30 days of the request, unless the customs administrations of the Parties mutually determine otherwise.

2. The customs administration of each Party shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. The customs administrations of the Parties shall notify each other promptly of any amendments to the details of their contact points.

3. The customs administrations of the Parties may consult each other on any trade facilitation issues arising from procedures to secure trade and the movement of means of transport between the Parties.

## CHAPTER 5 SANITARY AND PHYTOSANITARY MEASURES

### ARTICLE 5.1: OBJECTIVES

The objectives of this Chapter are to:

- (a) facilitate bilateral trade in food, plants and animals, including their products, while protecting human, animal or plant life or health in the territory of each Party;
- (b) deepen mutual understanding of each Party's regulations and procedures relating to sanitary and phytosanitary measures;
- (c) strengthen cooperation between Australian and Chinese government agencies with responsibility for sanitary and phytosanitary matters; and
- (d) enhance implementation of the SPS Agreement.

### ARTICLE 5.2: SCOPE

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

### ARTICLE 5.3: DEFINITIONS

For the purposes of this Chapter,

- (a) **SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures* contained in Annex 1A of the World Trade Organization Agreement; and
- (b) **sanitary and phytosanitary measure** means any measure referred to in paragraph 1 of Annex A of the SPS Agreement.

### ARTICLE 5.4: INTERNATIONAL OBLIGATIONS

The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.

#### ARTICLE 5.5: TRANSPARENCY

1. The Parties acknowledge the importance of transparency in the application of sanitary and phytosanitary measures, including through, *inter alia*, the exchange of information on their respective sanitary and phytosanitary measures in a timely manner.
2. Each Party shall provide notification, consistent with the notification requirements under the SPS Agreement, to the enquiry point of the other Party of new or revised sanitary and phytosanitary measures, including measures imposed in response to an urgent threat to human, animal or plant life or health.
3. Upon request by a Party, the notifying Party shall provide the full text of the notified sanitary and phytosanitary measures to the enquiry point of the other Party within 7 days.
4. Whenever an international standard, guideline or recommendation does not exist, or the content of a proposed sanitary or phytosanitary measure is not substantially the same as the content of an international standard, guideline or recommendation, and if the measure may have a significant effect on trade of the other Party, the Party should normally allow at least 60 days for the other Party to make comments in writing, shall discuss these comments upon request, and shall take the comments and the results of the discussions into account.
5. Where urgent problems of health protection arise, or threaten to arise, for a Party, the Party is not required to provide an opportunity for the other Party to make comments in writing prior to the entry into force of the measure. However, the Party shall observe the provisions of paragraphs 3 and 4, shall allow the other Party to make comments in writing, shall discuss these comments upon request, and shall take the comments and the results of the discussions into account.
6. Where there is non-compliance of an imported consignment with sanitary and phytosanitary measures, the relevant government agency of the importing Party shall notify the relevant government agency of the exporting Party of the non-compliance without undue delay.

#### ARTICLE 5.6: COOPERATION

1. The Parties shall explore opportunities for further cooperation and collaboration on sanitary and phytosanitary matters at the bilateral, regional and multilateral levels consistent with the provisions of this Chapter, including through:
  - (a) cooperating on work in relevant international bodies and regional organisations engaged in food safety and human, animal or plant life or health issues;

- (b) strengthening technical cooperation and communication on import risk analysis principles and processes so as to avoid undue delay; and
- (c) conducting possible joint research projects on diseases and pest prevention, surveillance and control strategies and on other scientific issues, including in the area of food safety, relating to SPS measures.

2. The Committee on Sanitary and Phytosanitary Measures established in accordance with Article 5.11 shall consider proposals for cooperation and collaboration to give effect to this Article.

#### ARTICLE 5.7: REGIONALISATION AND EQUIVALENCE

Each Party shall accept the regionalisation and equivalence provisions of the SPS Agreement, and consider the relevant international standards, guidelines and recommendations, in order to facilitate trade between the Parties.

#### ARTICLE 5.8: CONTROL, INSPECTION AND APPROVAL PROCEDURES

1. Each Party shall implement its control, inspection and approval procedures in accordance with its rights and obligations under the SPS Agreement.
2. On request of a Party, the Parties shall exchange views and information on their control, inspection and approval procedures.
3. Each Party shall, on request of the other Party, accept the control, inspection and approval procedures of the other Party as equivalent, provided that it is satisfied that these achieve the importing Party's appropriate level of sanitary and phytosanitary protection.

#### ARTICLE 5.9: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. The Parties recognise that cooperation, information sharing, capacity building and technical assistance are important elements in promoting the objectives of this Chapter.
2. The Parties shall give full consideration to the provisions on technical assistance and special and differential treatment in the SPS Agreement, and the possible difficulties that the Parties may encounter in the implementation of this Chapter. The Parties agree to take such reasonable measures, as may be available, to enhance capacity building by providing technical assistance.

3. Consistent with the objectives of this Article, the Parties shall jointly consider technical assistance projects in the field of sanitary and phytosanitary measures for the purposes of implementing this Article. Such technical assistance projects may include, but are not limited to:

- (a) sharing knowledge, experience or research results in areas such as:
  - (i) animal and plant pests and diseases;
  - (ii) food safety;
  - (iii) agri-chemicals and veterinary medicines; and
  - (iv) other areas agreed by the Parties; and
- (b) consulting on positions in regional and international organisations and on relevant standards and programs.

4. The Parties shall explore opportunities for other forms of technical assistance or cooperation that the Parties jointly decide upon, including strengthening cooperation between their SPS enquiry points, sharing available translations of SPS notifications and related documents, and exchanging experience and information on SPS notifications.

#### ARTICLE 5.10: CONSULTATION AND DISPUTE SETTLEMENT

1. The Parties shall endeavour to resolve any matter arising under this Chapter through cooperative mechanisms under this Chapter.
2. Neither Party shall have recourse to the dispute settlement provisions in Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

#### ARTICLE 5.11: COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

1. The Parties note the high level consultative mechanism established under the *Memorandum of Understanding on Cooperation in Sanitary and Phytosanitary Matters between the Australian Department of Agriculture, Fisheries and Forestry and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China*.
2. The Parties hereby establish the Committee on Sanitary and Phytosanitary Measures (the "Committee"), comprising representatives of each Party.

3. For the purposes of this Article, the Committee shall be coordinated by:
  - (a) for Australia, the Department of Agriculture or its successor; and
  - (b) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor.
  
4. The Committee shall meet at least once every two years unless the Parties agree otherwise. The Committee's functions shall include:
  - (a) promoting the objectives set out in Article 5.1;
  - (b) reviewing and monitoring the implementation of this Chapter;
  - (c) determining areas for cooperation and collaboration;
  - (d) considering proposals for technical assistance and capacity building under this Chapter;
  - (e) reviewing progress on and, as appropriate, seeking to address through mutual consent, sanitary and phytosanitary matters that may arise between the Parties;
  - (f) as appropriate, reporting its findings and the outcomes of its discussions to the FTA Joint Commission; and
  - (g) carrying out other functions as may be delegated to it by the FTA Joint Commission.
  
5. Each Party shall ensure that appropriate representatives with responsibility for sanitary and phytosanitary measures and food standards participate in meetings of the Committee.
  
6. The Committee may agree to establish technical working groups on human, animal and plant health or food safety, as necessary, including regionalisation and equivalence, to address issues arising from the implementation of this Chapter.
  
7. Each Party shall establish a contact point which shall have responsibility for coordinating the implementation of this Chapter. The contact points will be:
  - (a) for Australia, the Department of Agriculture or its successor; and
  - (b) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor.

## **CHAPTER 6**

### **TECHNICAL BARRIERS TO TRADE**

#### **ARTICLE 6.1: OBJECTIVES**

The objectives of this Chapter are to further the implementation of the TBT Agreement and to facilitate trade between the Parties through:

- (a) cooperation to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary barriers to trade;
- (b) improving access to information on technical regulations, standards and conformity assessment procedures;
- (c) enhancing mutual understanding of each Party's technical regulations, standards and conformity assessment procedures;
- (d) establishing communication links between agencies in the Parties and fostering cooperation at the regulatory level;
- (e) building on existing cooperation between standards, accreditation and conformity assessment organisations for the purpose of promoting recognition and acceptance of the results of conformity assessment; and
- (f) encouraging the reduction of transaction costs between the Parties.

#### **ARTICLE 6.2: SCOPE**

1. Unless otherwise provided in paragraphs 2 and 3, this Chapter applies to all standards, technical regulations and conformity assessment procedures of the central government that may, directly or indirectly, affect trade in goods between the Parties.
2. This Chapter does not apply to purchasing specifications prepared by government bodies for production or consumption requirements of such bodies.
3. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 5 (Sanitary and Phytosanitary Measures).
4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its rights and obligations under the TBT Agreement, standards, technical regulations and conformity assessment procedures.

5. Each Party shall take such reasonable measures as may be available to it to ensure compliance with the provisions of this Chapter by local government bodies and non-government bodies within its territory.

#### ARTICLE 6.3: DEFINITIONS

For the purposes of this Chapter:

- (a) **TBT Agreement** means the *Agreement on Technical Barriers to Trade* contained in Annex 1A of the WTO Agreement; and
- (b) **technical regulation, standard and conformity assessment procedures** shall have the meanings assigned to them in Annex 1 of the TBT Agreement.

#### ARTICLE 6.4: AFFIRMATION OF THE TBT AGREEMENT

The Parties affirm their rights and obligations with respect to each other under the TBT Agreement.

#### ARTICLE 6.5: INTERNATIONAL STANDARDS

The Parties shall use international standards, guidelines and recommendations, or the relevant parts of international standards, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, unless such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate objectives.

#### ARTICLE 6.6: TECHNICAL REGULATIONS

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

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain its reasons. The Parties will, if they so agree, give further consideration to whether a Party should accept a particular regulation as equivalent to its own and consider establishing an *ad hoc* working group, as provided for in Article 6.13.5(e), for this purpose.

#### ARTICLE 6.7: CONFORMITY ASSESSMENT PROCEDURES

1. The Parties shall work cooperatively, in particular on mandatory conformity assessment procedures, with a view to facilitating trade.
2. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment procedures and the results thereof.
3. The Parties agree to exchange information on conformity assessment procedures, including testing, inspection, certification, accreditation and metrology, with a view to building mechanisms for cooperation in the field of conformity assessment procedures in a manner consistent with the TBT Agreement and the relevant domestic legislation of the Parties.
4. The Parties agree to encourage their conformity assessment bodies to work more closely with a view to facilitating the acceptance of conformity assessment results between both Parties.
5. Subject to paragraph 6, each Party shall accredit or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory.
6. China's domestic legislation requires a cooperation agreement between the Parties or their competent authorities before it can accredit, approve, license or otherwise recognise a body in the territory of Australia for assessing conformity with a particular technical regulation or standard.
7. This Article shall not preclude a Party from undertaking conformity assessment solely within specific government bodies located in its own territory or in the other Party's territory, subject to its obligations under the TBT Agreement.

#### ARTICLE 6.8: TRANSPARENCY

1. The Parties acknowledge the importance of transparency in decision-making on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice in accordance with Article 2.9 or 5.6 of the TBT Agreement, it shall:
  - (a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
  - (b) transmit the proposal electronically from its own national TBT enquiry point to the enquiry point of the other Party established under Article 10 of the TBT Agreement, at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party, after it transmits a proposal to the other Party, should allow at least 60 days for the other Party to make comments in writing on the proposal.

2. Each Party shall respond in print or electronically to comments it receives from the other Party before it publishes the final technical regulation or conformity assessment procedure.

3. Where a Party makes an urgent notification in accordance with Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit electronically the notification to the other Party through the enquiry point referenced in paragraph 1(b).

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

5. A Party shall provide in a timely manner responses to all reasonable requests received from the other Party for information, where available, concerning technical regulations and conformity assessment procedures, products subject to conformity assessment requirements, charges and fees for conducting conformity assessment activities, bodies accredited to carry out certification and laboratory testing activities, and the scope of business of such bodies.

6. The Parties, through their competent regulatory authorities, shall endeavour to enhance cooperation and develop mechanisms to notify the other Party, in a timely manner, of any relevant and possibly emerging product problems, the measures to be taken, and the reasons for the imposition of the measures.

#### ARTICLE 6.9: TRADE FACILITATION

1. The Parties shall work cooperatively in the fields of standards, technical regulations and conformity assessment procedures to facilitate trade between the Parties. In particular, the Parties shall seek to identify bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors so as to facilitate trade. Such initiatives may include:

- (a) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;
- (b) alignment with international standards;
- (c) feasibility of acceptance and reliance on a supplier's declaration of conformity;

- (d) use of accreditation to qualify conformity assessment bodies; and
- (e) cooperation through recognition of conformity assessment procedures.

2. The Parties shall encourage their respective standardising and conformity assessment bodies to consult and exchange views when developing standards, guidelines, recommendations or policies relevant to this Chapter, and to consult and exchange views on major issues under discussion in relevant international or regional bodies.

#### ARTICLE 6.10: INFORMATION EXCHANGE

Any information or explanation that is provided on request of a Party in accordance with this Chapter shall be provided in print or electronically within a reasonable period of time.

#### ARTICLE 6.11: COOPERATION AND TECHNICAL ASSISTANCE

1. Each Party recognises the rights and obligations relating to technical assistance in the TBT Agreement, especially for developing country Members.

2. Considerable cooperation already exists between the Parties and their competent authorities on TBT issues. To support implementation of this Chapter and increase mutual understanding of their respective systems, the Parties, through the Committee on Technical Barriers to Trade established under Article 6.13, shall consider further cooperation and technical assistance programs in the field of technical barriers to trade. Such cooperation and technical assistance may include:

- (a) conducting joint studies, symposiums and seminars;
- (b) exchange of information in respect of technical regulations, standards, conformity assessment procedures and good regulatory practice;
- (c) supporting the activities of international standardisation bodies and the WTO Committee on Technical Barriers to Trade;
- (d) reinforcing the role of international standards as a basis for technical regulations and conformity assessment procedures;
- (e) promoting the accreditation of conformity assessment bodies on the basis of relevant standards and guides of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC); and

- (f) any other areas as agreed by the Parties.

#### ARTICLE 6.12: CONSULTATION AND DISPUTE SETTLEMENT

1. The Parties shall endeavour to resolve any matter arising under this Chapter through cooperative mechanisms under this Chapter.
2. Neither Party shall have recourse to the provisions in Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

#### ARTICLE 6.13: COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish the Committee on Technical Barriers to Trade (hereinafter referred to in this Article as the “Committee”), comprising representatives of each Party.
2. The Committee shall be:
  - (a) composed of representatives of the competent authorities of the Parties, who, upon agreement, may also invite representatives of relevant entities with necessary expertise relevant to the issues to be discussed; and
  - (b) co-chaired by officials of the competent authorities of the Parties.
3. For the purposes of this Article, the Committee shall be coordinated by Chapter Coordinators (“the Coordinators”):
  - (a) in the case of Australia, the Department of Industry or its successor; and
  - (b) in the case of China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor.
4. The Coordinators shall also facilitate the implementation of this Chapter and the decisions of the Committee. The Coordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions.
5. The Committee’s functions shall include:
  - (a) reviewing and monitoring the implementation and administration of this Chapter, including in light of any developments under the WTO Committee on Technical Barriers to Trade as well as the TBT Agreement, and, if necessary, developing recommendations for supplementing this Chapter;

- (b) upon a Party's written request, consulting on issues concerning technical barriers to trade arising under this Chapter. Where a Party declines a request from the other Party to consult on an issue relevant to this Chapter, it shall, on request, explain its reasons for its decision;
- (c) providing information on standards, technical regulations and conformity assessment procedures of a Party in response to all reasonable requests for information from the other Party;
- (d) discussing and developing appropriate project proposals on technical assistance and cooperation as needed and agreed by the Parties, and monitoring implementation;
- (e) establishing *ad hoc* working groups to discuss specific technical issues as needed and agreed by the Parties;
- (f) reporting to the FTA Joint Commission on its findings and the outcome of its discussions; and
- (g) carrying out other functions as may be delegated to it by the FTA Joint Commission.

6. In its first meeting, the Committee shall adopt its rules of procedure, which shall be updated if necessary.

7. The Committee shall convene at least once every two years, unless the Parties agree otherwise. The Committee may meet in person, by teleconference, by videoconference, or by any other means agreed by the Parties. The Parties may avail themselves of the opportunity to meet, where possible, in conjunction with other meetings related to the Agreement or in the margins of international meetings.

## CHAPTER 7 TRADE REMEDIES

### ARTICLE 7.1: DEFINITIONS

For the purposes of Articles 7.2 through 7.7:

- (a) **domestic industry** means, with respect to an imported product, the producers as a whole of the like or directly competitive product operating within the territory of a Party, or those whose collective output of the like or directly competitive product constitutes a major proportion of the total domestic production of those products;
- (b) **bilateral safeguard measure** means a measure described in Article 7.2.2;
- (c) **Safeguards Agreement** means the *Agreement on Safeguards* contained in Annex 1A to the WTO Agreement;
- (d) **serious injury** means a significant overall impairment in the position of a domestic industry;
- (e) **threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and
- (f) **transition period** means, in relation to a particular product, the three year period from the date of entry into force of this Agreement, except that for any product for which the date on which the customs duty on that product is to be eliminated in accordance with Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) is more than three years, transition period shall mean the tariff elimination period for that product.

### ARTICLE 7.2: APPLICATION OF A BILATERAL SAFEGUARD MEASURE

1. If during the transition period, as a result of the reduction or elimination of a customs duty in accordance with this Agreement, an originating product is being imported into a Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive product, the importing Party may apply a bilateral safeguard measure described in paragraph 2.

2. If the conditions in paragraph 1 are met, a Party may, only to the extent

necessary to prevent or remedy serious injury and facilitate adjustment:

- (a) suspend the further reduction of any rate of duty provided for under this Agreement on the product; or
- (b) increase the rate of duty on the good to a level not to exceed the lesser of:
  - (i) the most-favoured-nation (hereinafter referred to as “MFN”) applied rate of duty on the product in effect at the time the measure is applied; and
  - (ii) the MFN applied rate of duty on the product in effect on the day immediately preceding the date of entry into force of this Agreement.<sup>1</sup>

#### ARTICLE 7.3: SCOPE AND DURATION OF BILATERAL SAFEGUARD MEASURES

1. Neither Party shall apply or maintain a bilateral safeguard measure:
  - (a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment; or
  - (b) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of the applying Party determine, in conformity with the procedures set out in this Chapter, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting. Regardless of its duration, any such measure shall terminate at the end of the transition period.
2. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.
3. A Party shall not apply a bilateral safeguard measure again on a product which has been subject to a bilateral safeguard measure for a period of time equal to that during which the previous bilateral safeguard measure had been applied, provided that the period of non-application is at least two years. However, no bilateral safeguard measure may be applied more than twice on the same product.
4. Neither Party shall apply a bilateral safeguard measure on a product that is subject to a measure that the Party has applied in accordance with Article XIX of GATT

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<sup>1</sup> The Parties understand that neither tariff rate quotas nor quantitative restrictions would be permissible forms of bilateral safeguard measures.

1994 and the Safeguards Agreement, and neither Party shall maintain a bilateral safeguard measure on a product that becomes subject to a measure that the Party imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

5. On the termination of a bilateral safeguard measure, the Party that applied the bilateral safeguard measure shall apply the rate of customs duty set out in its schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) on the date of termination as if the bilateral safeguard measure had never been applied.

#### ARTICLE 7.4: INVESTIGATION PROCEDURES AND TRANSPARENCY REQUIREMENTS

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

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

#### ARTICLE 7.5: PROVISIONAL BILATERAL SAFEGUARD MEASURES

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to a domestic industry.

2. Before applying a provisional bilateral safeguard measure the applying Party shall notify the other Party and shall, on request of the other Party, initiate consultations after applying such a measure.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Articles 7.2 through 7.4 shall be met. Such a provisional bilateral safeguard measure should take the form of a suspension of the further reduction of any rate of duty provided for under this Agreement on the product or an increase in the customs duties to a rate not exceeding the lesser of the rates in Article 7.2.2(b). Any additional customs duties or guarantees collected shall be promptly refunded if the subsequent investigation referred to in Article 7.4.1 determines that increased imports have not caused, or threatened to cause, serious injury to a domestic industry.

4. The duration of any such provisional bilateral safeguard measure shall be counted as part of the period described in Article 7.3.1.

#### ARTICLE 7.6: NOTIFICATION AND CONSULTATION

1. A Party shall immediately notify the other Party in writing on:
  - (a) initiating a bilateral safeguard investigation;
  - (b) making a finding of serious injury or threat thereof caused by increased imports;
  - (c) taking a decision to apply or extend a bilateral safeguard measure; and
  - (d) taking a decision to liberalise a bilateral safeguard measure previously applied in accordance with Article 7.3.2.
2. In making the notifications referred to in paragraph 1(b) and paragraph 1(c), the Party applying a bilateral safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, the proposed bilateral safeguard measure, the grounds for introducing the bilateral safeguard measure, the proposed date of introduction and its expected duration and timetable for progressive liberalisation. In the case of an extension of a bilateral safeguard measure, the written results of the determination required by Article 7.4, including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting, shall also be provided.
3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided in accordance with paragraph 2, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation in accordance with Article 7.7.1.
4. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 7.4 as soon as it is available.

#### ARTICLE 7.7: COMPENSATION

1. A Party applying a bilateral safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. Such consultations shall begin within 30 days of the application of the bilateral safeguard measure.
2. If the Parties are unable to reach an agreement on compensation within 30 days

of the consultations commencing, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions in accordance with paragraph 2 shall terminate on the date of the termination of the safeguard measure.

#### ARTICLE 7.8: GLOBAL SAFEGUARD

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. This Agreement shall not confer any additional rights or impose any additional obligations on the Parties with respect to measures applied under Article XIX of GATT 1994 and the Safeguards Agreement.

#### ARTICLE 7.9: ANTI-DUMPING MEASURES

1. Except as otherwise provided for in this Article, each Party retains its rights and obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* contained in Annex 1A to the WTO Agreement.

2. The Parties agree to enhance dialogue in matters of anti-dumping to afford each other fair and transparent treatment. The Parties will afford adequate opportunity for consultations to exchange information on issues raised by the other Party with respect to such matters, including through the regular holding of a High Level Dialogue on Trade Remedies.

#### ARTICLE 7.10: SUBSIDIES AND COUNTERVAILING MEASURES

1. Except as otherwise provided for in this Article, each Party retains its rights and obligations under the *Agreement on Subsidies and Countervailing Measures* contained in Annex 1A to the WTO Agreement.<sup>2</sup>

2. The Parties shall ensure transparency of subsidy measures by exchanging their notifications to the WTO pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the *Agreement on Subsidies and Countervailing Measures*.

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<sup>2</sup> For greater certainty, nothing in this Article affects the Parties' rights and obligations under Article 13.3 of the *Agreement on Subsidies and Countervailing Measures*.

3. As soon as possible after a Party's receipt of a properly documented application for the initiation of a countervailing investigation against the imports from the other Party, the Party shall notify the other Party in writing. Such notification shall include the non-confidential version of the application and its supporting evidence. The investigating authority and the Party being notified shall avoid publicising the existence of the application unless a decision has been made to initiate an investigation.

4. As soon as possible after a properly documented application is accepted, and in any event before the initiation of any investigation, the importing Party shall afford to the other Party reasonable opportunities for consultations with the aim of clarifying the situation on matters raised in the application and arriving at a mutually agreed solution. Investigations into newly-alleged subsidy programs shall be undertaken in a transparent manner with the other Party afforded reasonable opportunities for consultations to defend its interests.

5. The investigating authorities shall carefully review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.

6. Throughout the investigation, the other Party shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.

**CHAPTER 8**  
**TRADE IN SERVICES**

**PART I: SCOPE AND DEFINITIONS**

**ARTICLE 8.1: SCOPE**

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

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally; and
- (d) the presence in its territory of a service supplier of the other Party.

2. This Chapter shall not apply to:

- (a) measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights and air traffic control and air navigation services, other than measures affecting:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (“CRS”) services;
  - (iv) airport operation services;
  - (v) ground handling services; and
  - (vi) specialty air services.

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

- (b) government procurement;
- (c) services supplied in the exercise of governmental authority in a Party's territory;
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; and
- (e) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding citizenship, residence or employment on a permanent basis.

#### ARTICLE 8.2: DEFINITIONS

For the purposes of this Chapter:

- (a) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called "line maintenance";
- (b) **airport operation services** means passenger air terminal, airfield and other airport infrastructure operation services excluding airport security services and services covered in ground handling services;
- (c) **commercial presence** means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition or maintenance of a juridical person; or
  - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;
- (d) **computer reservation system services** mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (e) **controlled** means having the power to name a majority of directors or otherwise legally direct a juridical person's actions;
- (f) **ground handling services** means the provision, by a third party on a fee or contract basis, of the following activities performed at an airport:

airline representation, administration and supervision; passenger handling services; ramp services; air cargo and baggage handling services; and load control and flight operation services. Ground handling services do not include security, aircraft repair and maintenance services or management of essential centralised airport infrastructure;

- (g) **juridical person** of a Party means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association, which is either:
- (i) constituted or otherwise organised in accordance with the law of that Party, and is engaged in substantive business operations in the territory of that Party; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (A) natural persons of that Party; or
    - (B) juridical persons of that Party identified under subparagraph (i);
- (h) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form, taken by:
- (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (i) **measures by Parties affecting trade in services** include measures in respect of:
- (i) the purchase, payment or use of a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally; and
  - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

- (j) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (k) **natural person of a Party** means a natural person who under the law of the Party,
  - (i) for Australia, is an Australian citizen or a permanent resident of Australia; and
  - (ii) for China, is a natural person who under the Chinese law is a national of China;
- (l) **owned** means holding more than 50 percent of the equity interest in a juridical person;
- (m) **person of a Party** means either a natural person or a juridical person of a Party;
- (n) **qualification procedures** means administrative procedures relating to the administration of qualification requirements;
- (o) **qualification requirements** means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a licence;
- (p) **sector of a service** means, with reference to a specific commitment, one or more or all subsectors of that service, as specified in a Party's Schedule in Annex III, or otherwise the whole of that service sector, including all of its subsectors;
- (q) **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, but do not include the pricing of air transport services nor the applicable conditions;
- (r) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (s) **service consumer** means any person that receives or uses a service;
- (t) **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;

- (u) **service supplier of a Party** means any person of a Party that supplies a service;<sup>1</sup>
- (v) **specialty air services** means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services;
- (w) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
- (x) **trade in services** means the supply of a service:
  - (i) from the territory of a Party into the territory of the other Party (“cross-border supply mode”);
  - (ii) in the territory of a Party to the service consumer of the other Party (“consumption abroad mode”);
  - (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party (“commercial presence mode”); and
  - (iv) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party (“presence of natural persons mode” or “movement of natural persons mode”);
- (y) **traffic rights** means the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

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

## PART II: SCHEDULING APPROACH

### ARTICLE 8.3: SCHEDULING OF COMMITMENTS

Each Party shall make commitments on National Treatment, Market Access and Most-Favoured-Nation Treatment in accordance with either Section A or Section B.

#### **Section A: Positive Listing Approach**

### ARTICLE 8.4: SCHEDULE OF SPECIFIC COMMITMENTS

1. Where a Party schedules commitments in accordance with this Section, it shall set out in a schedule, called its Schedule of Specific Commitments, the specific commitments it undertakes in accordance with Articles 8.5, 8.6 and 8.8. With respect to sectors where such commitments are undertaken, its Schedule of Specific Commitments shall specify:

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

2. Measures inconsistent with both Articles 8.5 and 8.6 shall be inscribed in the column relating to Article 8.6. In this case the inscription will be considered to provide a condition or qualification to Article 8.5 as well.

3. Schedules of Specific Commitments are annexed to this Agreement as Annex III and shall form an integral part thereof.

### ARTICLE 8.5: NATIONAL TREATMENT

1. Where a Party schedules commitments in accordance with this Section, in the sectors inscribed in its Schedule of Specific Commitments in Annex III, and subject to any conditions and qualifications set out therein, it shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services,

treatment no less favourable than that it accords to its own like services and service suppliers.<sup>2</sup>

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

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

#### ARTICLE 8.6: MARKET ACCESS

1. Where a Party schedules commitments in accordance with this Section, with respect to market access through the modes of supply identified in Article 8.2(x), it shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex III.<sup>3</sup>

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments in Annex III, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

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<sup>2</sup> Specific commitments assumed under this Article shall not be construed to require the Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

<sup>3</sup> If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(i) of Article 8.2, and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(iii) of Article 8.2, it is thereby committed to allow related transfers of capital into its territory.

- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>4</sup>
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

#### ARTICLE 8.7: MOST-FAVOURLED-NATION TREATMENT

1. Where a Party schedules commitments in accordance with this Section, in respect of the services sectors listed in Annex 8-A, and subject to any conditions and qualifications set out therein, the Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-party.<sup>5</sup>

2. Notwithstanding paragraph 1, a Party may adopt or maintain any measure that accords differential treatment to any non-party in accordance with any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

3. For greater certainty, paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation.

4. For sectors not covered by paragraph 1, if, after the date of entry into force of this Agreement, a Party subsequently enters into any agreement with a non-party in which it provides treatment to services or service suppliers of that non-party more favourable than it accords to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with

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<sup>4</sup> Paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

<sup>5</sup> For the purposes of this Article, the term “non-party” shall not include the following WTO members within the meaning of the WTO Agreement: (1) Hong Kong, China; (2) Macao, China; and (3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

the non-party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.

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

#### ARTICLE 8.8: ADDITIONAL COMMITMENTS

A Party making commitments in accordance with this Section may also negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 8.5 and 8.6, including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in that Party's Schedule of Specific Commitments in Annex III.

### **Section B: Negative Listing Approach**

#### ARTICLE 8.9: SCHEDULE OF NON-CONFORMING MEASURES

1. For a Party making commitments in accordance with this Section, Articles 8.10 through 8.12 shall not apply to:

- (a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, as set out in Section A of a Party's Schedule of Non-Conforming Measures in Annex III:
  - (i) the central government of a Party; or
  - (ii) a regional level of government;
- (b) any non-conforming measure that is maintained by a local level of government other than a regional level of government referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement; or
- (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b).

2. Articles 8.10 through 8.12 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in Section B of its Schedule of Non-Conforming Measures in Annex III.

3. Schedules of Non-Conforming Measures are annexed to this Agreement as Annex III and shall form an integral part thereof.

#### ARTICLE 8.10: NATIONAL TREATMENT

1. For a Party making commitments in accordance with this Section, it shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.<sup>6</sup>

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

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

#### ARTICLE 8.11: MARKET ACCESS

For a Party making commitments in accordance with this Section,<sup>7</sup> with respect to market access through the modes of supply identified in Article 8.2(x), it shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirements of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical

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<sup>6</sup> Nothing in this Article shall be construed to require the Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

<sup>7</sup> Where a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(i) of Article 8.2, and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(iii) of Article 8.2, it is thereby committed to allow related transfers of capital into its territory.

units in the form of quotas or the requirements of an economic needs test;<sup>8</sup>

- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirements of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

#### ARTICLE 8.12: MOST-FAVoured-NATION TREATMENT

1. For a Party making commitments in accordance with this Section, it shall, unless otherwise indicated in its Schedule of Non-Conforming Measures in Annex III, accord to services and service suppliers of the other Party treatment no less favourable than it accords to like services and service suppliers of any non-party.

2. Notwithstanding paragraph 1, a Party may adopt or maintain any measure that accords differential treatment to any non-party in accordance with any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

3. For greater certainty, paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation.

4. For those sectors exempted from the operation of paragraph 1 by a Party's Schedule of Non-Conforming Measures in Annex III and where, after this Agreement enters into force, that Party subsequently enters into any agreement with a non-party in which it provides treatment to services or service suppliers of that non-party more favourable than it accords to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.

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<sup>8</sup> This subparagraph shall not apply to measures of a Party which limit inputs for the supply of services.

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

### PART III: OTHER PROVISIONS

#### ARTICLE 8.13: DOMESTIC REGULATION

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2.

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

(b) The provisions of subparagraph (a) 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.

3. Where authorisation is required for the supply of a service on which a specific commitment under this Agreement has been made, the competent authorities of each Party shall:

(a) in the case of an incomplete application, on request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

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

(c) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such

action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. To ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures pursuant to paragraph 4 of Article VI of GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

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

5.

- (a) In sectors in which a Party has undertaken specific commitments, pending the incorporation of the disciplines referred to in paragraph 4, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement in a manner which:
  - (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
  - (ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.
- (b) In determining whether a Party is in conformity with the obligation under subparagraph 5(a), account shall be taken of international standards of relevant international organisations applied by that Party.<sup>9</sup>

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

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<sup>9</sup> The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

7. A Party shall, in accordance with its laws and regulations, permit services suppliers of the other Party to use enterprise names under which they trade in the territory of the other Party.

#### ARTICLE 8.14: RECOGNITION

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-party, nothing in Articles 8.7 or 8.12 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or in the future, shall afford adequate opportunity for the other Party, on request, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should also be recognised.

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

#### ARTICLE 8.15: QUALIFICATIONS RECOGNITION COOPERATION

1. The Parties agree to encourage, where possible, the relevant bodies in their respective territories responsible for issuance and recognition of professional and vocational qualifications to strengthen cooperation and to explore possibilities for mutual recognition of respective professional and vocational qualifications.

2. Each Party, where possible, will encourage the relevant bodies in its territory to develop, where possible, mutually acceptable standards and criteria for licensing and certification, and to provide recommendations to the Committee on Trade in Services on

mutual recognition with respect to service sectors mutually agreed by the Parties, including engineering and Traditional Chinese Medicine.

3. The Parties may discuss, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to professional and vocational services.

#### ARTICLE 8.16: PAYMENTS AND TRANSFERS

1. Except in the circumstances envisaged in Article 16.6 (Measures to Safeguard the Balance-of-Payments) of Chapter 16 (General Provisions and Exceptions), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund in accordance with the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 16.6 (Measures to Safeguard the Balance of Payments) of Chapter 16 (General Provisions and Exceptions), or at the request of the International Monetary Fund.

#### ARTICLE 8.17: DENIAL OF BENEFITS

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is a juridical person:

- (a) owned or controlled by persons of a non-party or of the denying Party; and
- (b) has no substantive business operations in the territory of the other Party.

#### ARTICLE 8.18: TRANSPARENCY

1. Each Party shall ensure that:

- (a) regulatory decisions, including the basis for such decisions, are promptly published or otherwise made available to all interested persons; and
- (b) its measures relating to public networks or services are made publicly available, including the requirements, if any, for permits.

2. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public networks or services are made publicly available, including:

- (a) the circumstances in which a licence is required;
- (b) all applicable licencing procedures;
- (c) the period of time normally required to reach a decision concerning a licence application;
- (d) the cost of, or fees for applying for, or obtaining, a licence; and
- (e) the period of validity of a licence.

3. Each Party shall, in accordance with its laws and regulations, ensure that, on request, an applicant receives reasons for the denial of, revocation of, refusal to renew, or the imposition or modification of conditions on, a licence. Each Party shall endeavour to provide, to the extent possible, such information in writing.

#### ARTICLE 8.19: TELECOMMUNICATION SERVICES

1. The Annex on Telecommunications of GATS and Reference Paper on Telecommunications shall be incorporated, *mutatis mutandis*, into and form an integral part of this Agreement.

2. Each Party shall ensure that licensing requirements for suppliers of telecommunications networks or services of the other Party are applied in the least trade restrictive manner and are not more burdensome than necessary.

3. Each Party shall facilitate consultation with suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of telecommunications policy, regulations and standards.

4. In accordance with its laws and regulations, each Party shall ensure that suppliers of public telecommunications networks or services of the other Party operating in its territory are provided with adequate advance notice<sup>10</sup> of, and the opportunity to comment on, regulatory decisions of general application that its telecommunications regulatory body proposes.

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<sup>10</sup> For greater clarity, the practice of soliciting public opinions before promulgation of regulatory decisions shall be deemed “adequate advance notice”.

5. The Parties shall encourage their respective telecommunications service suppliers to cooperate to reduce the wholesale rates for international mobile roaming between the two Parties, with a view to reducing international mobile roaming rates.

#### ARTICLE 8.20: COMMITTEE ON TRADE IN SERVICES

1. The Parties hereby establish a Committee on Trade in Services (the “Committee”) that shall meet within two years of the date of entry into force of this Agreement, or as agreed by the Parties, or on the request of the FTA Joint Commission, to consider any matter arising under this Chapter.

2. The Committee’s functions shall include:

- (a) reviewing the implementation and operation of this Chapter;
- (b) identifying and recommending measures to promote increased services trade between the Parties; and
- (c) considering other trade in services issues of interest to a Party.

3. With the agreement of both Parties, representatives from relevant agencies or sectors may be invited to attend the Committee meetings.

#### ARTICLE 8.21: CONTACT POINTS

Each Party shall designate one or more contact points to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

#### ARTICLE 8.22: MODIFICATION OF SCHEDULES

1. A Party (referred to in this Article as the “modifying Party”) may modify or withdraw any commitment in its Schedule in Annex III at any time after three years have elapsed from the date on which that commitment entered into force, provided that:

- (a) it notifies the other Party (referred to in this Article as the “affected Party”) of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and

- (b) upon notification of a Party's intent to make such modification, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment.
2. In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is not less favourable to trade than provided for in the Schedules prior to such negotiations.
  3. If agreement under paragraph 1(b) is not reached between the modifying Party and the affected Party within three months, the affected Party may refer the matter to an arbitral tribunal in accordance with the procedures set out in Chapter 15 (Dispute Settlement) or, where agreed between the Parties, to an alternative arbitration procedure.
  4. The modifying Party may not modify or withdraw its commitment until it has made the compensatory adjustments in conformity with the findings of the arbitral tribunal in accordance with paragraph 3.
  5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitral tribunal, the affected Party may modify or withdraw substantially equivalent benefits in conformity with the findings of the arbitral tribunal.

#### ARTICLE 8.23: MONOPOLIES AND EXCLUSIVE SERVICE SUPPLIERS

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under its Schedule in Annex III.
2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments in its Schedule in Annex III, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, that Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.
4. If, after the date of entry into force of this Agreement, a Party grants monopoly rights regarding the supply of a service covered by its specific commitments in its Schedule in Annex III, that Party shall notify the other Party no later than three months before the intended implementation of the grant of monopoly rights, and paragraphs 1(b) and 2 of Article 8.22 shall apply.

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

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

#### ARTICLE 8.24: REVIEW

1. The Parties shall consult within two years of the date of entry into force of this Agreement and every two years thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.

2. Where a Party unilaterally liberalises a measure affecting market access of a service supplier or suppliers of the other Party, the other Party may request consultations to discuss the measure. Following such consultations, if the Parties agree to incorporate the liberalised measure into the Agreement as a new commitment, the relevant Schedule in Annex III shall be amended.

3. After the entry into force of this agreement, at a time to be mutually agreed by the Parties, the Parties shall initiate next round of the negotiation on trade in services in the form of negative listing approach, and conclude such negotiation as soon as they could.

#### ARTICLE 8.25: COOPERATION

##### *Bilateral Taxation Arrangements*

1. The Parties shall review their bilateral taxation arrangements,<sup>11</sup> having regard to mutual economic objectives and international taxation standards.

##### *Traditional Chinese Medicine Services ("TCM")*

2. Within the relevant committees to be established in accordance with this Agreement, and subject to available resources, Australia and China shall cooperate on matters relating to trade in TCM services.

3. Cooperation identified in paragraph 2 shall:

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<sup>11</sup> These arrangements include the *Agreement between the Government of the People's Republic of China and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, done at Canberra on 17 November 1988.

- (a) include exchanging information, where appropriate, and discussing policies, regulations and actions related to TCM services; and
- (b) encourage future collaboration between regulators, registration authorities and relevant professional bodies of the Parties to facilitate trade in TCM and complementary medicines, in a manner consistent with all relevant regulatory frameworks. Such collaboration, involving the competent authorities of both Parties – for Australia, notably the Department of Health, and for China the State Administration of Traditional Chinese Medicine – will foster concrete cooperation and exchanges relating to TCM.

**ANNEX 8-A**  
**SECTOR COVERAGE UNDER ARTICLE 8.7**

<b>Sector</b>	<b>Conditions/Qualification</b>
Environmental services (CPC 9401-9406, 9409)	
Construction and related engineering services (CPC 512, 514, 516 and 517)	
Services incidental to forestry (CPC 8814)	The commitment is limited to preferential treatment accorded to members of the Organization for Economic Cooperation and Development (“OECD”)
Engineering services (CPC 8672)	
Integrated engineering services (CPC 8673)	
Computer and related services (CPC 841, 842, 843, 844, 845 and 849)	
Tourism and travel related services (CPC 641, 642, 643, 7471 and 7472)	
Related scientific and technical consulting services (CPC 8675, excluding the services related to national security)	
Securities services	
Education services (excluding national compulsory education and special education services e.g. military, police, political and party school education)	

## **ANNEX 8-B FINANCIAL SERVICES**

### ARTICLE 1: SCOPE

1. This Annex provides for measures additional to Chapter 8 (Trade in Services) in relation to financial services.
2. This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a financial service:
  - (a) from the territory of a Party into the territory of the other Party;
  - (b) in the territory of a Party to the service consumer of the other Party;
  - (c) by a service supplier of a Party, through commercial presence in the territory of the other Party; or
  - (d) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party.

### ARTICLE 2: DEFINITIONS

1. For the purposes of this Annex, “services supplied in the exercise of governmental authority” as referred to in Chapter 8 (Trade in Services) of this Agreement means the following:
  - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
  - (b) activities forming part of a statutory system of social security or public retirement plans; or
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government,except where a Party allows the activities referred to in paragraph 1(b) or paragraph 1(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.
2. The definition of “service supplied in the exercise of governmental authority” in Article 8.2 (Definitions) of Chapter 8 (Trade in Services) shall not apply to services covered by this Annex.

3. For the purposes of this Annex:

- (a) **financial service** is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

*Insurance and insurance-related services*

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

*Banking and other financial services (excluding insurance)*

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
  - (A) money market instruments (including cheques, bills, certificates of deposits);
  - (B) foreign exchange;

- (C) derivative products including, but not limited to, futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (E) transferable securities; 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 paragraphs 3(a)(v) through 3(a)(xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (b) **financial service supplier** means any natural or juridical person of a Party wishing to supply or supplying financial services but does not include a public entity; and
  - (c) **public entity** means:
    - (i) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

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

#### ARTICLE 3: DOMESTIC REGULATION

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from adopting or maintaining reasonable measures for prudential reasons, including for:

- (a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or
- (b) ensuring the integrity and stability of that Party's financial system.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding that Party's commitments or obligations under this Chapter. Such measures shall not constitute a disguised restriction on trade in services and shall not discriminate against financial services or financial service suppliers of the other Party in comparison to the Party's own like financial services or like financial service suppliers.

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

#### ARTICLE 4: RECOGNITION

1. A Party may recognise prudential measures of the other Party, or a non-party, in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with an international standard-setting body, the 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 agreements or arrangements, or to negotiate comparable ones 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 5: REGULATORY TRANSPARENCY

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

2. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published or otherwise made publicly available.

3. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations<sup>1</sup> of the Party are promptly published or otherwise made publicly available.

4. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons<sup>2</sup> of the other Party regarding measures of general application to which this Annex applies.

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

6. Each Party's regulatory authorities shall make administrative decisions on a completed application of a financial service supplier of the other Party seeking to supply a financial service in that Party's territory within 180 days and shall notify the applicant of the decision where possible in writing, without undue delay:

- (a) an application shall not be considered complete until all relevant proceedings are conducted and the regulatory authorities consider all necessary information has been received; and
- (b) where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable time thereafter.

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<sup>1</sup> In the case of Australia, "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and in the case of China, means an organisation recognised as a self-regulatory body by the central government according to China's laws and regulations.

<sup>2</sup> The Parties confirm their shared understanding that "interested persons" in this Article should only be persons whose direct financial interest could potentially be affected by the adoption of the regulations of general application.

7. On the written request of an unsuccessful applicant, a regulatory authority that has denied an application shall endeavour to inform the applicant of the reasons for denial of the application in writing.

#### ARTICLE 6: DISPUTE SETTLEMENT

Arbitrators on an arbitral tribunal established in accordance with Chapter 15 (Dispute Settlement) for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

#### ARTICLE 7: COMMITTEE ON FINANCIAL SERVICES

1. The Parties hereby establish a Committee on Financial Services (hereinafter referred to as the “Committee”).

2. The Committee shall comprise officials of each Party from authorities responsible for financial services. The authorities responsible for financial services are:

- (a) for Australia, the Treasury and the Department of Foreign Affairs and Trade and, as necessary, officials from the relevant regulatory authorities including the Australian Prudential Regulation Authority, Reserve Bank of Australia and Australian Securities and Investment Commission; and
- (b) for China, the Ministry of Commerce and, as necessary, officials from the relevant regulatory authorities, including the People’s Bank of China, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission and the State Administration of Foreign Exchange.

3. The Committee shall:

- (a) supervise the implementation of this Annex and its further elaboration; and
- (b) consider issues regarding financial services that are referred to it by a Party, including ways for the Parties to incorporate into this Agreement development in their markets for financial services and to cooperate more effectively in the financial services sector.

4. The Committee shall meet every two years, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services.

ARTICLE 8: CONSULTATIONS

A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request.

## CHAPTER 9 INVESTMENT

### Section A: Investment

#### ARTICLE 9.1: DEFINITIONS

For the purposes of this Chapter:

- (a) **covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party in existence at the date of entry into force of this Agreement or established, acquired, or expanded thereafter and which, where applicable, has been admitted by the host Party, subject to its relevant laws, regulations and policies;
- (b) **enterprise** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation; and a branch of an enterprise;
- (c) **enterprise of a Party** means an enterprise constituted or organised in accordance with the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;
- (d) **investment** means every kind of asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that investments may take include:
  - (i) an enterprise and a branch of an enterprise;
  - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
  - (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
  - (iv) rights under contracts, including turnkey, construction, management, production or revenue sharing contracts;
  - (v) claims to money and claims to any performance under a contract associated with an investment and having a financial value;

- (vi) intellectual property rights;
- (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorisations and permits; and
- (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

Note: Investments also include the amounts yielded by investments that are reinvested, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

- (e) **investor of a Party** means a Party, a natural person of a Party, or an enterprise of a Party, that seeks to make, is making or has made a covered investment;

#### ARTICLE 9.2: SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party; and
  - (b) covered investments.
2. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Trade in Services) or Chapter 10 (Movement of Natural Persons).
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 either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

#### ARTICLE 9.3: NATIONAL TREATMENT

1. Australia shall accord to investors of China treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
2. China shall accord to investors of Australia treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the expansion,<sup>1</sup> management, conduct, operation and sale or other disposition of investments in its territory.
3. Australia shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
4. China shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the expansion, management, conduct, operation and sale or other disposition of investments in its territory.

#### ARTICLE 9.4: MOST-FAVOURLED-NATION TREATMENT<sup>2</sup>

1. Each Party shall accord to investors of the other Party, and covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory, treatment no less favourable than that it accords, in like circumstances, to investors and investments in its territory of investors of any non-Party.
2. For greater certainty, the treatment referred to in this Article does not encompass Investor-State Dispute Settlement procedures or mechanisms.
3. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords more favourable treatment to investors of non-parties in

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<sup>1</sup> For greater certainty, the concept of 'expansion' in Article 3 means the expansion of an existing investment and does not include the establishment or acquisition of a new, separate investment.

<sup>2</sup> For the purposes of this Article, the term "non-party" shall not include the following WTO members within the meaning of the General Agreement on Tariffs and Trade and the WTO Agreement: 1) Hong Kong, China; 2) Macao, China; and 3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

accordance with any bilateral or multilateral international agreement in force prior to the date of entry into force of this Agreement.<sup>3</sup>

4. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords more favourable treatment to investors of non-parties in accordance with any bilateral or multilateral international agreement in force on, or signed after, the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters, including salvage.

#### ARTICLE 9.5: NON-CONFORMING MEASURES<sup>4</sup>

1. For Australia, Article 9.3 and Article 9.4 shall not apply to:

- (a) any existing non-conforming measure that is maintained on the date of entry into force of this Agreement:
  - (i) at the central level of government, as set out by Australia in Section A of its Schedule of Non-Conforming Measures in Annex III;
  - (ii) by a State or Territory of Australia, as set out by Australia in Section A of its Schedule of Non-Conforming Measures in Annex III; or
  - (iii) at a local level of Australian government;
- (b) the continuation of any non-conforming measure referred to in subparagraph (a); or

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<sup>3</sup> For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

<sup>4</sup> Until the entry into force of China's investment commitments in the comprehensive Investment Chapter negotiated pursuant to Article 9.9, China's commitments under Article 9.4 shall apply subject to any non-conforming measures scheduled by China against the most-favoured-nation (MFN) obligation in any negative list investment agreement with a non-party, *mutatis mutandis*. Until the entry into force of the comprehensive Investment Chapter negotiated pursuant to Article 9.9, and subject to the scope of this Chapter, if China concludes more than one such agreement with a non-party, the schedule of non-conforming measures against MFN most favourable to Australian investors and investments shall apply *mutatis mutandis*.

- (c) an amendment or modification to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.3 and Article 9.4.
- 2. For China, Article 9.3 and Article 9.4 shall not apply to:
  - (a) any existing non-conforming measures maintained within its territory;
  - (b) the continuation 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 increase the non-conformity of the measure, as it existed immediately before the amendment, with Article 9.3 and Article 9.4.
- 3. Article 9.3 and Article 9.4 shall not apply to any measure that Australia adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in Section B of its Schedule of Non-Conforming Measures in Annex III.
- 4. The Parties shall endeavour to progressively remove the non-conforming measures.

#### ARTICLE 9.6: DENIAL OF BENEFITS

- 1. A Party may deny the benefits of this Chapter to an investor of the other Party and to investments of that investor if the investor is an enterprise:
  - (a) owned or controlled either by persons of a non-party or of the denying Party; and
  - (b) that has no substantive business operations in the territory of the other Party.
- 2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if persons of a non-party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-party or a person of the non-party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or its investments.

#### ARTICLE 9.7: COMMITTEE ON INVESTMENT

1. The Parties hereby establish a Committee on Investment that shall meet on the request of either Party or the FTA Joint Commission to consider any matter arising under this Chapter.
2. The Committee's functions shall include:
  - (a) reviewing the implementation of this Chapter;
  - (b) identifying and recommending measures or initiatives to promote and increase investment flows between the Parties; and
  - (c) unless the Parties otherwise agree, conducting the review referred to in Article 9.9.
3. The Committee:
  - (a) shall establish and maintain a list of arbitrators pursuant to Article 9.15.5 and Article 9.15.6;
  - (b) may, pursuant to Article 9.18.2 or Article 9.19, adopt a joint decision of the Parties, declaring their interpretation of a provision of this Chapter and Annex 9-A;
  - (c) may propose amendments to Section B in the light of experience of its operation.

#### ARTICLE 9.8: GENERAL EXCEPTIONS

1. For the purposes of this Chapter and subject to the requirement that such measures are not applied in a manner which would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures:
  - (a) necessary to protect human, animal or plant life or health;
  - (b) necessary to ensure compliance with laws and regulations that are not inconsistent with this Agreement;
  - (c) imposed for the protection of national treasures of artistic, historic or archaeological value; or

- (d) relating to the conservation of living or non-living exhaustible natural resources.

2. The Parties understand that the measures referred to in subparagraph 1(a) include environmental measures to protect human, animal or plant life or health, and that the measures referred to in subparagraph 1(d) include environmental measures relating to the conservation of living or non-living exhaustible natural resources.

#### ARTICLE 9.9: FUTURE WORK PROGRAM

1. Unless the Parties otherwise agree, the Parties shall conduct a review of the investment legal framework between them no later than three years after the date of entry into force of this Agreement.

2. The review shall include consideration of this Chapter and the *Agreement between the Government of Australia and the Government of the People's Republic of China on the Reciprocal Encouragement and Protection of Investments*.

3. Unless the Parties otherwise agree, the Parties shall commence negotiations on a comprehensive Investment Chapter, reflecting outcomes of the review referred to in paragraphs 1 and 2, immediately after such review is completed. The negotiations shall include, but are not limited to, the following:

- (a) amendments to Articles included in this Chapter;
- (b) the inclusion of additional Articles in this Chapter, including Articles addressing:
  - (i) Minimum Standard of Treatment;
  - (ii) Expropriation;
  - (iii) Transfers;
  - (iv) Performance Requirements;
  - (v) Senior Management and Board of Directors;
  - (vi) Investment-specific State to State Dispute Settlement; and
  - (vii) The application of investment protections and ISDS to services supplied through commercial presence; and
- (c) scheduling of investment commitments by China on a negative list basis.

4. Unless the Parties otherwise agree, the negotiations referred to in paragraph 3 shall be concluded and then incorporated into this Agreement in accordance with Article 17.3 (Amendments) of Chapter 17 (Final Provisions).

## **Section B: Investor-State Dispute Settlement**

### ARTICLE 9.10: DEFINITIONS

For the purposes of this Chapter:

- (a) **claimant** means an investor of a Party that is a party to an investment dispute with the other Party;
- (b) **disputing parties** means the claimant and the respondent;
- (c) **disputing Party** means a Party against which a claim is made under Section B (Investor-State Dispute Settlement);
- (d) **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*;
- (e) **ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965*;
- (f) **non-disputing Party** means the Party that is not a party to an investment dispute;
- (g) **protected information** means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;
- (h) **respondent** means the Party that is a party to an investment dispute;
- (i) **Secretary-General** means the Secretary-General of ICSID; and
- (j) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law.

#### ARTICLE 9.11: CONSULTATIONS

1. In the event of an investment dispute, after two months since the occurrence of the measure or event giving rise to the dispute, the claimant may deliver to the respondent a written request for consultations. The request shall:

- (a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, identify the provision of this Chapter alleged to have been breached and any other relevant provisions;
- (c) for each claim, identify the measures or events giving rise to the claim;
- (d) for each claim, indicate whether the claim is made on its own behalf or on behalf of the enterprise;
- (e) for each claim, provide a brief summary of the legal and factual basis sufficient to present the problem clearly; and
- (f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.

2. After a request for consultations is made in accordance with this Section, the claimant and the respondent shall initially seek to resolve the dispute through consultations.

3. If the disputing parties reach a mutually agreed solution to a dispute, or certain claims thereof, formally raised under this Section, they shall abide by and comply with the mutually agreed solution reached under this Article without delay.

4. Measures of a Party that are non-discriminatory and for the legitimate public welfare objectives of public health, safety, the environment, public morals or public order shall not be the subject of a claim under this Section.

5. The respondent may, within 30 days of the date on which it receives a request for consultations (as provided for in paragraph 1), state that it considers that a measure alleged to be in breach of an obligation under Section A is of the kind described in paragraph 4, by delivering to the claimant and to the non-disputing Party a notice specifying the basis for its position (a 'public welfare notice').

6. The issuance of a public welfare notice shall trigger a 90 day period during which the respondent and the non-disputing Party shall consult. The dispute resolution procedure contemplated by this Section shall be automatically suspended for this 90 day period.

7. The issuance of a public welfare notice is without prejudice to the respondent's right to invoke the procedures described in Article 9.16.5 or Article 9.16.6. The respondent shall promptly inform the claimant, and make available to the public, the outcome of any consultations.

8. In any proceeding brought pursuant to this Section, the tribunal shall not draw any adverse inference from the non-issuance of a public welfare notice by the respondent, or from the absence of any decision between the respondent and the non-disputing Party as to whether a measure is of a kind described in paragraph 4.

#### ARTICLE 9.12: SUBMISSION OF A CLAIM TO ARBITRATION

1. This Section applies where there is a dispute between a Party and an investor of the other Party relating to a covered investment made in accordance with the Party's laws, regulations and investment policies.<sup>5</sup>

2. In the event that an investment dispute cannot be settled by consultations under Article 9.11 within 120 days after the date of receipt of the request for consultations,

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached an obligation in Article 9.3;  
and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach;<sup>6</sup> or

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

(i) that the respondent has breached an obligation under Article

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<sup>5</sup> For greater certainty, the State to State Dispute Settlement mechanism in Chapter 15 (Dispute Settlement) of this Agreement applies to this Chapter including pre-establishment obligations under Article 9.3.

<sup>6</sup> For greater certainty, the loss or damage incurred by the claimant that forms the subject matter of a claim under sub-paragraph (a) shall not include loss or damage suffered by the claimant which is a result of loss or damage caused to an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly by reason of, or arising out of, the alleged breach by the respondent.

9.3; and

- (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

3. A claimant cannot submit or continue to pursue a claim under this Section where the investment of the claimant in the territory of the respondent is owned or controlled indirectly by an investor of a non-party, and the investor of the non-party submits or has submitted a claim with respect to the same measure or event under any agreement between the respondent and that non-party.

4. A claimant may submit a claim referred to in paragraph 2:

- (a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;
- (b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;
- (c) under the UNCITRAL Arbitration Rules, except as modified by this Agreement and the Side Letter on Transparency Rules Applicable to ISDS; or
- (d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

5. Where a claim is submitted to arbitration under paragraph 4(b), (c) and (d) (except where a claim is submitted to any other arbitration institution under paragraph 4(d)), the disputing parties and the tribunal constituted thereunder shall request ICSID to provide administrative services for the arbitration proceedings. Both Parties shall endeavour to make proper institutional arrangements with ICSID to accommodate such requests following the entry into force of this Agreement.

6. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

- (a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL

Arbitration Rules, are received by the respondent; or

- (d) referred to under any arbitral institution or arbitral rules selected under paragraph 4(d) is received by the respondent,

provided that no claim shall be deemed submitted under this Section if that claim is asserted by the claimant for the first time after such notice of arbitration is submitted.

7. A notice of arbitration shall:

- (a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, identify the provision of this Chapter alleged to have been breached and any other relevant provisions;
- (c) for each claim, identify the measure or event giving rise to the claim;
- (d) for each claim, indicate whether the claim is made on the claimant's own behalf or on behalf of an enterprise;
- (e) for each claim, provide a brief summary of the legal and factual basis sufficient to present the problem clearly; and
- (f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.

8. The claimant shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the claimant appoints; or
- (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

9. The arbitration rules applicable under paragraph 4, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement and the Side Letter on Transparency Rules Applicable to ISDS.

#### ARTICLE 9.13: CONSENT OF EACH PARTY TO ARBITRATION

1. Each Party consents to the submission of a claim to arbitration under this

Section in accordance with this Agreement. Failure to meet any of the conditions and limitations provided for in Article 9.12.4 shall nullify that consent.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute.

#### ARTICLE 9.14: CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.12.2 and knowledge that the claimant (for claims brought under Article 9.12.2(a)) or the enterprise (for claims brought under Article 9.12.2(b)) has incurred loss or damage. In no event may a claim be submitted to arbitration under this Section after four years since the occurrence of the measures and/or events giving rise to the breach alleged under Article 9.12.2.

2. No claim may be submitted to arbitration under this Section unless:

- (a) the claimant has complied with the rules and procedures set forth in Articles 9.12.1 and 9.12.2;
- (b) the claim has been explicitly included in the request for consultations submitted by the claimant in accordance with Article 9.11.1;
- (c) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and,
- (d) the notice of arbitration is accompanied,
  - (i) for claims submitted to arbitration under Article 9.12.2(a), by the claimant's written waiver, and
  - (ii) for claims submitted to arbitration under Article 9.12.2(b), by the claimant's and the enterprise's written waivers, and written waiver by all persons through which the claimant owns or controls the enterprise,

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure or event alleged to constitute a breach referred to in Article 9.12.2.

3. Notwithstanding paragraph 2(d)(ii), a waiver from the enterprise shall not be

required only if the respondent has deprived the claimant of its control of the enterprise and the claimant is unable to provide such a waiver as a result.

4. Notwithstanding paragraph 2(d), the claimant (for claims brought under Article 9.12.2(a)) and the claimant or the enterprise (for claims brought under Article 9.12.2(b)) may, in accordance with the laws of the respondent, initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

#### ARTICLE 9.15: CONSTITUTION OF THE TRIBUNAL

1. Unless the disputing parties have agreed to appoint a sole arbitrator, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the chairperson, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If the disputing parties agree to appoint a sole arbitrator, the disputing parties shall seek to agree on the sole arbitrator. If they fail to do so within 90 days of the day on which the respondent gave its agreement to submit the dispute to a sole arbitrator, the sole arbitrator shall be drawn by the appointing authority on the request of a disputing party from the list of chairpersons established pursuant to paragraph 5 below.

4. If a tribunal has not been constituted within 90 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 remaining arbitrators from the list established pursuant to paragraph 5 below.

5. The Committee on Investment shall, no later than 2 years after the entry into force of this Agreement, establish a list of individuals who are willing and able to serve as arbitrators. The Committee on Investment shall ensure that at all times the list includes at least 20 individuals.

6. For purpose of the list referred to in paragraph 5, each Party shall select at least five individuals to serve as arbitrators. The Parties shall also jointly select at least 10 individuals who are not nationals of either Party to act as chairperson of the tribunals.

7. In the event that the Secretary-General is required to appoint an arbitrator or arbitrators under paragraph 3 or 4, and the list referred to in paragraph 5 has not been established, the Secretary-General shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of

either Party as the presiding arbitrator unless the disputing parties otherwise agree.

8. All arbitrators appointed pursuant to this Section shall have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute, or be affiliated with the government of either Party or any disputing party, and shall comply with Annex 9-A. Arbitrators who serve on the list established pursuant to paragraph 5 shall not, for that reason alone, be deemed to be affiliated with the government of either Party.

9. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

- (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a claimant referred to in Article 9.12.2(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
- (c) a claimant referred to in Article 9.12.2(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

#### ARTICLE 9.16: CONDUCT OF THE ARBITRATION

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 9.12.4. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Chapter.

3. With the written agreement of the disputing parties, the tribunal may allow a party or entity that is not a disputing party to file a written *amicus curiae* submission with the tribunal regarding a matter within the scope of the dispute. In determining

whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

- (a) the *amicus curiae* submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;
- (b) the *amicus curiae* submission would address a matter within the scope of the dispute; and
- (c) the *amicus curiae* has a significant interest in the proceeding.

4. Each submission in accordance with paragraph 3 of this Article shall identify the author, disclose any affiliation, direct or indirect, with any disputing party, and identify any person, government, or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration, and comply with any page limits and deadlines set by the tribunal. The tribunal shall ensure that the *amicus curiae* submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the *amicus curiae* submission.

5. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.12.

- (a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial.
- (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
- (c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
- (d) The respondent does not waive any objection as to competence or any

argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 6.

6. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 5 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, 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.

7. When it decides a respondent's objection under paragraph 5 or 6, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

8. A respondent may not assert as a defence, counterclaim, right of set-off, or for any other reason that the claimant or the enterprise referred to in Article 9.12.2(b) has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an indemnity, guarantee or insurance contract.

#### ARTICLE 9.17: TRANSPARENCY OF ARBITRAL PROCEEDINGS

1. Subject to paragraphs 3, 4 and 5, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party:

- (a) the request for consultations;
- (b) the notice of arbitration;
- (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 9.21;
- (d) minutes or transcripts of hearings of the tribunal, where available; and
- (e) orders, awards, and decisions of the tribunal.

2. Subject to paragraphs 3, 4 and 5, the respondent:

- (a) shall make the documents referred to in paragraph 1 (a), (b) and (e)

available to the public;

- (b) may make the documents referred to in paragraph 1(c) and (d) available to the public;
- (c) may make any written submissions submitted pursuant to Article 9.16.2 available to the public provided that prior consent is obtained from the non-disputing Party.

3. With the agreement of the respondent, the tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

4. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 16.1 (Disclosure and Confidentiality of Information) or Article 16.3 (Security Exceptions) of Chapter 16 (General Provisions and Exceptions).

5. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

- (a) Neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
- (b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;
- (c) A disputing party shall, within 7 days after it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version may be provided to the non-disputing Party and made public in accordance with paragraphs 1 and 2.

#### ARTICLE 9.18: GOVERNING LAW

1. Subject to paragraphs 2 and 3, when a claim is submitted under Article 9.12, the tribunal shall decide the issues in dispute in accordance with this Agreement as interpreted in accordance with customary rules of treaty interpretation of public international law, as codified in the *Vienna Convention on the Law of Treaties* done at

Vienna on 23 May 1969. Where relevant and appropriate, the tribunal shall also take into consideration the law of the respondent.

2. A joint decision of the Parties, acting through the Committee on Investment, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

3. A decision between the respondent and the non-disputing Party that a measure is of the kind described in Article 9.11.4 shall be binding on a tribunal and any decision or award issued by a tribunal must be consistent with that decision.

#### ARTICLE 9.19: INTERPRETATION OF ANNEXES

1. Where a respondent asserts as a defence that the measure alleged to be a breach is within the scope of an entry set out in Section A or B of its Schedule of Non-Conforming Measures in Annex III, the tribunal shall, on request of the respondent, request the interpretation of the Parties on the issue. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 90 days of delivery of the tribunal's request.

2. A joint decision issued under paragraph 1 by the Parties, acting through the Committee on Investment, shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision. If the Parties fail to issue such a decision within 90 days, the tribunal shall decide the issue. In such a case, the tribunal shall draw no inference from the fact that the Parties fail to issue such a decision.

3. A joint decision issued under paragraph 1 by the Parties shall also be binding on the tribunal of any dispute subsequent to the date of the joint decision to the extent applicable and not modified by another joint decision issued pursuant to paragraph 1 subsequent to the first said joint decision.

#### ARTICLE 9.20: EXPERT REPORTS

Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

#### ARTICLE 9.21: CONSOLIDATION

1. Where two or more claims have been submitted separately to arbitration under Article 9.12.2 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 11.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the claimants;
- (b) one arbitrator appointed by the respondent; and
- (c) the presiding arbitrator appointed by the Secretary-General from the list of chairpersons established pursuant to Article 9.15.5.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed from the list of arbitrations established pursuant to Article 9.15.5.

6. In the event that the Secretary-General is required to appoint an arbitrator or arbitrators under paragraph 4 or 5, and the list referred to in Article 9.15.5 has not been established, the Secretary-General shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties otherwise agree.

7. Where a tribunal established under this Article is satisfied that two or more

claims that have been submitted to arbitration under Article 9.12.2 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- (c) instruct a tribunal previously established under Article 9.15 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that
  - (i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a), 5 and 6; and
  - (ii) that tribunal shall decide whether any prior hearing shall be repeated.

8. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 9.12.2 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 7, and shall specify in the request:

- (a) the name and address of the claimant;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

9. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Agreement and the Side Letter on Transparency Rules Applicable to ISDS.

10. A tribunal established under Article 9.15 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

11. On application of a disputing party, a tribunal established under this Article,

pending its decision under paragraph 7, may order that the proceedings of a tribunal established under Article 9.15 be stayed, unless the latter tribunal has already adjourned its proceedings.

#### ARTICLE 9.22: AWARDS

1. Where a tribunal makes an award against a respondent, 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 respondent 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. Subject to paragraph 1, where a claim is submitted to arbitration under Article 9.12.2(b):

- (a) an award of restitution of property shall provide that restitution be made to the enterprise;
- (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
- (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable laws and regulations provided that such relief does not grant or result in duplicated remedies to any person in light of the award rendered.

4. A tribunal may not award punitive damages.

5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

6. Subject to paragraph 7, a disputing party shall abide by and comply with an award without delay.

7. A disputing party may not seek enforcement of an award until:

- (a) in the case of a final award made under the ICSID Convention:
  - (i) 120 days have 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; and
- (b) in the case of an award made under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 9.12.4(d),
  - (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.

8. Each Party shall provide for the enforcement of an award in its territory.

#### ARTICLE 9.23: APPELLATE REVIEW

Within three years after the date of entry into force of this Agreement, the Parties shall commence negotiations with a view to establishing an appellate mechanism to review awards rendered under Article 9.22 in arbitrations commenced after any such appellate mechanism is established. Any such appellate mechanism would hear appeals on questions of law.

#### ARTICLE 9.24: ANNEXES AND FOOTNOTES

The Annexes and footnotes shall form an integral part of this Agreement.

#### ARTICLE 9.25: SERVICE OF DOCUMENTS

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 9-B.

**ANNEX 9-A**  
**CODE OF CONDUCT**

*Responsibilities to the Process*

1. Every arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved. Former arbitrators shall comply with the obligations established 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 the arbitrator's 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 the arbitrator's 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 the arbitrator's 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 the arbitrator's 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.

*Definitions*

21. For the purposes of this Annex:

**assistant** means a person who, under the terms of appointment of an arbitrator, conducts research or provides support for the arbitrator;

**arbitrator** means a member of an arbitral tribunal established under Section B of this Chapter;

**proceeding**, unless otherwise specified, means the proceeding of an arbitral tribunal under Section B of this Chapter; and

**staff**, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

**ANNEX 9-B**  
**SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B**

**Australia**

Notices and other documents in disputes under Section B shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade  
RG Casey Building  
John McEwen Crescent  
Barton ACT 0221 Australia

**China**

Notices and other documents in disputes under Section B shall be served on China by delivery to:

Ministry of Commerce  
NO.2 Dongchangan Street, Dongcheng District  
Beijing, China, 100731

## CHAPTER 10 MOVEMENT OF NATURAL PERSONS

### ARTICLE 10.1: SCOPE

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party into the territory of the other Party under any of the categories referred to in Annex 10-A.
2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, or residence or employment on a permanent basis.
3. Nothing contained in this Agreement shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.<sup>1</sup>

### ARTICLE 10.2: DEFINITIONS

For the purposes of this Chapter:

- (a) **immigration measure** means any measure<sup>2</sup> affecting the entry and stay of foreign nationals in a Party;
- (b) **immigration formality** means a visa, permit, pass or other document or electronic authority granting a natural person of a Party temporary entry to the other Party;
- (c) **natural person of a Party** means a natural person who under the law of the Party,
  - (i) for Australia, is an Australian citizen or a permanent resident of Australia; and

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<sup>1</sup> 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 that other Party under this Chapter.

<sup>2</sup> “Measure” means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.

- (ii) for China, is a natural person who under Chinese law is a national of China;
- (d) **temporary employment entry** means entry by a natural person of a Party, including a skilled worker, into the territory of the other Party in order to temporarily work under an employment contract concluded pursuant to the law of the receiving Party, without the intent to establish permanent residence; and
- (e) **temporary entry** means entry by a natural person covered by this Chapter, including, where relevant, temporary employment entry, without the intent to establish permanent residence.

#### ARTICLE 10.3: EXPEDITIOUS APPLICATION PROCEDURES

1. Each Party shall expeditiously process complete applications for immigration formalities received from natural persons of the other Party covered by this Chapter, including further immigration formality requests or extensions thereof.

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) where a decision has been made, the decision concerning the application, including:
  - (i) if approved, the period of stay and other conditions; or
  - (ii) if refused, the reasons for refusal.

3. The Parties affirm their voluntary commitments established in the *APEC Business Travel Card Operating Framework*.

4. Each Party shall ensure that fees charged by its competent authorities in respect of the processing of an immigration formality are reasonable and do not in themselves represent an unjustifiable impediment to the movement of natural persons of the other Party under this Chapter.

5. Each Party shall endeavour, to the extent possible, to provide facilities for online lodgement and processing of immigration formalities.

#### ARTICLE 10.4: GRANT OF TEMPORARY ENTRY

1. Each Party shall set out in Annex 10-A the specific commitments it undertakes for each of the categories of natural persons specified therein. The Parties may make commitments in respect of the temporary employment entry of natural persons.
2. Where a Party makes a commitment under paragraph 1, it shall grant temporary entry or extension of temporary stay to natural persons of the other Party to the extent provided for in that commitment, provided that those natural persons:
  - (a) follow the prescribed application procedures for the relevant immigration formality; and
  - (b) meet all relevant eligibility requirements for such temporary entry.
3. In respect of the specific commitments on temporary entry in this Chapter, unless otherwise specified in Annex 10-A, neither Party shall:
  - (a) impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party; or
  - (b) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.
4. Each Party shall limit any fees for processing applications for temporary entry of natural persons in a manner consistent with Article 10.3.
5. Temporary entry granted in accordance with this Chapter does not replace the requirements needed to carry out a profession or activity according to the applicable laws and regulations in force in the territory of the Party authorising the temporary entry.

#### ARTICLE 10.5: TRANSPARENCY

Further to the commitments in Chapter 13 (Transparency), each Party shall:

- (a) provide to the other Party such materials as will enable it to become acquainted with that Party's measures relating to this Chapter;
- (b) no later than six months after the date of entry into force of this Agreement, prepare, publish on the internet where possible or, if not, otherwise make publicly available in a consolidated manner, explanatory material, relevant forms and documents, and average processing times regarding temporary entry under this Chapter in such a manner as will

- enable natural persons of the other Party to become acquainted with them;
- (c) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter; and
  - (d) upon modifying or amending an immigration measure that affects the temporary entry of natural persons, ensure that such modifications or amendments are promptly published or otherwise made available pursuant to subparagraph (b).

#### ARTICLE 10.6: COMMITTEE ON MOVEMENT OF NATURAL PERSONS

1. The Parties hereby establish a Committee on Movement of Natural Persons that shall meet within two years of entry into force of this Agreement, or as agreed by the Parties or on the request of the FTA Joint Commission, to consider any matter arising under this Chapter.
2. The Committee's functions shall include:
  - (a) reviewing the implementation and operation of this Chapter; and
  - (b) identification and recommendation of measures to promote increased movement of natural persons between the Parties; and to improve the commitments undertaken by the Parties under this Chapter, on a mutually advantageous basis.

#### ARTICLE 10.7: DISPUTE SETTLEMENT

1. The Parties shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of this Chapter.
2. The dispute settlement procedures in Chapter 15 (Dispute Settlement) shall not apply to this Chapter unless:
  - (a) the matter involves a pattern of practice; and
  - (b) the natural persons of a Party concerned have exhausted administrative remedies, where available, regarding the particular matter.
3. The remedies referred to in paragraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued within one year after the date of the institution of proceedings (not including any review or appeal) for such remedy, and the

failure to issue such a determination is not attributable to delays caused by the natural persons concerned.

#### ARTICLE 10.8: RELATION TO OTHER CHAPTERS

1. Except for this Chapter, Chapters 1 (Initial Provisions and Definitions), 13 (Transparency), 14 (Institutional Provisions), 15 (Dispute Settlement), 16 (General Provisions and Exceptions), and 17 (Final Provisions), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures within the scope of this Chapter.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

**ANNEX 10-A**  
**SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS**

**Section A: Australia's Specific Commitments**

1. Australia requires a natural person of China seeking temporary entry to its territory under the provisions of Chapter 10 (Movement of Natural Persons) and this Annex to obtain appropriate immigration formalities prior to entry. Grant of temporary entry in accordance with this Annex is contingent on meeting eligibility requirements contained within Australia's migration law and regulations, as applicable at the time of an application for grant of temporary entry. Eligibility requirements for grant of temporary entry in accordance with paragraphs 5 through 11 of this Annex include, but are not limited to, employer nomination and occupation requirements.

**BUSINESS VISITORS OF CHINA**

2. Entry and temporary stay shall be granted to business visitors of China referred to in paragraph 4(a) for a period of up to 90 days.

3. Entry and temporary stay shall be granted to business visitors of China referred to in paragraph 4(b) for a period of up to six months, with the possibility of further stay for up to one year.

4. A business visitor of China means a natural person of China who is:

- (a) seeking to travel to Australia for business purposes, including for investment purposes, whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who must not engage in making direct sales to the general public or in supplying goods or services themselves; or
- (b) a service seller, who is a natural person not based in Australia whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who is a sales representative of a service supplying enterprise, seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplying enterprise.

#### INTRA-CORPORATE TRANSFEREES OF CHINA

5. Entry and temporary stay shall be granted to intra-corporate transferees of China referred to in paragraph 6(a), (b) and (c) for a period of up to four years, with the possibility of further stay.

6. An intra-corporate transferee of China means an employee of an enterprise of China established in Australia through a branch, subsidiary or affiliate which is lawfully and actively operating in Australia, who is transferred to fill a position in the branch, subsidiary or affiliate of the enterprise in Australia, and who is:

- (a) an executive or a senior manager, who is a natural person responsible for the entire or a substantial part of the operations of the enterprise in Australia, receiving general supervision or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; or
- (b) a specialist, who is a natural person with advanced trade, technical or professional skills and experience who must be assessed as having the necessary qualifications, or alternative credentials accepted as meeting Australia's standards, for that occupation, and who must have been employed by the employer for not less than two years immediately preceding the date of the application for temporary entry.
- (c) a manager, who is a natural person within an enterprise who primarily directs the enterprise or a department or subdivision of the enterprise, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor unless the employees supervised are professionals.

#### INDEPENDENT EXECUTIVES OF CHINA

7. Entry and temporary stay shall be granted to independent executives of China for a period of up to four years.

8. An independent executive of China means an executive of an enterprise headquartered in China who is establishing a branch or subsidiary of that enterprise in Australia, and who is a natural person that will be responsible for the entire or a

substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.

#### CONTRACTUAL SERVICE SUPPLIERS OF CHINA

9. Entry and temporary stay shall be granted to contractual service suppliers of China for a period of up to four years, with the possibility of further stay.

10. A contractual service supplier of China means a natural person of China who has trade, technical or professional skills and experience and who is assessed as having the necessary qualifications, skills and work experience accepted as meeting Australia's standards for their nominated occupation and is:

- (a) an employee of an enterprise of China that has concluded a contract for the supply of a service within Australia and which does not have a commercial presence within Australia; or
- (b) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.

11. Entry and temporary stay shall be granted for a period of up to four years, with the possibility of further stay, for up to a combined total of 1,800 per year, of Chinese chefs, Wushu martial arts coaches, Mandarin language tutors and Traditional Chinese Medicine practitioners, entering as contractual service suppliers of China.

#### INSTALLERS AND SERVICERS OF CHINA

12. Entry and temporary stay shall be granted to installers and servicers of China for a period of up to three months.

13. A natural person of China is an installer or servicer of machinery and/or equipment where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer must abide by Australian workplace standards and conditions and cannot perform services which are not related to the installation or servicing activity which is the subject of the contract.

#### ACCOMPANYING SPOUSES AND DEPENDANTS

14. For a natural person of China who has been granted the right of entry and temporary stay under this Chapter for a period of longer than 12 months and who has a spouse or dependant, Australia shall, upon application, grant the accompanying spouse or dependant the right of entry and temporary stay, movement and work for an equal period to that of the natural person.

**Section B: China's Specific Commitments**

(See China's Schedule of Specific Commitments in Annex III.)

## CHAPTER 11 INTELLECTUAL PROPERTY

### ARTICLE 11.1: PURPOSE AND PRINCIPLES

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

- (a) establishing and maintaining transparent intellectual property systems and promoting and maintaining adequate and effective protection and enforcement of intellectual property rights provides certainty to rights holders and users;
- (b) protecting and enforcing intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology;
- (c) intellectual property protection promotes economic and social development and can reduce distortion and obstruction to international trade;
- (d) intellectual property systems should support open, innovative and efficient markets, including through the effective creation, utilisation, protection and enforcement of intellectual property rights, appropriate limitations and exceptions, and an appropriate balance between the legitimate interests of rights holders, users and the public interest;
- (e) intellectual property systems should not themselves become barriers to legitimate trade;
- (f) appropriate measures, provided they are consistent with the provisions of the TRIPS Agreement<sup>1</sup> and this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders, or the resort to practices which unreasonably restrain trade, are anticompetitive or adversely affect the international transfer of technology; and
- (g) appropriate measures to protect public health and nutrition may be adopted provided they are consistent with the TRIPS Agreement and this Chapter.

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<sup>1</sup> For greater certainty, “TRIPS Agreement” includes any amending protocol in force and any waiver made between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

#### ARTICLE 11.2: DEFINITIONS

For the purposes of this Chapter, unless the contrary intention appears:

- (a) **intellectual property rights** refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents and layout-designs (topographies) of integrated circuits, rights in plant varieties, and rights in undisclosed information, as defined and described in the TRIPS Agreement;
- (b) **national of a Party** includes, in respect of the relevant right, an entity of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 1.3 of the TRIPS Agreement;
- (c) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement; and
- (d) **WIPO** means the World Intellectual Property Organization.

#### ARTICLE 11.3: OBLIGATIONS ARE MINIMUM OBLIGATIONS

Each Party shall, at a minimum, give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, and enforcement of, intellectual property rights than this Chapter requires, provided that this additional protection and enforcement is not inconsistent with the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

#### ARTICLE 11.4: INTERNATIONAL AGREEMENTS

Each Party affirms its commitment to the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both Parties are party.

#### ARTICLE 11.5: NATIONAL TREATMENT

1. In respect of intellectual property rights covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of such intellectual property rights, subject to the exceptions provided under the TRIPS Agreement and those multilateral agreements concluded under the auspices of WIPO to which the Parties are party.

2. For the purposes of this Article, “protection” includes matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights covered by this Chapter.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, provided that such derogation is:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
- (b) not applied in a manner that would constitute a disguised restriction on trade.

4. Paragraph 1 shall not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

#### ARTICLE 11.6: TRANSPARENCY

1. To assist with the transparency of the operation of its intellectual property system, each Party shall make its granted or registered patent for invention, utility model, industrial design, plant variety protection, geographical indication and trade mark databases available on the internet.

2. In addition, each Party shall endeavour to publish and make available on the internet patent for invention, trade mark, plant variety protection and geographical indication applications.

#### ARTICLE 11.7: INTELLECTUAL PROPERTY AND PUBLIC HEALTH

1. The Parties recognise the principles established in the *Declaration on the TRIPS Agreement and Public Health* adopted on 14 November 2001 (hereinafter referred to as the “Doha Declaration”) by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.

2. The Parties reaffirm their commitment to contribute to the international efforts to the implementation of the Decision of the WTO General Council of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration, as well as the *Protocol amending the TRIPS Agreement*, done at Geneva on 6 December 2005.

#### ARTICLE 11.8: EXHAUSTION

Nothing in this Chapter shall affect the freedom of the Parties to determine whether, and under what conditions, the exhaustion of intellectual property rights applies. The Parties agree to further discuss relevant issues relating to the exhaustion of patent rights.

#### ARTICLE 11.9: PROCEDURES ON ACQUISITION AND MAINTENANCE

Each Party shall:

- (a) continue to work to enhance its examination and registration systems, including through improving examination procedures and quality systems;
- (b) provide applicants with a communication in writing of the reasons for any refusal to grant or register an intellectual property right;
- (c) provide an opportunity for interested parties to oppose the grant or registration of an intellectual property right, or to seek either revocation, cancellation or invalidation of an existing intellectual property right;
- (d) require that opposition, revocation, cancellation or invalidation decisions be reasoned and in writing; and
- (e) for the purposes of this Article, “writing” and “communication in writing” includes writing and communications in an electronic form.

#### ARTICLE 11.10: AMENDMENTS, CORRECTIONS AND OBSERVATIONS ON PATENT APPLICATIONS

Each Party shall provide patent applicants with opportunities to make amendments, corrections and observations in connection with their applications in accordance with each Party’s laws, regulations and rules.

#### ARTICLE 11.11: 18 MONTH PUBLICATION

Each Party shall publish, and make available online, any patent for invention application promptly after the expiry of 18 months from its filing date or from its earliest priority date, if priority has been claimed, unless the application has been published earlier or has been withdrawn, abandoned or refused.

#### ARTICLE 11.12: TYPES OF SIGNS AS TRADE MARKS

The Parties agree to cooperate on the means to protect types of signs as trade marks, including visual and sound signs.

#### ARTICLE 11.13: CERTIFICATION AND COLLECTIVE TRADE MARKS

Each Party shall provide for the protection of both collective and certification trade marks.

#### ARTICLE 11.14: WELL-KNOWN TRADE MARKS

The Parties shall provide protection for well-known trade marks at least in accordance with Article 16.2 and 16.3 of the TRIPS Agreement and Article 6 *bis* of the *Paris Convention for the Protection of Industrial Property*, done at Paris on 20 March 1883.

#### ARTICLE 11.15: GEOGRAPHICAL INDICATIONS

Each Party recognises that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.

#### ARTICLE 11.16: PLANT BREEDERS' RIGHTS

The Parties, through their competent agencies, shall cooperate to encourage and facilitate the protection and development of plant breeders' rights with a view to:

- (a) better harmonising the plant breeders' rights administrative systems of both Parties, including enhancing the protection of species of mutual interest and exchanging information;
- (b) reducing unnecessary duplicative procedures between their respective plant breeders' rights examination systems; and
- (c) contributing to the reform and further development of the international plant breeders' rights laws, standards and practices, including within the South East Asian region.

#### ARTICLE 11.17: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

1. Subject to each Party's international obligations and its laws, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.
2. The Parties agree to further discuss relevant issues concerning genetic resources, traditional knowledge and folklore, taking into account future developments in their respective laws and in multilateral agreements.

#### ARTICLE 11.18: PROTECTION OF UNDISCLOSED INFORMATION<sup>2</sup>

1. In the course of ensuring effective protection against unfair competition, each Party shall protect undisclosed information in accordance with paragraph 2.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices<sup>3</sup>, so long as such information:
  - (a) is secret, in that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
  - (b) has commercial value because it is secret; and
  - (c) has been subject to reasonable steps under the circumstances, taken by the person lawfully in control of the information, to keep it secret.

#### ARTICLE 11.19: COLLECTIVE MANAGEMENT OF COPYRIGHT

Each Party shall foster the establishment of appropriate bodies for the collective management of copyright and shall encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

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<sup>2</sup> It is understood that, consistent with the TRIPS Agreement, protection of undisclosed information includes protection of confidential information that is otherwise undisclosed and provided in commercial situations, such as architectural drawings or proprietary commercial-in-confidence information.

<sup>3</sup> For the purposes of this provision, "a manner contrary to honest commercial practices" shall mean, at least, practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

#### ARTICLE 11.20: SERVICE PROVIDER LIABILITY

Each Party may take appropriate measures to limit the liability of, or remedies available against, internet service providers for copyright infringement by the users of their online services or facilities, where the internet service providers take action to prevent access to the materials infringing copyright in accordance with the laws and regulations of the Party.

#### ARTICLE 11.21: ENFORCEMENT

1. Each Party commits to implementing effective intellectual property enforcement systems with a view to eliminating trade in goods and services infringing intellectual property rights.
2. Each Party shall provide for criminal procedures and penalties in accordance with the TRIPS Agreement to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, and consistent with the level of penalties applied for crimes of a corresponding gravity.

#### ARTICLE 11.22: BORDER MEASURES

1. Each Party shall ensure that the requirements necessary for a right holder to initiate procedures to suspend the release of goods suspected of being counterfeit trade mark or pirated copyright goods shall not unreasonably deter recourse to these procedures.
2. Where its competent authorities have made a determination that goods are counterfeit trade mark or pirated copyright goods (or have detained such suspected goods), each Party shall provide that its competent authorities have the authority to inform the right holder of at least the names and addresses of the consignor and the consignee, and of the quantity of the goods in question.
3. Each Party shall provide that its customs authorities may initiate border measures *ex officio* with respect to imported or exported goods suspected of being counterfeit trade mark or pirated copyright goods.
4. Each Party shall ensure that its laws, regulations or policies permit relevant competent authorities, on receipt of information or complaints, to take measures in accordance with its laws to prevent the export of counterfeit trademark or pirated copyright goods.

5. The Parties may exclude from the application of this Article the importation or exportation of small quantities of goods which are considered to be of a non-commercial nature.

#### ARTICLE 11.23: COOPERATION – GENERAL

1. Each Party shall, on request of the other Party, exchange information:
  - (a) relating to intellectual property policies in their respective administrations;
  - (b) on changes to, and developments in the implementation of, their national intellectual property systems; and
  - (c) on the administration and enforcement of intellectual property rights.
2. Each Party shall, on request of the other Party, consider intellectual property rights issues and questions of interest to private stakeholders.
3. The Parties will consider opportunities for continuing cooperation under established arrangements in areas of mutual interest that aim to improve the operation of the intellectual property rights system, including administrative processes, in each other's jurisdictions. This cooperation could include, but is not necessarily limited to:
  - (a) work sharing in patent examination;
  - (b) enforcement of intellectual property rights;
  - (c) raising public awareness on intellectual property issues;
  - (d) improvement of patent examination quality and efficiency; and
  - (e) reducing the complexity and cost of obtaining the grant of a patent.
4. Each Party will consider requests for assistance from the other Party in a public health crisis in accordance with Article 11.7.

#### ARTICLE 11.24: CONSULTATIVE MECHANISM: COMMITTEE ON INTELLECTUAL PROPERTY

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Intellectual Property (“the Committee”).

2. The functions of the Committee shall be to:
  - (a) review and monitor the implementation and operation of this Chapter;
  - (b) discuss any issues related to intellectual property covered by this Chapter;  
and
  - (c) report its findings to the FTA Joint Commission.
3. The Committee shall be composed of representatives of each Party.
4. The Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

## CHAPTER 12 ELECTRONIC COMMERCE

### ARTICLE 12.1: PURPOSE AND OBJECTIVE

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of avoiding barriers to its use and development, and the applicability of relevant WTO rules.
2. The objective of this Chapter is to promote electronic commerce between the Parties, including by encouraging cooperation on electronic commerce.
3. The Parties shall endeavour to ensure that bilateral trade through electronic commerce is no more restricted than other forms of trade.

### ARTICLE 12.2: DEFINITIONS

For the purposes of this Chapter:

- (a) **digital certificates** are electronic documents or files that are issued or otherwise linked to a party to an electronic communication or transaction for the purpose of establishing the party's identity;
- (b) **electronic signature** means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message;
- (c) **electronic version** of a document means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;
- (d) **personal information** means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information;
- (e) **trade administration documents** means forms issued or controlled by the Government of a Party which must be completed by or for an importer or exporter in relation to the import or export of goods;
- (f) **UNCITRAL** means the United Nations Commission on International Trade Law; and

- (g) **unsolicited commercial electronic message** means an electronic message (including a voice service) which is sent for commercial purposes to an electronic address without the consent of the recipient (including where consent has been explicitly refused or withdrawn) using an internet carriage service or other telecommunications service.

#### ARTICLE 12.3: CUSTOMS DUTIES

1. Each Party shall maintain its practice of not imposing customs duties on electronic transmissions between the Parties, consistent with paragraph 5 of the WTO Ministerial Decision of 7 December 2013 in relation to the Work Programme on Electronic Commerce (WT/MIN(13)/32-WT/L/907).
2. Each Party reserves the right to adjust its practice referred to in paragraph 1 in accordance with any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

#### ARTICLE 12.4: TRANSPARENCY

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

#### ARTICLE 12.5: DOMESTIC REGULATORY FRAMEWORKS

1. Each Party shall maintain domestic legal frameworks governing electronic transactions based on the *UNCITRAL Model Law on Electronic Commerce 1996* and taking into account, as appropriate, other relevant international standards.
2. Each Party shall:
  - (a) minimise the regulatory burden on electronic commerce; and
  - (b) ensure that regulatory frameworks support industry-led development of electronic commerce.

#### ARTICLE 12.6: ELECTRONIC AUTHENTICATION AND DIGITAL CERTIFICATES

1. Each Party shall maintain laws regulating electronic signatures that permit:
  - (a) parties to electronic transactions to mutually determine the appropriate electronic signature and authentication methods; and
  - (b) electronic authentication service providers, including agencies, to have the opportunity to prove before judicial or administrative authorities that their electronic authentication services comply with the relevant legal requirements.
2. The Parties shall work towards the mutual recognition of digital certificates and electronic signatures.
3. Each Party shall encourage the use of digital certificates in the business sector.

#### ARTICLE 12.7: ONLINE CONSUMER PROTECTION

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

#### ARTICLE 12.8: ONLINE DATA PROTECTION

1. Notwithstanding the differences in existing systems for personal information protection in the territories of the Parties, each Party shall take such measures as it considers appropriate and necessary to protect the personal information of users of electronic commerce.
2. In the development of data protection standards, each Party shall, to the extent possible, take into account international standards and the criteria of relevant international organisations.

#### ARTICLE 12.9: PAPERLESS TRADING

1. Each Party shall accept the electronic versions of 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.
2. The Parties shall cooperate bilaterally and in international forums to enhance acceptance of electronic versions of trade administration documents.
  3. In developing initiatives which provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by international organisations.
  4. Each Party shall endeavour to make all trade administration documents available to the public as electronic versions.

#### ARTICLE 12.10: COOPERATION ON ELECTRONIC COMMERCE

1. The Parties shall encourage cooperation in research and training activities that would enhance the development of electronic commerce, including by sharing best practices on electronic commerce development.
2. The Parties shall encourage cooperative activities to promote electronic commerce, including those that would improve the effectiveness and efficiency of electronic commerce.
3. The cooperative activities referred to in paragraphs 1 and 2 may include, but are not limited to:
  - (a) sharing information about regulatory frameworks;
  - (b) sharing information about on-line consumer protection, including unsolicited commercial electronic messages; and
  - (c) further areas as agreed between the Parties.
4. The Parties shall endeavour to undertake forms of cooperation that build on and do not duplicate existing cooperation initiatives pursued in international forums.

#### ARTICLE 12.11: DISPUTE SETTLEMENT PROVISIONS

The provisions in Chapter 15 (Dispute Settlement) shall not apply to the provisions of this Chapter.

## CHAPTER 13 TRANSPARENCY

### ARTICLE 13.1: DEFINITIONS

For the purposes of this Chapter, **administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

### ARTICLE 13.2: 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 possible, each Party shall:

- (a) publish in advance any such laws, regulations, procedures and administrative rulings of general application referred to in paragraph 1 that it proposes to adopt; and
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed laws, regulations, procedures and administrative rulings of general application.

### ARTICLE 13.3: NOTIFICATION AND PROVISION OF INFORMATION

1. Where a Party considers that any proposed or actual law, regulation, procedure or administrative ruling of general application might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, that Party shall notify the other Party, to the extent possible.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed law, regulation, procedure or

administrative ruling of general application, regardless of whether the requesting Party has been previously notified of it.

3. Any notification or information provided under this Article shall be without prejudice as to whether the law, regulation, procedure or administrative ruling of general application is consistent with this Agreement.

4. The notification referred to under paragraph 1 shall be considered to have been made when an appropriate notification made in accordance with the WTO Agreement is available, or when the relevant information has been made publicly available, including through an official, public and fee-free accessible website of the Party concerned.

5. Any notification, request or information provided under this Article shall be conveyed to the other Party through the relevant contact points.

#### ARTICLE 13.4: 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 with respect to any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying these measures to particular persons, goods or services of the other Party in specific cases that:

- (a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided with reasonable notice 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 issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) it follows its procedures in accordance with its law.

#### ARTICLE 13.5: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purposes 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 the law of the Party, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

**CHAPTER 14**  
**INSTITUTIONAL PROVISIONS**

ARTICLE 14.1: FUNCTIONS OF THE FTA JOINT COMMISSION

1. The FTA Joint Commission shall:
  - (a) consider matters relating to the implementation of this Agreement;
  - (b) consider issues referred to it by the committees and working groups established under this Agreement or by either Party;
  - (c) in accordance with the objectives of this Agreement, explore measures for the further expansion of trade and investment between the Parties;
  - (d) consider any proposal to amend this Agreement and make recommendations to the Parties; and
  - (e) consider any other matter that may affect the operation of this Agreement.
  
2. The FTA Joint Commission may:
  - (a) establish additional committees and *ad hoc* working groups as necessary and refer matters to any committee or working group for advice;
  - (b) further the implementation of this Agreement through implementing arrangements;
  - (c) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;
  - (d) seek the advice of non-governmental persons or groups on any matter falling within its responsibilities where this would assist it in discharging its responsibilities; and
  - (e) take such other action in the exercise of its functions as the Parties may agree.

ARTICLE 14.2: RULES OF PROCEDURE OF THE FTA JOINT COMMISSION

1. The FTA Joint Commission shall take decisions on any matter within its functions, as set out in Article 14.1, by mutual agreement.

2. The FTA Joint Commission shall convene in regular session once per year and at other times at the request of either Party. Regular sessions of the FTA Joint Commission shall be chaired successively by each Party. Other sessions of the FTA Joint Commission shall be chaired by the Party hosting the meeting.
3. The FTA Joint Commission shall ordinarily meet at the level of senior officials, unless there is a request by either Party to convene the meeting at Ministerial level.
4. Subject to paragraph 3, each Party shall be responsible for the composition of its delegation to the FTA Joint Commission.
5. The Party chairing a session of the FTA Joint Commission shall provide any necessary administrative support for such session, and shall record any decisions taken by the FTA Joint Commission, copies of which will be provided to the other Party.

#### ARTICLE 14.3: CONTACT POINT

For the purpose of facilitating communication between the Parties on any matter covered by this Agreement, the following contact points are designated:

- (a) for Australia: the Department of Foreign Affairs and Trade (DFAT); and
- (b) for China: the Ministry of Commerce (MOFCOM).

## **CHAPTER 15**

### **DISPUTE SETTLEMENT**

#### **ARTICLE 15.1: COOPERATION**

The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

#### **ARTICLE 15.2: SCOPE OF APPLICATION**

Unless otherwise provided in this Agreement, this Chapter shall apply to the settlement of disputes between the Parties regarding the implementation, interpretation and application of this Agreement or wherever a Party considers that:

- (a) a measure of the other Party is inconsistent with its obligations under this Agreement; or
- (b) the other Party has otherwise failed to carry out its obligations under this Agreement.

#### **ARTICLE 15.3: CONTACT POINTS**

1. Each Party shall designate a contact point to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.
2. Any request, notification, written submission or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

#### **ARTICLE 15.4: CHOICE OF FORUM**

1. Unless otherwise provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both parties.
2. Where a dispute regarding any matter arises under this Agreement and under another international trade agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

3. Once the complaining Party has requested the establishment of, or referred a matter to, a dispute settlement panel or arbitral tribunal, the forum selected shall be used to the exclusion of the others.

#### ARTICLE 15.5: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter described in Article 15.2 by delivering written notification to the other Party.

2. In this notification, the complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the factual and legal basis for the complaint.

3. If a request for consultations is made, the Party to which the request is made shall reply promptly to the request and shall enter into consultations in good faith, with a view to reaching a mutually satisfactory solution, within a period of no more than:

(a) 10 days after the date of receipt of the request for matters of urgency concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

4. The consultations shall be confidential and are without prejudice to the rights of either Party in any further proceedings.

5. In conducting the consultations, the Parties shall:

(a) provide sufficient information to enable a full examination of how the matter might affect the operation and application of this Agreement; and

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

6. If the Party complained against does not enter into consultations within the timeframe specified in paragraph 3(a) or 3(b), then the complaining Party may proceed directly to request the establishment of an arbitral tribunal.

#### ARTICLE 15.6: GOOD OFFICES, MEDIATION AND CONCILIATION

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

2. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal convened under Article 15.7.

#### ARTICLE 15.7: ESTABLISHMENT AND COMPOSITION OF AN ARBITRAL TRIBUNAL

1. If the consultations fail to resolve a dispute within:
  - (a) 20 days after the date of receipt of the request for consultations regarding a matter of urgency concerning perishable goods; or
  - (b) 60 days after the date of receipt of the request for consultations regarding any other matter;

the Party that made the request for consultations may request, in writing, the establishment of an arbitral tribunal to consider the matter.

2. The request to establish an arbitral tribunal shall identify:
  - (a) the specific measures at issue; and
  - (b) the factual and legal basis of the complaint, including the provisions alleged to have been breached and any other relevant provisions of this Agreement, sufficient to present the problem clearly.
3. When a request is made by the complaining Party in accordance with paragraph 1, an arbitral tribunal shall be established.
4. An arbitral tribunal shall be composed of three arbitrators.
5. Within 15 days after the establishment of an arbitral tribunal, each Party shall appoint one arbitrator, who may be its national.
6. The Parties shall, by common agreement, designate the third arbitrator within 30 days after the establishment of the arbitral tribunal. The arbitrator thus appointed shall be the Chair of the arbitral tribunal.
7. If any arbitrator of the arbitral tribunal has not been designated or appointed within 30 days after the establishment of the arbitral tribunal, either Party may request that the Director-General of the WTO designate an arbitrator within 30 days of that request.

8. All arbitrators shall:
- (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
  - (b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;
  - (c) be independent of, and not be affiliated with or take instructions from, either Party;
  - (d) not have dealt with the matter in any capacity; and
  - (e) comply with the code of conduct set out in Annex 15-A.

9. The Chair of the arbitral tribunal shall:

- (a) not be a national of either Party; and
- (b) not have his or her usual place of residence in the territory of either Party.

10. If an arbitrator appointed in accordance with this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.

11. Where an arbitral tribunal is reconvened in accordance with Articles 15.15 through 15.17, the reconvened arbitral tribunal shall, where possible, have the same arbitrators as in the original arbitral tribunal. If the arbitral tribunal cannot be reconvened with its original arbitrators, the procedures for selection of arbitrators set out in this Article shall apply.

#### ARTICLE 15.8: FUNCTIONS OF ARBITRAL TRIBUNALS

1. The function of an arbitral tribunal is to make an objective assessment of the matter before it, including an objective assessment of:

- (a) the facts of the case;
- (b) the applicability of the relevant provisions of this Agreement cited by the Parties; and
- (c) whether:

- (i) the measure at issue is inconsistent with the obligations of this Agreement; or
- (ii) a Party has otherwise failed to carry out its obligations under this Agreement.

2. Unless the Parties otherwise agree within 20 days after the date of the establishment of the arbitral tribunal, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 15.7 and to make findings of law and fact together with the reasons therefor for the resolution of the dispute."

3. The findings of the arbitral tribunal shall be binding on the Parties.

#### ARTICLE 15.9: RULES OF INTERPRETATION

1. The arbitral tribunal shall interpret this Agreement in accordance with customary rules of interpretation of public international law, including as reflected in the *Vienna Convention on the Law of Treaties*, done at Vienna on 23 May 1969.

2. The arbitral tribunal shall have regard to any relevant interpretation established in rulings and recommendations of the WTO Dispute Settlement Body.

3. The rulings and recommendations of the arbitral tribunal cannot add to or diminish the rights and obligations provided for in this Agreement.

#### ARTICLE 15.10: RULES OF PROCEDURE OF AN ARBITRAL TRIBUNAL

1. Unless the Parties otherwise agree, the arbitral tribunal shall follow the model rules of procedure set out in Annex 15-B.

2. The arbitral tribunal may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules.

#### ARTICLE 15.11: SUSPENSION OR TERMINATION OF PROCEEDINGS

1. The Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the tribunal shall resume its work if requested by either Party. If the work of the arbitral

tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse, unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found. In such event the Parties shall jointly notify the Chair of the arbitral tribunal.

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

#### ARTICLE 15.12: REPORT OF THE ARBITRAL TRIBUNAL

1. In order to enable the Parties to have an opportunity for review and comment, the arbitral tribunal shall present the Parties with its initial report within 90 days of appointment of the final arbitrator setting out its findings of facts, its reasoning, and its determination as to whether:

- (a) the measure at issue is inconsistent with the obligations of this Agreement;
- (b) a Party has otherwise failed to carry out its obligations under this Agreement.

2. The arbitral tribunal shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties and any information or technical advice it has obtained in accordance with its rules of procedure. The arbitral tribunal may also, on the joint request of the Parties, suggest ways in which the Party complained against could implement the recommendations.

3. In exceptional cases, if the arbitral tribunal considers it cannot present its initial report 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 issue its report. Any delay shall not exceed a further period of 30 days, unless the Parties otherwise agree.

4. Each Party may submit written comments to the arbitral tribunal within 10 days of the presentation of the initial report. After considering these written comments by the Parties and making any further examination it considers appropriate, the arbitral tribunal shall present the Parties its final report within 30 days of presentation of the initial report, unless the Parties otherwise agree.

5. The final report of the arbitral tribunal shall be made available to the public within 10 days from the date of its presentation to the Parties.

#### ARTICLE 15.13: IMPLEMENTATION OF THE FINAL REPORT

1. Where the arbitral tribunal makes a finding that a measure is inconsistent with this Agreement, or that a Party has otherwise failed to carry out its obligations under this Agreement, the Party complained against shall bring the measure into conformity with this Agreement.

2. Within 30 days of the presentation of the final report of the arbitral tribunal to the Parties, the Party complained against shall inform the complaining Party of its intentions with respect to implementation of the findings of the arbitral tribunal. If it is impracticable to comply immediately with the findings, the Party complained against shall have a reasonable period of time in which to do so.

#### ARTICLE 15.14: REASONABLE PERIOD OF TIME

1. The reasonable period of time shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days of the presentation of the arbitral tribunal's final report, either Party may refer the matter to the original arbitral tribunal, to the extent this is possible, which shall determine the reasonable period of time.

2. The arbitral tribunal shall provide its determination to the Parties within 30 days after the date of the referral of the matter to it. Prior to making its determination, the arbitral tribunal shall seek written submissions from the Parties and, if requested by either Party, hold a meeting with the Parties where each will be given an opportunity to present its submission. As a guideline, the reasonable period of time should not exceed 15 months from the date of the issuance of the arbitral tribunal's final report. However, that time may be shorter or longer depending upon the particular circumstances.

3. When the arbitral tribunal considers that it cannot provide its determination within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its determination. Any delay shall not exceed a further period of 15 days, unless the Parties otherwise agree.

#### ARTICLE 15.15: COMPLIANCE REVIEW

1. Where the Parties disagree on the existence or consistency with this Agreement of measures taken to comply with the obligations in Article 15.13.1, such dispute shall be referred to an arbitral tribunal under this Chapter, including wherever possible by resort to the original arbitral tribunal.

2. Such request may only be made after:
  - (a) the expiry of the reasonable period of time; or
  - (b) the Party complained against has given written notification to the complaining Party that it has complied with the obligations in Article 15.13.1.
3. The arbitral tribunal convened under this Article shall reconvene as soon as possible after the delivery of the request and shall issue its final report on the matter within 60 days of the date of delivery of the written notification.
4. The arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:
  - (a) the facts of any implementation action taken by the Party complained against to comply with the obligations in Article 15.13.1; and
  - (b) whether the Party complained against has complied with the obligations in Article 15.13.1,

and set out its findings on both elements in its report.

#### ARTICLE 15.16: COMPENSATION AND SUSPENSION OF CONCESSIONS AND OBLIGATIONS

1. If the Party complained against:
  - (a) fails to comply with the findings of the arbitral tribunal within the reasonable period of time;
  - (b) expresses in writing that it will not comply with the findings of the arbitral tribunal, or
  - (c) has been found through the compliance review process set out in Article 15.15 to have not complied with the obligations in Article 15.13.1,

that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensation.

2. If the Parties do not reach agreement on compensation in accordance with paragraph 1 within 20 days, the complaining Party may provide written notification to the Party complained against that it intends to suspend the application to the Party complained against of concessions and obligations under this Agreement of equivalent effect to the level of non-conformity that the arbitral tribunal has found. The notification

shall specify the level of concessions or other obligations that the complaining Party proposes to suspend.

3. The complaining Party may begin suspending concessions and obligations 30 days after it provides notification of its intention to suspend, or after an arbitral tribunal issues its determination under paragraph 6.

4. Any suspension of concessions and obligations shall be restricted to benefits accruing to the other Party under this Agreement.

5. In considering what concessions and obligations to suspend in accordance with paragraph 2, the complaining Party shall apply the following principles:

- (a) the complaining Party should first seek to suspend concessions and obligations in the same sector(s) as that affected by the measure that the arbitral tribunal has found to be inconsistent with the obligations of this Agreement; and
- (b) if the complaining Party considers that it is not practicable or effective to suspend concessions and obligations in the same sector(s), it may suspend concessions and obligations in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

6. If the Party complained against objects to the level of suspension proposed, or considers that the principles set out in paragraph 5 have not been applied, it may make a written request to reconvene the original arbitral tribunal to examine the matter. The arbitral tribunal shall determine whether the level of concessions and obligations to be suspended by the complaining Party in accordance with paragraph 2 is equivalent to the level of non-conformity. If the arbitral tribunal cannot be established with its original arbitrators, the proceeding set out in Article 15.7 shall be applied.

7. The arbitral tribunal shall present its determination within 60 days of the request made in accordance with paragraph 6 or, if an arbitral tribunal cannot be established with its original arbitrators, from the date on which the last arbitrator is designated. The determination of the arbitral tribunal shall be final and binding and shall be made publicly available.

8. The suspension of concessions and obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or a mutually satisfactory solution is reached.

#### ARTICLE 15.17: POST SUSPENSION REVIEW

1. Where the right to suspend concessions and obligations has been exercised in accordance with Article 15.16, if the Party complained against considers that it has complied with its obligations in Article 15.13.1, it may provide written notice to the complaining Party with a description of how it has complied. If the complaining Party disagrees, it may refer the matter to the original arbitral tribunal within 30 days after receipt of such written notice. If the arbitral tribunal cannot be established with its original arbitrators, the proceeding set out in Article 15.7 shall be applied. Otherwise, the complaining Party shall promptly stop the suspension of concessions and obligations.
  
2. The arbitral tribunal shall release its report within 60 days after the referral of the matter. If the arbitral tribunal concludes that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions and obligations.

**ANNEX 15-A**  
**CODE OF CONDUCT**

**Definitions**

1. For the purposes of this Annex:
  - (a) **assistant** means a person who, under the terms of appointment of an arbitrator, conducts research or provides support for the arbitrator;
  - (b) **arbitrator** means a member of an arbitral tribunal established under Article 15.7;
  - (c) **proceeding**, unless otherwise specified, means the proceeding of an arbitral tribunal under this Chapter; and
  - (d) **staff**, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

**Responsibilities to the Process**

2. Every arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved. Former arbitrators shall comply with the obligations established in paragraphs 17 through 20.

**Disclosure Obligations**

3. 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.

4. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 3 and shall disclose them by communicating them in writing to the FTA Joint Commission for consideration by the 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**

5. An arbitrator shall comply with the provisions of this Chapter and the applicable rules of procedure.
6. On selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.
7. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the proceeding.
8. 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.
9. An arbitrator shall take all appropriate steps to ensure that the arbitrator's assistant and staff are aware of, and comply with, paragraphs 2, 3, 4, 19, 20 and 21.
10. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.
11. An arbitrator shall not communicate matters concerning actual or potential violations of this Annex by another arbitrator unless the communication is to both Parties or is necessary to ascertain whether that arbitrator has violated or may violate this Annex.

### **Independence and Impartiality of Arbitrators**

12. 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.
13. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
14. 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 the arbitrator's duties.
15. 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.
16. 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.

17. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the arbitrator's impartiality or that might reasonably create an appearance of impropriety or bias.

#### **Duties in Certain Situations**

18. An arbitrator or former arbitrator shall avoid actions that may create the appearance that the arbitrator was biased in carrying out the arbitrator's duties or would benefit from the decision or report of the arbitral tribunal.

#### **Maintenance of Confidentiality**

19. 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.

20. An arbitrator shall not disclose an arbitral tribunal report, or parts thereof, prior to its publication.

21. 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 15-B**  
**MODEL RULES OF PROCEDURE FOR THE ARBITRAL TRIBUNAL**

**Timetable**

1. After consulting the Parties, an arbitral tribunal shall, whenever possible within 10 days of the appointment of the final arbitrator, fix the timetable for the arbitral tribunal process. The indicative timetable attached to these Rules should be used as a guide.
2. The arbitral tribunal process shall, as a general rule, not exceed 270 days from the date of establishment of the arbitral tribunal until the date of the final report, unless the Parties otherwise agree.
3. Should the arbitral tribunal consider there is a need to modify the timetable, it shall inform the Parties in writing of the proposed modification and the reason for it.

**Written Submissions and other Documents**

4. Unless the arbitral tribunal otherwise decides, the complaining Party shall deliver its first written submission to the arbitral tribunal no later than 14 days after the date of appointment of the final arbitrator. The Party complained against shall deliver its first written submission to the arbitral tribunal no later than 30 days after the date of delivery of the complaining Party's first written submission. Copies shall be provided for each arbitrator.
5. Each Party shall also provide a copy of its first written submission to the other Party at the same time as it is delivered to the arbitral tribunal.
6. Within 20 days of the conclusion of the hearing, each Party may deliver to the arbitral tribunal and the other Party a supplementary written submission responding to any matter that arose during the hearing.
7. All written documents provided to the arbitral tribunal or by one Party to the other Party shall also be provided in electronic form.
8. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitral tribunal proceeding may be corrected by delivery of a new document clearly indicating the changes.

**Operation of the Arbitral Tribunal**

9. All arbitrators shall be present at hearings. Only arbitrators may take part in the deliberations of the arbitral tribunal. In consultation with the Parties, assistants, translators or designated note takers may also be present at hearings to assist the arbitral

tribunal in its work. Any such arrangements established by the arbitral tribunal may be modified with the agreement of the Parties.

10. The Chair of the arbitral tribunal shall preside at all of its meetings. The arbitral tribunal may delegate to the Chair the authority to make administrative and procedural decisions.

### **Hearings**

11. The timetable established in accordance with Rule 1 shall provide for at least one hearing for the Parties to present their cases to the arbitral tribunal.

12. The arbitral tribunal may convene additional hearings if the Parties so agree.

13. The hearings of the arbitral tribunal shall be held in closed session.

14. The hearing shall be conducted by the arbitral tribunal in a manner ensuring that the complaining Party and the Party complained against are afforded equal time to present their case. The arbitral tribunal shall conduct the hearing in the following manner: argument of the complaining Party; argument of the Party complained against; the reply of the complaining Party; and the counter-reply of the Party complained against. The Chair may set time limits for oral arguments to ensure that each Party is afforded equal time.

### **Questions**

15. The arbitral tribunal may direct questions to either Party at any time during the proceedings. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

16. Where 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 arbitral tribunal. Each Party shall be given the opportunity to provide written comments on the response of the other Party.

### **Confidentiality**

17. The arbitral tribunal's hearings and the documents submitted to it shall be confidential. Each Party shall treat as confidential information submitted to the arbitral tribunal by the other Party which that Party has designated as confidential.

18. Where a Party designates as confidential its written submissions to the arbitral tribunal, it shall, on request of the other Party, provide the arbitral tribunal and the other Party with a non-confidential summary of the information contained in its written submissions that could be disclosed to the public no later than 15 days after the date of request.

19. Nothing in these Rules shall prevent a Party from disclosing statements of its own positions to the public.

### **Role of experts**

20. On request of a Party, or on its own initiative, the arbitral tribunal may seek information and technical advice from any individual or body that it deems appropriate, provided that the Parties agree and subject to such terms and conditions as the Parties agree. The arbitral tribunal shall provide the Parties with any information so obtained for comment.

### **Working language**

21. The working language of the arbitral tribunal proceedings, including for written submissions, oral arguments or presentations, the report of the arbitral tribunal and all written and oral communications between the Parties and with the arbitral tribunal, shall be English.

### **Venue**

22. The venue for the hearings of the arbitral tribunal shall be decided by agreement between the Parties. If there is no agreement, the first hearing shall be held in the territory of the Party complained against, and any additional hearings shall alternate between the territories of the Parties.

### **Expenses**

23. Unless the Parties otherwise agree, the expenses of the arbitral tribunal, including the remuneration of the arbitrators, shall be borne by the Parties in equal share.

24. The arbitral tribunal 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, designated note takers or other individuals that it retains in accordance with Rule 9.

**Attachment to Annex 15-B**  
**Model Rules of Procedure for the Arbitral Tribunal**

**Indicative Timetable for the Arbitral Tribunal**

Arbitral tribunal established on xx/xx/xxxx.

1. Receipt of first written submissions of the Parties:
  - (i) complaining Party: 14 days after the date of appointment of the final arbitrator;
  - (ii) Party complained against: 30 days after (i);
2. Date of the first hearing with the Parties: 30 days after receipt of the first submission of the Party complained against;
3. Receipt of written supplementary submissions of the Parties: 20 days after the date of the first hearing;
4. Issuance of initial report to the Parties: 30 days after receipt of written supplementary submissions;
5. Deadline for the Parties to provide written comments on the initial report: 10 days after the issuance of the initial report; and
6. Issuance of final report to the Parties: within 30 days of presentation of the initial report.

## CHAPTER 16 GENERAL PROVISIONS AND EXCEPTIONS

### ARTICLE 16.1: DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

1. Nothing in this Agreement shall require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.
2. Unless otherwise provided in this Agreement, where a Party provides written information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party 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 such use or disclosure is necessary to comply with legal or constitutional requirements, or for the purpose of judicial proceedings.

### ARTICLE 16.2: GENERAL EXCEPTIONS

1. For the purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin and Implementation Procedures), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures), 6 (Technical Barriers to Trade) and 12 (Electronic Commerce), Article XX of GATT 1994, including its interpretative notes, is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapters 8 (Trade in Services), 10 (Movement of Natural Persons) and 12 (Electronic Commerce), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

### ARTICLE 16.3: SECURITY EXCEPTIONS

Article XXI of GATT 1994 and Article XIV *bis* of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.

### ARTICLE 16.4: TAXATION

1. For the purposes of this Article, the term “taxation measures” shall not include any customs or import duties.

2. Unless otherwise provided for 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 corresponding rights or obligations are also granted or imposed under the WTO Agreement.

4. Notwithstanding paragraph 3, nothing in this Agreement shall:

- (a) oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention;
- (b) apply to:
  - (i) a non-conforming provision of any taxation measure that is maintained by a Party on the date of entry into force of this Agreement;
  - (ii) the continuation or prompt renewal of a non-conforming provision of any such taxation measure; or
  - (iii) an amendment to a non-conforming provision of any such taxation measure to the extent that the amendment does not decrease the conformity of the tax measure, as it existed before the amendment, with the Agreement;
- (c) prevent the adoption or enforcement by a Party of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or
- (d) prevent the adoption or enforcement by a Party of a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation or supervision over such trust, fund or other arrangement.

5. 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 to the extent of the inconsistency. In the case of a tax convention between the Parties, any consultation about whether any inconsistency exists shall include the competent authorities of each Party under that tax convention.

#### ARTICLE 16.5: REVIEW OF AGREEMENT

The Parties shall undertake a general review of the Agreement, with a view to furthering its objectives, within three years of the date of entry into force of this Agreement and at least every five years thereafter unless otherwise agreed by the Parties. The review shall include, but not be limited to, consideration of deepening liberalisation and further expansion of market access.

#### ARTICLE 16.6: 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 the 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, adopt or maintain restrictions on trade in services in respect of which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments; and
- (c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 9.1 of Chapter 9 (Investment).

2. Restrictions adopted or maintained under subparagraphs 1(b) or (c) shall:

- (a) be consistent with the IMF Articles of Agreement;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-party.

3. In determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to its economic development. However, such

restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party.

5. The Party adopting or maintaining any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions applied by it.

#### ARTICLE 16.7: COMPETITION COOPERATION

1. The Parties recognise the importance of cooperation and coordination to further the promotion of competition, economic efficiency, consumer welfare and the curtailment of anticompetitive practices.

2. The competition authorities of the Parties shall cooperate and coordinate, as appropriate, in enforcing competition laws and policies subject to each Party's confidentiality requirements, including through:

- (a) the exchange of information;
- (b) notification;
- (c) coordination of cross-border enforcement matters and the exchange of views in cases which are subject to the common review of both Parties; and
- (d) technical cooperation.

3. The cooperation referred to in paragraph 2 may be promoted through new or existing mechanisms for cooperation between the competition authorities of the Parties.

4. Without prejudice to the independence of the Parties' competition authorities, the Parties agree to cooperate under this Article in accordance with their respective laws, regulations and procedures, and within their reasonably available resources.

#### ARTICLE 16.8: GOVERNMENT PROCUREMENT

The Parties shall commence negotiations on government procurement as soon as possible after the completion of negotiations on the accession of China to the *Agreement on Government Procurement*, contained in Annex 4 to the WTO Agreement, with a view to concluding, on a reciprocal basis, commitments on government procurement between the Parties.

## **CHAPTER 17 FINAL PROVISIONS**

### ARTICLE 17.1: ANNEXES

The Annexes to this Agreement constitute an integral part of this Agreement.

### ARTICLE 17.2: ENTRY INTO FORCE

This Agreement shall enter into force 30 days after the date on which the Parties exchange through diplomatic channels written notifications certifying that they have completed their respective necessary internal requirements, or on such other date as the Parties may agree.

### ARTICLE 17.3: AMENDMENTS

1. The Parties may agree in writing to amend this Agreement. Any amendment shall enter into force in accordance with the procedures required for entry into force of this Agreement.
2. If any provision of the WTO Agreement or any other agreement to which both Parties are party that has been incorporated into this Agreement is amended, the Parties shall consult on whether to amend this Agreement, unless this Agreement provides otherwise.

### ARTICLE 17.4: TERMINATION

1. This Agreement shall remain in force unless either Party notifies the other Party in writing to terminate this Agreement. Such termination shall take effect 180 days following the date of receipt of the notification.
2. Within 30 days of a notification under paragraph 1, either Party may request consultations regarding whether the termination of any provision of this Agreement should take effect on a later date than provided under paragraph 1. Such consultations shall commence within 30 days of a Party's delivery of such request.

### ARTICLE 17.5: AUTHENTIC TEXTS

This Agreement is done in duplicate in the Chinese 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 Canberra on this 17<sup>th</sup> day of June in the year 2015 in the English and Chinese languages.

FOR THE GOVERNMENT OF  
AUSTRALIA:

FOR THE GOVERNMENT OF  
THE PEOPLE'S REPUBLIC OF CHINA: