

# THAILAND-AUSTRALIA

## FREE TRADE AGREEMENT

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# THAILAND-AUSTRALIA

## FREE TRADE AGREEMENT

### PREAMBLE

The Kingdom of Thailand and Australia, hereinafter in this Agreement referred to as the “Parties”;

*Inspired* by the traditional links of friendship and the cordial relations which exist between them, and their shared regional interests and ties;

*Aware* of the increasing importance of trade and investment for the future prosperity of the economies of the Asia-Pacific region;

*Conscious* that open, transparent and competitive markets are the key drivers of economic efficiency, innovation, wealth creation and consumer welfare;

*Recognising* the importance of promoting the flow of capital for economic activity and development and aware of its role in expanding economic relations between them, particularly with respect to investment by investors of one Party in the territory of the other Party;

*Reaffirming* their willingness to strengthen and reinforce the multilateral trading system as reflected in the World Trade Organization (WTO);

*Mindful* of their commitment to the Asia-Pacific Economic Cooperation (APEC) goals of free and open trade and investment;

*Recalling* the contribution made to the development of their bilateral trade relationship of the *Trade Agreement between the Government of the Kingdom of Thailand and the Government of Australia*, done at Bangkok on 5 October 1979 and the *Agreement on Economic Cooperation between the Government of the Kingdom of Thailand and the Government of Australia*, done at Bangkok 6 August 1990;

*Further recalling* the *Agreement on Development Cooperation between the Government of the Kingdom of Thailand and the Government of Australia*, done at Bangkok on 2 February 1989; and

*Desiring* to strengthen the cooperative framework for the conduct of economic relations to ensure it is dynamic and encourages broader and deeper economic cooperation;

Have agreed as follows:

# **CHAPTER 1**

## **OBJECTIVES AND DEFINITIONS**

### **ARTICLE 101**

#### **Establishment of the Free Trade Area**

The Parties hereby establish a free trade area consistent with Article XXIV of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Article V of the *General Agreement on Trade in Services* (GATS).

### **ARTICLE 102**

#### **Objectives**

The objectives of the Parties in concluding this Agreement are:

- (a) to liberalise trade in goods and services and to create favourable conditions for the stimulation of trade and investment flows;
- (b) to build upon their commitments under the World Trade Organization and to support its efforts to create a predictable and more free and open global trading system;
- (c) to establish a program of cooperative activities in support of the aims of the Agreement;
- (d) to improve the efficiency and competitiveness of their economies; and
- (e) to support the wider liberalisation and facilitation process in APEC and in particular the efforts of all APEC economies to meet the Bogor goals of free and open trade and investment by 2010 at the latest for industrialised economies and 2020 at the latest for developing economies.

## ARTICLE 103

### General Definitions

Unless otherwise defined, for the purposes of this Agreement:

- (a) “Agreement” means the Thailand-Australia Free Trade Agreement;
- (b) “APEC” means Asia-Pacific Economic Cooperation;
- (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) “customs administration” means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and policies;
- (e) “customs duties” includes any customs or import duty and a charge of any kind imposed in connection with the import of a good, including any form of surtax or surcharge in connection with such import, but does not include any:
  - (i) charge equivalent to an internal tax imposed consistently with Article III (2) of GATT 1994;
  - (ii) any anti-dumping or countervailing duty applied consistently with the provisions of GATT 1994, the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, and the *WTO Agreement on Subsidies and Countervailing Measures*; and
  - (iii) fee or other charge in connection with importing commensurate with the cost of services rendered;
- (f) “days” means calendar days;
- (g) “FTA Joint Commission” means the Free Trade Agreement Joint Commission established under Article 1701 of this Agreement;
- (h) “GATS” means the *General Agreement on Trade in Services*, which is part of the WTO Agreement;
- (i) “GATT 1994” means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;
- (j) “government procurement” means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

- (k) “Harmonised System” means the *Harmonised Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes and Chapter Notes, as adopted by the Parties in their respective tariff laws;
- (l) “investment” means every kind of asset, owned or controlled, directly or indirectly, by an investor, including but not limited to the following:
  - (i) movable and immovable property, including rights such as mortgages, liens and other pledges;
  - (ii) shares, stocks, bonds and debentures and any other form of participation in a juridical person;
  - (iii) a claim to money or a claim to performance having economic value;
  - (iv) intellectual property rights, including rights with respect to copyright, patents, trademarks, trade names, industrial designs, trade secrets, know-how and goodwill;
  - (v) business concessions and any other rights required to conduct economic activity and having economic value conferred by law or under a contract, including concession to search for, cultivate, extract or exploit natural resources; and
  - (vi) returns that are invested.

For the purposes of this Agreement, any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided that such altered investment is approved by the relevant Party if so required by its laws, regulations or policies;

- (m) “investor of a Party” means:
  - (i) a juridical person of a Party; or
  - (ii) a natural person who is a national or a permanent resident of a Party, that has made, is in the process of making, or is seeking to make an investment in the territory of the other Party;
- (n) “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately owned or governmentally owned, including any corporation, association, trust, partnership, joint venture or sole proprietorship;
- (o) a juridical person is:
  - (i) “owned” by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;
  - (ii) “controlled” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (p) “juridical person of a Party” means a juridical person duly constituted or otherwise organised under the applicable law of the Party;

- (q) “measure” includes any law, regulation, governmental procedure or requirement;
- (r) “non-originating material” means a material that does not qualify as originating in accordance with the relevant provisions of Chapter 4;
- (s) “originating goods” means goods that qualify as originating in accordance with the relevant provisions of Chapter 4;
- (t) “Parties” means the Kingdom of Thailand and Australia;
- (u) “person” means a natural person or a juridical person;
- (v) “preferential tariff treatment” means the customs duty rate that is applicable to an originating good pursuant to Article 203 (3) of Chapter 2;
- (w) “service supplier” means any person that supplies a service;<sup>1</sup>
- (x) “services” includes any services in any sector or sub-sector except services supplied in the exercise of government authority;
- (y) “SPS Agreement” means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement;
- (z) “TBT Agreement” means the *Agreement on Technical Barriers to Trade*, which is part of the WTO Agreement;
- (aa) “territory” means the territory of a Party as well as the exclusive economic zone, seabed and subsoil over which the Party exercises sovereign rights or jurisdiction in accordance with international law;
- (bb) “WTO” means the World Trade Organization;
- (cc) “WTO Agreement” means the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994;
- (dd) “WTO Agreement on Textiles and Clothing” means the *Agreement on Textiles and Clothing*, which is part of the WTO Agreement;
- (ee) “WTO Customs Valuation Agreement” means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement; and
- (ff) “WTO Safeguards Agreement” means the *Agreement on Safeguards*, which is part of the WTO Agreement.

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

#### ARTICLE 104

#### **Territorial Application**

The free trade area to which this Agreement applies consists of the Kingdom of Thailand and Australia.

## **CHAPTER 2**

### **TRADE IN GOODS**

#### **ARTICLE 201**

##### **Scope**

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

#### **ARTICLE 202**

##### **National Treatment**

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994.

#### **ARTICLE 203**

##### **Elimination of Customs Duties**

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territory of the Parties.
2. A Party shall not increase an existing customs duty or introduce a new customs duty on imports of an originating good.
3. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with its Tariff Schedule at Annex 2. The base rate and the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule. Reductions shall occur upon entry into force of the Agreement and thereafter on 1 January of each year, as provided for in each Party's Schedule.



4. Each Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff quota set out in its Schedule, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff quota.

5. On the written request of the other Party, a Party applying or intending to apply measures pursuant to Paragraph 4 shall consult to consider a review of the administration of those measures.

## ARTICLE 204

### **Accelerated Tariff Elimination**

1. Each Party declares its readiness to eliminate its customs duties more rapidly than is provided for in Article 203 or otherwise improve the conditions of access of originating goods if its general economic situation, and the economic situation of the economic sector concerned, so permit.

2. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in Annex 2.

3. An agreement by the Parties to accelerate the elimination of customs duties on originating goods shall enter into force after the Parties have exchanged written notification advising that they have completed necessary internal legal procedures and on such date or dates as may be agreed between them.

4. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule. A Party considering doing so shall inform the other Party as early as practicable before the new rate of customs duties takes effect.

## ARTICLE 205

### **Administrative Fees and Formalities**

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 charge applied consistently with Article III (2) of GATT 1994, and anti-dumping and countervailing duties) imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.

## ARTICLE 206

### **Anti-Dumping Measures**

1. With respect to the application of anti-dumping measures, the Parties reaffirm their commitment to the provisions of the *WTO Agreement on Implementation of Article VI of GATT 1994*.
2. The Parties shall observe the following practices relating to anti-dumping:
  - (a) on request of an exporter of the other Party, a Party's investigating authority shall make available the timeframes, procedures and any documents necessary for the offering of an undertaking. A Party's investigating authority shall extend reasonable consideration to price undertakings requested by exporters of the other Party. Furthermore, once a Party's investigating authority recommends accepting a particular price undertaking the authority shall extend that undertaking to the decision maker who shall give positive consideration to the investigative authority's recommendation to the extent possible under the Party's laws and regulations; and
  - (b) the timeframe to be used for determining the volume of dumped imports in the investigation or review shall be representative of the imports of both dumped and non-dumped goods, for a reasonable period, and such reasonable period shall normally be 12 months and not less than six months except in exceptional circumstances.

## ARTICLE 207

### **Subsidies and Countervailing Measures**

The Parties confirm their rights and obligations arising from the WTO *Agreement on Subsidies and Countervailing Measures*.

## ARTICLE 208

### **Agricultural Export Subsidies**

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work toward an agreement in the WTO to eliminate those subsidies and prevent the introduction in any form of any new export subsidies for agricultural goods.
2. Consistently with their rights and obligations under the WTO Agreement, neither Party shall introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.
3. At the earliest possible time, a Party shall give to the other Party advance notice of, and if requested shall consult on, any changes to relevant policies or measures. The Parties agree to enhance communication between their appropriate officials with a view to minimising trade distortions from such policies or measures. Where the affected Party identifies an adverse impact on its agriculture and food industries, the other Party shall take that impact into consideration.

## ARTICLE 209

### **Non-Tariff Measures**

1. Except as otherwise provided in this Agreement, a Party shall not adopt or maintain any prohibition or restriction on the import of any good of the other Party or on the export or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994.

2. Each Party shall ensure the transparency of its non-tariff measures permitted in Paragraph 1 and shall ensure that any such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

## **CHAPTER 3**

# **CUSTOMS PROCEDURES**

### **ARTICLE 301**

#### **Purpose and Definitions**

1. The purpose of this Chapter is to promote the objectives of this Agreement by simplifying and harmonising customs procedures and to ensure their proper application in relation to bilateral trade between the Parties.
2. For the purposes of this Chapter, “customs procedures” means the treatment applied by the customs administration of each Party to goods which are subject to customs control.

### **ARTICLE 302**

#### **Scope**

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

### **ARTICLE 303**

#### **Customs Valuation**

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

## ARTICLE 304

### **Customs Procedures and Facilitation**

1. Customs procedures of both Parties shall conform, where possible and to the extent permitted by their respective laws, regulations and policies, to international standards and recommended practices.
2. Each Party shall ensure that its customs procedures and practices are predictable, consistent and transparent and facilitate trade.
3. The customs administrations of both Parties shall periodically review their customs procedures with a view to their further simplification and the development of further mutually beneficial arrangements to facilitate bilateral trade.

## ARTICLE 305

### **Techniques and Use of Cooperative Arrangements**

1. To the extent permitted by their laws, regulations and policies, the customs administrations of both Parties shall provide each other with mutual assistance in order to prevent breaches of customs legislation and for the protection of the economic, fiscal, social and commercial interests of their respective countries, including ensuring appropriate and efficient customs duty collection.
2. Each Party shall endeavour to provide the other Party with advance notice of any significant modification of laws, regulations or policies governing importations that is likely to substantially affect the operation of this Agreement.

## ARTICLE 306

### **Review and Appeal**

1. Each Party shall provide easily accessible processes for administrative and judicial review of decisions taken by its customs administration.

2. Requests for review of decisions taken by the customs administration of a Party shall be made in writing or electronically, and shall be accompanied by any information deemed useful to comply with the request.

## ARTICLE 307

### **Advance Rulings**

1. Subject to Paragraph 2, each Party shall provide, in writing, advance tariff classification rulings (hereinafter referred as “pre-classification”) to a person described in Sub-paragraph 2(a).

2. Each Party shall adopt or maintain procedures for pre-classification, which shall:

- (a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may apply for pre-classification before the importation of goods in question;
- (b) require that an applicant for pre-classification provide a detailed description of the goods and all relevant information needed to process an application for a pre-classification;
- (c) provide that its customs administration may, at any time during the course of an evaluation of an application for pre-classification, request that the applicant provide additional information within a specified period;
- (d) provide that pre-classification 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 pre-classification be issued to the applicant expeditiously, or in any case within 30 working days of the receipt of all necessary information.

3. A Party may reject requests for pre-classification where the additional information requested by it in accordance with Sub-paragraph 2(c) is not provided within the specified period.

4. Subject to Paragraph 5, each Party shall apply a pre-classification to all importations of goods covered by the application for that pre-classification imported into its territory within five years of the date the pre-classification is issued, or such other period as required by a Party’s laws, regulations or policies.

5. A Party may modify or revoke a pre-classification upon a determination that the classification was based on an error of fact or law (including human error), or if there is a change in:

- (a) domestic law consistent with this Agreement; or

- (b) a material factor; or
- (c) the circumstances on which the ruling is based.

## ARTICLE 308

### **Treatment of Goods for which a Certificate of Origin has been Issued**

1. The importing Party shall facilitate the importation of goods for which a Certificate of Origin has been issued in accordance with Chapter 4 of this Agreement to the greatest extent permitted under its laws, regulations and policies. In particular, subject to Paragraphs 2 to 4, the importing Party shall not dispute the customs duty payable on such goods at the time of importation or entry for home consumption, provided they are imported and entered in accordance with the relevant Certificate of Origin.
2. To ensure the requirements of Paragraph 1 are met, the importing Party may request the presentation of the Certificate of Origin issued for goods. The customs administration of the importing Party may require the deposit of a security, including a cash security, up to the amount which would be payable on the goods if they did not qualify for preferential tariff treatment.
3. Paragraph 1 does not prevent the importing Party from disputing the customs duty payable on the goods referred to in that Paragraph after the goods have entered for home consumption, in accordance with its laws, regulations and policies.
4. Paragraph 1 does not apply where any goods previously traded by the importer, exporter or producer of the imported goods, or by any person associated with that importer, exporter or producer, are the subject of current verification action, or have been denied preferential tariff treatment, in accordance with Chapter 4 of this Agreement.
5. Where a dispute arises between the Parties as to:
  - (a) the valuation or the tariff classification of goods for which a Certificate of Origin has been issued in accordance with Chapter 4 of this Agreement; or
  - (b) the valuation or the tariff classification of non-originating materials used or consumed in the processing of those goods; or
  - (c) the interpretation of the rules of origin on which the relevant Certificate of Origin was based,

the importing Party shall consult with the exporting Party with a view to resolving the issue prior to taking any action to recover duties.



## ARTICLE 309

### **Paperless Trading and Use of Automated Systems**

1. The customs administrations of both Parties, in implementing initiatives which provide for the use of paperless trading, shall take into account the methods agreed in APEC and the World Customs Organization.
2. The customs administration of each Party shall work towards having electronic means for all its customs reporting requirements as soon as practicable.
3. The introduction of information technology shall, to the greatest extent possible, be carried out in consultation with all relevant parties directly affected.

## ARTICLE 310

### **Risk Management**

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

## ARTICLE 311

### **Publication and Enquiry Points**

1. Each Party shall publish on the Internet or a comparable computer-based telecommunications network or in print form any statutory and regulatory provisions and any administrative procedures applicable or enforceable by its customs administration.
2. Each Party shall designate one or more enquiry points to address enquiries from interested persons of the other Party concerning customs matters, and shall make available on the Internet information concerning procedures for making such enquiries.

## CHAPTER 4

### RULES OF ORIGIN

#### ARTICLE 401

#### Definitions

For the purposes of this Chapter:

- (a) “Certificate of Origin” means a certificate issued in accordance with Article 408 and complying with the requirements of Annex 4.2 (Certificate of Origin Requirements);
- (b) “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;
- (c) “material” means any matter or substance used or consumed in the production of goods, and physically incorporated into or classified with those goods;
- (d) “originating material” means a material that qualifies as originating in accordance with the relevant provisions of this Chapter;
- (e) “registered exporter” means an exporter that is registered with an authorised body as an exporter of originating goods in accordance with Article 407 (2);
- (f) “registered goods” means the particular goods in respect of which a registered exporter is registered in accordance with Article 407 (2);
- (g) “significant change”, in relation to Articles 407 (4) and 408 (2) and Annex 4.2, means a change that may prevent those goods from continuing to satisfy the requirements of Article 402;
- (h) “wholly obtained goods” means:
  - (i) mineral goods extracted in the territory of a Party;
  - (ii) agricultural goods harvested, picked, or gathered in the territory of a Party;
  - (iii) live animals born and raised in the territory of a Party;

- (iv) goods obtained from live animals in the territory of a Party;
- (v) goods obtained directly from hunting, trapping, fishing, gathering, or capturing in the territory of a Party;
- (vi) goods (fish, shellfish, plant and other marine life) taken within the territorial sea or the relevant maritime zone of a Party seaward of the territorial sea under that Party's applicable laws in accordance with the provisions of the *United Nations Convention on the Law of the Sea*, or taken from the high seas by a vessel entitled to fly the flag of that Party;
- (vii) goods obtained or produced on board factory ships entitled to fly the flag of a Party from the goods referred to in subparagraph (vi);
- (viii) goods taken by a Party, or a person of a Party, from the seabed or subsoil beneath the seabed of the territorial sea or the continental shelf of that Party, in accordance with the provisions of the *United Nations Convention on the Law of the Sea*;
- (ix) waste and scrap derived from production in the territory of a Party, or used goods collected in the territory of a Party, provided such goods are fit only for the recovery of raw materials; and
- (x) goods produced entirely in the territory of a Party exclusively from goods referred to in subparagraph (i) through (ix).

## ARTICLE 402

### **Originating Goods**

1. Particular goods shall originate in the territory of a Party if they:
  - (a) are the wholly obtained goods of that Party; or
  - (b) satisfy any applicable requirements of Annex 4.1, as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers.
2. Originating materials from the territory of a Party, used in the production of particular goods in the territory of the other Party, shall be considered to originate in the territory of the other Party.
3. Particular goods that do not satisfy a change in tariff classification requirement pursuant to Annex 4.1 are nonetheless originating goods if:

- (a) the value of all non-originating materials used in the production of the goods that do not undergo the required change in tariff classification does not exceed 10 per cent of the Free on Board (FOB) value of the goods; and
  - (b) the goods meet all other applicable criteria of this Article.
- 4. Accessories, spare parts or tools delivered with originating goods that form part of the standard accessories, spare parts, or tools for those goods, shall be treated as originating goods, and shall be disregarded in determining whether all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification, provided that:
  - (a) the accessories, spare parts, or tools are not invoiced separately from the originating goods;
  - (b) the quantities and value of the accessories, spare parts, or tools are customary for the originating goods; and
  - (c) if the goods are subject to a regional value content requirement, the value of the accessories, spare parts, or tools was taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the originating goods.
- 5. Paragraph 4 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.
- 6. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the goods or materials or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first out, recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.
- 7. An inventory management method selected under Paragraph 6 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.
- 8. Packaging materials and containers in which goods are packaged for retail sale, if classified with those goods, or for shipment, shall be disregarded in determining whether all the non-originating materials used in the production of those goods have undergone the applicable change in tariff classification set out in Annex 4.1.

## ARTICLE 403

### **Regional Value Content**

1. Subject to Paragraphs 2 to 4 of this Article and Article 404, where Annex 4.1 requires goods to have a regional value content, the regional value content of particular goods shall be calculated as follows:

$$\text{RVC} = \frac{\text{FOB} - \text{VNM}}{\text{FOB}} \times 100$$

where:

- (a) “RVC” is the regional value content between the Parties, expressed as a percentage;
- (b) “FOB” is the FOB value of the goods; and
- (c) “VNM” is the CIF (Cost, Insurance and Freight) value of all non-originating materials that:
  - (i) in the form in which they were first supplied to the producer of the goods, were imported into Thailand or Australia; or
  - (ii) in the form in which they were first supplied to a producer in the territory of a Party of non-originating materials that are supplied to the producer of the goods, were imported into Thailand or Australia.

2. Annex 4.1 may specify that the value of non-originating materials produced in developing countries and places may contribute towards the RVC for particular goods. In that case, the value of those materials, as a proportion of the FOB value of the goods equating to no more than the maximum allowable proportion specified in the Headnotes to Annex 4.1 for those goods shall be excluded from the VNM for the purposes of paragraph 1. Prior to entry into force of the Agreement, the Parties shall determine the list of countries and places to be considered developing countries and places for the purpose of this paragraph. The Parties shall, through the Committee on Rules of Origin established in Article 415, review and modify this list in the light of relevant international developments, and determine the date on which any such modifications shall take effect. This Paragraph shall expire 20 years after the date of entry into force of this Agreement.

3. Packaging materials and containers in which goods are packaged for retail sale, if classified with those goods, shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content.
4. Packaging materials and containers in which goods are packaged for shipment shall be disregarded in calculating the regional value content.

#### ARTICLE 404

### **Calculation of Values**

1. For the purposes of this Chapter, the FOB value of particular goods is to be determined under Articles 1 to 8, Article 15 and the corresponding interpretative notes of the WTO Customs Valuation Agreement, as adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the merchandise from the country of exportation to the port or place of importation.
2. For the purposes of determining whether a material acquired in the territory of a Party is originating, FOB value for that material shall be taken to mean the value of the material, determined in accordance with Articles 1 to 8, Article 15 and the corresponding interpretative notes of the WTO Customs Valuation Agreement, with such reasonable modifications as may be required to reflect the fact that the material was not imported.
3. For the purposes of this Chapter, the CIF value of non-originating materials is to be determined under Articles 1 to 8, Article 15, and the corresponding interpretative notes of the WTO Customs Valuation Agreement, as adjusted to include any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the goods from the country of exportation to the port or place of importation.

#### ARTICLE 405

### **Recording of Costs**

For the purposes of this Chapter all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the goods are produced or manufactured.

## ARTICLE 406

### **Consignment**

Goods shall not be considered to be originating if they undergo subsequent production or any other operation outside the territories of the Parties, other than operations necessary to preserve them in good condition or to transport them to the territory of the other Party, provided that the goods are not traded or used outside the territories of the Parties.

## ARTICLE 407

### **Registration of Exporters**

1. Subject to Article 409, the exporting Party shall require that, on receipt of an application to register as an exporter of originating goods, an authorised body referred to in Annex 4.2 (Certificate of Origin Requirements) shall, within 60 days of receipt of that application, conduct and conclude such examinations of documentation and facilities as it considers necessary to establish that the particular goods nominated in the application satisfy the requirements of Article 402.
2. Subject to Article 409, the exporting Party shall require that, where an authorised body, after conducting examinations in accordance with Paragraph 1, is satisfied that the particular goods satisfy the requirements of Article 402, the authorised body shall register the applicant as an exporter of originating goods in respect of those particular goods, and shall so notify the exporter within ten working days.
3. The exporting Party shall require that, where an authorised body, after conducting examinations in accordance with Paragraph 1, is not satisfied that the particular goods satisfy the requirements of Article 402, the authorised body shall not register the applicant as an exporter of originating goods in respect of those particular goods, and shall so notify the exporter within ten working days.
4. The exporting Party shall require that a registered exporter must, as expeditiously as possible, notify the authorised body with which it is registered if a significant change occurs in the basis for the registration of particular goods.
5. The exporting Party shall require that, on receipt of advice referred to in Paragraph 4, the authorised body shall, as expeditiously as possible, conduct such examinations of documentation and facilities as it considers necessary to assess whether the registered goods still satisfy the requirements of Article 402.

6. Where an authorised body, after conducting examinations in accordance with Paragraph 5, is satisfied that the registered goods satisfy the requirements of Article 402, it shall so notify the registered exporter within ten working days that the registration of the goods shall continue on the basis of the relevant changes.

7. The exporting Party shall require that an authorised body referred to in Annex 4.2 (Certificate of Origin Requirements) may, at any other time not specified, conduct such examinations of documentation and facilities as it considers necessary to ensure that registered goods still satisfy the requirements of Article 402.

8. The exporting Party shall require that, where an authorised body, after conducting examinations in accordance with Paragraphs 5 or 7, or for any other reason, is not satisfied that registered goods satisfy the requirements of Article 402, the authorised body shall de-register the registered exporter as an exporter of originating goods in respect of those goods, and within ten working days shall so notify:

- (a) the exporter;
- (b) all other authorised bodies referred to in Annex 4.2 (Certificate of Origin Requirements), in the territory of the exporting Party; and
- (c) the customs administration in the territory of the importing Party.

## ARTICLE 408

### **Certification of Origin**

1. Subject to Article 409, the exporting Party shall ensure that a registered exporter has the opportunity to apply to an authorised body referred to in Annex 4.2 (Certificate of Origin Requirements) for a Certificate of Origin in respect of a single shipment of registered goods.

2. Subject to Article 409, on receipt of an application referred to in Paragraph 1, an authorised body shall issue a Certificate of Origin in relation to the registered goods that are the subject of that application, provided that:

- (a) no significant change has occurred in the basis for the registration of those goods; or
- (b) if a significant change has occurred in the basis for the registration of those goods, the authorised body is satisfied that the goods meet the requirements of Article 402.

3. An authorised body shall not issue a Certificate of Origin:

- (a) for goods that are not registered goods; or



- (b) where the circumstances set out in Paragraph 2 are not met.
4. The exporting Party shall require that an application for a Certificate of Origin and a Certificate of Origin must meet the requirements set out in Annex 4.2 (Certificate of Origin Requirements).
5. The exporting Party shall require that a Certificate of Origin may be revoked by notice in writing. A revoked Certificate of Origin shall have no force from the date specified in that notice.
6. The exporting Party shall require that a copy of a notice revoking a Certificate of Origin shall be forwarded to the applicant for the Certificate of Origin and to the importing Party, immediately upon the issue of that notice.

## ARTICLE 409

### **Exporter Sanctions**

1. The exporting Party shall ensure that adequate sanctions are imposed where an exporter:
- (a) secures registration as an exporter of originating goods, or obtains a Certificate of Origin, on the basis of a statement that is false or misleading in any particular, including a statement that is false or misleading due to omission;
  - (b) falsifies a Certificate of Origin;
  - (c) fails to notify an authorised body of significant changes in accordance with Article 407 (4); or
  - (d) commits any other offence in an effort to secure registration as an exporter of originating goods or to obtain a Certificate of Origin.
2. In respect of an exporter referred to in paragraph 1, or in respect of a person who, consistent with the principles set out in the WTO Customs Valuation Agreement,<sup>2</sup> is related to such an exporter, sanctions imposed may include:
- (a) de-registration in respect of some or all registered goods for a particular period; and
  - (b) refusal to consider an application for registration as an exporter of originating goods or for a Certificate of Origin for a particular period.

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<sup>2</sup> With such modifications as may be required to reflect the fact that the Parties to the transaction are within the same country.

3. The exporting Party shall require that, where sanctions are imposed under Paragraph 1, the following are notified within ten working days of the decision to impose sanctions:

- (a) the exporter;
- (b) all authorised bodies referred to in Annex 4.2 (Certificate of Origin requirements) in the territory of the exporting Party; and
- (c) the customs administration in the territory of the importing Party.

#### ARTICLE 410

### **Claim for Preferential Treatment**

1. Subject to Article 413, the importing Party shall grant preferential tariff treatment to goods imported into its territory from the other Party, provided that the goods are originating goods, the consignment criteria specified in Article 406 have been met, and the importer claiming preferential tariff treatment:

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

2. The importing Party may waive the requirement for a Certificate of Origin in certain circumstances, in accordance with its laws, regulations and policies.

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

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

#### ARTICLE 411

### **Records**

1. Each Party shall require that:

- (a) a producer, or an exporter must maintain, for five years from the date of the Certificate of Origin, all records relating to the origin of the goods for which preferential tariff treatment is claimed in the importing Party, including the Certificate of Origin relevant to the goods, or a copy thereof; and
  - (b) an importer claiming preferential tariff treatment shall maintain, for five years after the date of importation of the goods, all records relating to the importation of the goods, including the Certificate of Origin relevant to the goods, or a copy thereof.
2. The records to be maintained pursuant to this Article shall include electronic records. Any such records in electronic form shall be maintained in accordance with the laws, regulations and policies of the relevant Party.

## ARTICLE 412

### **Origin Verification**

1. The importing Party may verify the eligibility of goods for preferential tariff treatment in accordance with its laws, regulations and policies.
2. Verification of eligibility for preferential tariff treatment may include either Party taking the following courses of action, in accordance with mutually determined procedures:
- (a) instituting measures to establish the validity of the Certificate of Origin;
  - (b) issuing written questionnaires, to be completed within a period of 30 days, to relevant producers, exporters or importers of goods for which preferential tariff treatment was claimed in the territory of the importing Party, or of the materials used or consumed in the production of those goods;
  - (c) requesting the supply of records relating to the production, manufacture or export of the goods for which preferential tariff treatment was claimed in the territory of the importing Party, or of the materials used or consumed in the production of those goods; and
  - (d) visiting the factory or premises of the producer, importer, exporter or any other party in the territory of a Party associated with the production, import or export of the goods for which preferential tariff treatment was claimed in the territory of the importing Party, or of the materials used or consumed in the production of those goods.
3. The importing Party shall notify the exporting Party in writing when it approaches any party listed in Sub-paragraph (2)(d) within the territory of the exporting Party during an action to verify eligibility.

4. The importing Party shall not visit the factory or premises of any party listed in Sub-paragraph (2)(d) within the territory of the exporting Party without the prior consent of that party.
5. To the extent allowed by its laws, regulations and policies, the exporting Party shall fully cooperate in any action to verify eligibility and shall require that producers and exporters cooperate in any action to verify eligibility.
6. Action to verify eligibility for preferential tariff treatment shall be completed and a decision shall be made within 90 days of the commencement of such action. Written advice as to whether goods are eligible for preferential tariff treatment must be provided to all relevant parties within 10 days of the decision being made.

#### ARTICLE 413

### **Suspension and Denial of Preferential Tariff Treatment**

1. Notwithstanding Article 410 (1), the importing Party may suspend the application of preferential tariff treatment to goods that are the subject of origin verification action under Article 412 for the duration of that action, or any part thereof.
2. The importing Party may deny a claim for preferential tariff treatment or recover unpaid duties where:
  - (a) the goods do or did not meet the requirements of this Chapter;
  - (b) the producer, exporter, or importer of goods fails or has failed to comply with any of the relevant requirements for obtaining preferential tariff treatment;  
or
  - (c) action taken under Article 412 failed to verify the eligibility of the goods for preferential tariff treatment.

#### ARTICLE 414

### **Review and Appeal**

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

ARTICLE 415

**Committee on Rules of Origin**

1. For the purposes of the effective and uniform implementation of this Chapter, a Committee on Rules of Origin (“the Committee”) shall be established. The functions of the Committee shall include:

- (a) the monitoring of the implementation and administration of the provisions of this Chapter;
- (b) the discussion of any issue that may have arisen in the course of implementation, including any matters that may have been referred to the Committee by the Joint Commission;
- (c) the discussion of any proposed modifications of the rules of origin under this Chapter; and
- (d) consultation on issues relating to rules of origin and administrative cooperation.

2. The Committee shall be comprised of representatives of the Parties. It shall meet at least once a year and more often as may be mutually determined from time to time between the Parties.

# **CHAPTER 5**

## **SAFEGUARDS**

### **PART I**

#### **DEFINITIONS**

##### **ARTICLE 501**

##### **Definitions**

For purposes of this Chapter:

- (a) “domestic industry” means, with respect to an imported good, the producers as a whole of the like or directly competitive good or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;
- (b) “provisional measure” means a provisional safeguard measure described in Article 505;
- (c) “safeguard measure” means a safeguard measure described in Article 502;
- (d) “special safeguard measure” means a special safeguard measure described in Article 509;
- (e) “serious damage” means a significant overall impairment in the position of a domestic industry; and
- (f) “transition period”, in relation to a particular good, means the period from the entry into force of this Agreement until the date on which the customs duty on that good is to be eliminated in accordance with Annex 2.

## **PART II**

### **TRANSITIONAL SAFEGUARD MEASURES**

#### **ARTICLE 502**

##### **Application of a Safeguard Measure**

If, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of a Party is being imported into the other Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the other Party may, to the minimum extent necessary to prevent or remedy serious damage and facilitate adjustment, apply a safeguard measure, consisting of:

- (a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the good; or
- (b) an increase of the rate of customs duty on the good to a level not to exceed the lesser of
  - (i) the most-favoured-nation (MFN) applied rate of customs duty in effect at the time the action is taken, or
  - (ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

#### **ARTICLE 503**

##### **Scope and Duration of Transitional Safeguard Measures**

1. A Party shall apply a safeguard measure only for such period of time as may be necessary to prevent or remedy serious damage and to facilitate adjustment. A Party may apply a safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to two years provided that the conditions of this Chapter are met. The total period of a safeguard measure, including any extensions thereof, shall not exceed six years. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate within two years following the end of the transition period for such good. No new safeguard measure may be applied to a good after that date.

2. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the application of the measure, including at the time of any extension.

3. A Party shall not apply a safeguard or provisional measure more than once on the same good until a period of time has elapsed following the termination of the earlier safeguard or provisional measure equal to the duration of the earlier measure.

4. A Party may not apply a safeguard or provisional measure on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement, the WTO Agreement on Textiles and Clothing, or any other relevant provisions in the WTO Agreement, nor may a Party continue to maintain a safeguard or provisional measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement, the WTO Agreement on Textiles and Clothing or any other relevant provisions in the WTO Agreement.

5. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 2 on the date of termination as if the safeguard measure had never been applied.

## ARTICLE 504

### **Investigation**

1. A Party may apply or extend a safeguard measure only following an investigation by the Party's competent authorities to examine the effect of increased imports of an originating good of the other Party on the domestic industry, as reflected in changes in such relevant economic variables as production, productivity, levels of sales, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which is necessarily decisive. When factors other than increased imports of an originating good of the other Party resulting from the reduction or elimination of a customs duty pursuant to this Agreement are simultaneously causing damage to the domestic industry, such damage shall not be attributed to such increased imports.



2. An investigation under Paragraph 1 shall only take place pursuant to procedures previously established and made public in consonance with Chapter 14 of this Agreement. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. Upon completion of an investigation, the competent authorities shall promptly publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

3. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

## ARTICLE 505

### **Provisional Measures**

1. In highly unusual and critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious damage. The duration of such a provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 502, 503 and 504 shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 503 (1). Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Paragraph 1 of Article 504 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious damage to a domestic industry. In such a case, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 2 as if the provisional measure had never applied.

2. In determining whether such highly unusual and critical circumstances exist, a Party shall have regard to the rate of increase of imports of an originating good of the other Party, both in absolute and relative terms, and the overall level of the Party's imports of the good from the other Party as a share of total imports of the good, as a result of the reduction or elimination of a duty on the good pursuant to this Agreement.

## ARTICLE 506

### **Notification and Consultation**

1. A Party shall promptly notify the other Party, in writing, on:
  - (a) initiating an investigation under Article 504;
  - (b) making a finding of serious damage or actual threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty on the good pursuant to this Agreement;
  - (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and
  - (d) taking a decision to modify a safeguard measure previously applied.
2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 504 immediately as it is available.
3. In making a notification pursuant to Paragraph 1, the Party applying or extending a safeguard measure shall also provide evidence of serious damage or actual threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement, a precise description of the good involved, the details of the proposed measure including as appropriate the grounds for not selecting the measure described in Article 502 (a) , the date of introduction, duration, and timetable for progressive liberalisation of the measure, if applicable. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall provide additional information as the other Party may consider necessary.
4. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided under Paragraph 3, exchanging views on the measure, and reaching an agreement on compensation as set forth in Article 507 (1).

5. Where a Party applies a provisional measure referred to in Article 505, on request of the other Party, consultations shall be initiated immediately after such application.

6. The provisions on notification in this Chapter shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

## ARTICLE 507

### **Compensation**

1. A Party extending a safeguard measure for an overall period beyond three years shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of substantially equivalent concessions during the period of extension of the measure beyond the aforementioned three years. Such consultations shall begin within 30 days of the decision to extend the measure and, in accordance with Article 506 (4), shall take place prior to the extension.

2. If the Parties are unable to reach agreement on compensation within 30 days after the consultations commence, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party extending the safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under Paragraph 2.

4. The obligation to provide compensation under Paragraph 1 and the right to suspend substantially equivalent concessions under Paragraph 2 shall terminate on the date of the termination of the safeguard measure.

## ARTICLE 508

### **Global safeguards**

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards and any other relevant provisions in the WTO Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to such global safeguard measures, except that a Party taking such a measure may exclude imports of an originating good of the other Party from the action if such imports are not a cause of serious injury or threat thereof or of serious damage or actual threat thereof or of any other such factor as may be provided in Article XIX of GATT 1994 and the WTO Agreement on Safeguards, and any other relevant provisions in the WTO Agreement.
2. A Party considering the imposition of a global safeguard measure on an originating good of the other Party shall initiate consultations with that Party as far in advance of taking any such measure as practicable.

## **PART III**

### **SPECIAL SAFEGUARD MEASURES FOR CERTAIN SENSITIVE AGRICULTURAL PRODUCTS**

## ARTICLE 509

### **Standards for a Special Safeguard Measure**

1. A Party may, in exceptional circumstances, apply a special safeguard measure to a limited number of specified sensitive agricultural goods, as set down in Annex 5.
2. The Parties shall endeavour to apply special safeguards measures in a manner that is consistent with their commitment under the terms of this Agreement to promote the expansion of bilateral trade in agricultural goods.
3. A Party may impose a special safeguard measure on a good only during the period set down in Annex 5 for that good.

4. Such a special safeguard measure may be applied to imports of an agricultural good listed in Annex 5 if the volume of imports of that originating good of the other Party entering the customs territory of the Party during any given calendar year exceeds the specified volume trigger level for that year. The applicable trigger levels are set out in Annex 5.
5. If the conditions in Paragraph 4 are met, a Party may increase the rate of customs duty applicable to the good for the remainder of that calendar year through the application of the customs duty for such good at the current MFN rate or the base rate, whichever is lower.
6. Any supplies of the good in question which were *en route* on the basis of a contract settled before the additional customs duty is imposed under the terms of this Article shall be exempted from any such additional customs duty, provided that they may be counted in the volume of imports of the good in question during the following year for the purposes of triggering the provisions of Paragraph 4 in that year.
7. Each Party shall apply any special safeguard measure in a transparent manner. A Party applying a special safeguard measure shall give notice in writing, including relevant data, to the other Party as far in advance as may be practicable and in any event within ten working days of the implementation of such action.
8. Upon request, the Party imposing the measure shall consult and cooperate in exchanging information as appropriate with the other Party with respect to the conditions of application of the measure.
9. A Party may not apply a special safeguard measure on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement or any other relevant provisions in the WTO Agreement or to a measure set forth in Articles 502-508, nor may a Party continue to maintain a special safeguard measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement or any other relevant provisions in the WTO Agreement, or to any measure set forth in Articles 502-508.
10. No later than three years following the entry into force of this Agreement, the Parties shall review the operation of this Article, including the appropriateness of the list and trigger levels, including the growth factors set down in Annex 5. The review shall take into account relevant international trade developments.
11. In the event that a Party enters into an agreement or arrangement with a non-Party following entry into force of this Agreement that does not provide for special safeguard measures on a good or goods covered in the relevant section of Annex 5 of this Agreement, and where the non-Party is a substantial supplier of the good or goods, the Parties shall, by mutual consent, enter into consultations on the scope for that good or those goods to be withdrawn from Annex 5.

## CHAPTER 6

# SANITARY AND PHYTOSANITARY MEASURES AND FOOD STANDARDS

### ARTICLE 601

#### **Objectives**

The objectives of this Chapter are:

- (a) to protect human, animal or plant life or health in the territory of each Party;
- (b) to facilitate safe bilateral trade in food, plants and animals, including their products, and animal feed;
- (c) to strengthen cooperation between Thai and Australian government agencies having responsibility for matters covered by this Chapter and to deepen mutual understanding of each Party's regulations and procedures; and
- (d) to strengthen collaboration between the Parties in relevant international bodies implementing agreements or developing international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

### ARTICLE 602

#### **Definitions**

For the purposes of this Chapter:

- (a) "agricultural and food standard" means a mandatory requirement being either a sanitary or phytosanitary measure or other technical regulation, that is made pursuant to relevant laws administered by either Party;
- (b) "sanitary or phytosanitary measure" (SPS measure) shall have the same meaning as in Annex A, paragraph 1, of the SPS Agreement; sanitary or phytosanitary measures include control, inspection and approval procedures, guidelines for use of which are given in Annex C of the SPS Agreement;

- (c) “technical regulation” means a non-SPS measure which shall have the same meaning as in Annex 1 of the TBT Agreement; and
- (d) “appropriate level of sanitary or phytosanitary protection” shall have the same meaning as in Annex A of the SPS Agreement.

## ARTICLE 603

### **Scope**

1. This Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade in agricultural and food products traded between the Parties, regardless of the origin of those products.
2. It shall also apply to:
  - (a) all other agricultural and food standards related to agricultural and food products traded between the Parties;
  - (b) assessments of manufacturers or manufacturing processes of agricultural and food products exported from one Party to the other Party; and
  - (c) assessments of official control, inspection and approval systems related to agricultural and food products operated by the Parties.

## ARTICLE 604

### **Obligations**

1. The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement and the TBT Agreement to the extent that these rights and obligations are applicable to trade in agricultural and food products.
2. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations:
  - (a) SPS measures necessary to achieve its appropriate level of protection of human, animal or plant life or health; and
  - (b) other technical requirements set out in a Party’s laws, regulations and policies as appropriate to its national circumstances.

3. Each Party, consistent with Paragraphs 1 and 2, shall retain all authority under its laws to implement sanitary and phytosanitary measures and other standards related to this Chapter. This includes the authority to take appropriate measures for goods that do not conform to that Party's SPS measures and such other standards.

## ARTICLE 605

### **Harmonisation**

1. Noting their commitments under Article 604 (1), the Parties shall endeavour to work towards harmonisation of sanitary and phytosanitary measures and other agricultural and food standards, on as wide a basis as possible, as provided for under Article 3 of the SPS Agreement and Article 2 of the TBT Agreement.

2. Harmonisation shall be pursued without requiring either Party to change its appropriate level of protection of human, animal or plant life or health, that the Party determines to be appropriate in accordance with the relevant provisions of Article 5 of the SPS Agreement.

## ARTICLE 606

### **Equivalence**

1. The Parties recognise that the principle of equivalence as set down in Article 4 of the SPS Agreement and Article 2 of the TBT Agreement, as applied to SPS measures and other agricultural and food standards, has mutual benefits for both exporting and importing countries.

2. The Parties shall follow the procedures for determining the equivalence of SPS measures and other agricultural and food standards, including control, inspection and approval procedures, developed by the relevant WTO bodies and the Codex Alimentarius Commission, the Office Internationale des Epizooties and the International Plant Protection Convention, as amended from time to time.

3. Compliance by an exported food product with a food standard that has been accepted as equivalent to a food standard of the importing Party shall not remove the need for that product to comply with any other relevant mandatory requirements of the importing Party.



### **Control, Inspection and Approval Procedures**

1. The Parties recognise that they operate different systems for giving effect to their international rights and obligations relating to control, inspection and approval procedures.
2. Each Party shall, on the request of the other Party, following the procedures set down from time to time by the relevant WTO bodies and the Codex Alimentarius Commission, the Office Internationale des Epizooties or the International Plant Protection Convention, give consideration to accepting the relevant control, inspection and approval procedures of the other Party, provided that it is satisfied that these achieve the same outcomes as its own regulatory requirements.
3. Each Party shall on request and in accordance with its international obligations and applicable laws, regulations and policies, review its inspection, testing, certification and other relevant import and export approval systems or procedures to ensure these are reasonable and necessary, so as to further facilitate access of traded goods to its territory and minimise the costs of doing business.
4. The Parties shall cooperate on a product trace back system for the notification of non-compliance of imported consignments for commodities subject to SPS measures or other agricultural and food standards requirements, drawing on the guidelines of relevant international organisations where available.
5. In particular:
  - (a) where non-compliance with SPS measures or other agricultural and food standards arises, the importing Party shall notify the exporting Party of the consignment details;
  - (b) unless specifically required by laws, regulations or policies in effect at the time this Agreement enters into force, the importing Party shall avoid suspending trade based on one shipment, but in the first instance shall contact the exporting Party to ascertain how the problem has occurred. The Parties shall consult on what remedial action might be taken by the exporting Party to ensure that further shipments are not affected;
  - (c) the exporting Party shall investigate and advise the importing Party of its findings regarding the non-compliance referred to in Sub-paragraph (a), including any corrective action that will apply to future shipments. The Parties shall, upon the request of either Party, jointly examine the import or export control, inspection and approval procedures concerned; and

- (d) if, after investigation and review, the Parties mutually determine that the issue is an incident arising from an isolated technical problem, the importing Party shall separate the incident clearly from the overall institutional and procedural arrangements applying to relevant control, inspection and approval systems. In this event, the importing Party shall confine any treatment measures taken only to that particular shipment and shall also endeavour to ensure that the incident is not used as a basis for refusing to accept the arrangements applying to other shipments of the products concerned.

## ARTICLE 608

### **Information Exchange and Cooperation**

1. Recognising the importance of close and effective working relationships between the Parties' regulatory and other relevant agencies in giving effect to the objectives of this Chapter, the Parties shall enhance their consultation processes in order to facilitate cooperation.
2. In particular, each Party shall:
  - (a) establish an overall coordination contact point, as well as contact points for relevant specialised areas, to disseminate and exchange information expeditiously and to facilitate timely and favourable consideration of requests for information or clarification from the other Party. The overall coordination contact point shall be included in all consultations made pursuant to this Article;
  - (b) provide notice to the relevant contact points of the other Party of new or proposed changes to its SPS measures and other agricultural and food standards, as far in advance as practicable before the changes come into effect, where these are likely to affect, directly or indirectly, trade between the Parties;
  - (c) where considerations of public, animal or plant health and safety warrant more urgent action, notify the other Party no later than the date the changes enter into force;
  - (d) where it implements emergency management measures in response to a confirmed threat to human, plant or animal life or health, ensure that all pertinent information about the incident is provided to the other Party and the Parties shall consult expeditiously with the aim of minimising disruption to trade.
3. The Parties shall explore opportunities for further cooperation and collaboration on regulatory issues at the bilateral, regional and multilateral levels consistent with the provisions of this Chapter.

4. The Parties shall enhance cooperation on priority proposals in relevant areas of technical assistance and capacity-building activities to ensure that existing or future opportunities for funding or other support are used effectively to further the objectives of this Chapter.

#### ARTICLE 609

##### **Consultative Forum on Sanitary and Phytosanitary Measures and Food Standards**

1. The Parties shall establish an Expert Group on Sanitary and Phytosanitary Measures and Food Standards as a consultative forum to promote the objective set out in Article 601 (c) and to reflect their commitments under Article 608 (1) to strengthen cooperation between regulatory agencies having responsibility for sanitary and phytosanitary measures and for food standards.
2. The Expert Group, along with the existing Joint Working Group on Agriculture, shall together form an integrated means of enhanced regular and comprehensive consultation and cooperation on agriculture and related matters so as to facilitate safe trade between the Parties.
3. The Expert Group shall meet as often as required and mutually determined by the Parties, but this shall not be less than once a year. In principle, the Parties shall meet biannually during the initial two year work program of the Expert Group. The Expert Group shall meet consecutively with the regular meetings of the Joint Working Group, alternately in each Party's territory.
4. The Parties may mutually determine an alternative process for addressing any matter and for this purpose shall make full use of the coordination and contact points established under Article 608 (2)(a).
5. The Expert Group may adopt a work program and work procedures independently of the established scope and modalities of the Joint Working Group. The Expert Group shall inform the Joint Working Group of the outcomes from its meetings.
6. The Expert Group may establish temporary task forces to address particular issues.

7. The Party hosting the Expert Group shall provide the chair for the meeting who shall be a representative from the agriculture ministry of the relevant Party. Delegations to the Expert Group may be composed of relevant technical and policy officials or other designated officials as each Party determines appropriate from time to time. Each Party shall ensure, reflecting the agenda agreed for each meeting, that appropriate representatives with responsibility for SPS measures and food standards participate in meetings of the Expert Group.

8. The Parties shall consult on dates and venues for planned meetings of the Expert Group and Joint Working Group well in advance. Agendas for meetings of the Expert Group shall be mutually determined at least 30 days prior to each meeting.

9. To achieve the objectives of Paragraph 2 on matters related to this Chapter, the Expert Group shall at its first meeting develop and implement a work program, with the initial phase to be completed and reviewed within two years of the signature of this Agreement, with the aim of:

- (a) reviewing progress and monitoring the implementation of this Chapter on an ongoing basis;
- (b) enhancing mutual understanding of each Party's sanitary and phytosanitary measures, agricultural and food standards, and related regulatory processes;
- (c) consulting on matters related to the development or application of SPS measures and other agricultural and food standards that affect or may affect trade between the Parties;
- (d) reviewing and assessing progress of each Party's priority market access interests, which at the time of signature of this Agreement are listed in Annex 6.1;
- (e) consulting on requests for recognition of equivalence of SPS measures or other agricultural and food standards. In respect of control, inspection and approval arrangements, the priority sectors of each Party at the time of signature of this Agreement are listed in Annex 6.2;
- (f) consulting on matters relating to the harmonisation of standards;
- (g) consulting or coordinating positions on matters related to meetings of the WTO SPS Committee, the Codex Alimentarius Commission, the Office Internationale des Epizooties, the International Plant Protection Convention or other forums dealing with human, plant or animal health;
- (h) coordinating and prioritising capacity building and technical cooperation programs related to SPS measures and other relevant agricultural and food standards; and
- (i) progressing resolution of disputes that arise in connection with the matters covered by this Chapter.

## ARTICLE 610

### **Dispute Settlement**

1. Matters arising under this Chapter that cannot be settled through consultations within the Expert Group established under Article 609 may be forwarded by either Party for consideration by the FTA Joint Commission.
2. Chapter 18 shall not apply to the provisions of this Chapter.

## CHAPTER 7

### INDUSTRIAL TECHNICAL BARRIERS TO TRADE

#### ARTICLE 701

##### **Definitions**

All general terms concerning standards and conformity assessment used in this Agreement shall have the meaning given in the definitions contained in the International Organization for Standardization/International Electrotechnical Commission Guide 2 (1996), which cover goods, processes, and services. This Chapter deals only with technical regulations, standards and conformity assessment procedures related to products or processes and production methods. In addition, the following terms and definitions shall apply for the purposes of this Chapter:

- (a) “conformity assessment” means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled;
- (b) “equivalence” means the state wherein mandatory requirements applied in the exporting Party, though different from the mandatory requirements applied in the importing Party, meet the legitimate objective of the mandatory requirements applied in the importing Party;
- (c) “mandatory requirements” means all mandatory standards and technical regulations in the laws, regulations and policies of the Parties;
- (d) “standard” means a document approved by a recognised body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method; and
- (e) “technical regulation” means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

## ARTICLE 702

### **Objectives**

The objectives of this Chapter are:

- (a) to facilitate trade and investment between the Parties through collaborative efforts which minimise the impact of technical regulations and/or assessments of manufacturers or manufacturing processes on the goods traded between the Parties, in the most appropriate or cost-effective manner;
- (b) to complement bilateral agreements and arrangements between the Parties relating to technical regulations; and
- (c) to build on the mutual recognition arrangements developed within the voluntary sector and APEC context.

## ARTICLE 703

### **Scope and Obligations**

1. The Parties affirm with respect to each other their existing rights and obligations relating to technical regulations under the *WTO Agreement on Technical Barriers to Trade* and all other international agreements, including environmental and conservation agreements, to which the Parties are party.

2. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations, and conditions set out in the *WTO Agreement on Technical Barriers to Trade*:

- (a) technical regulations necessary to ensure its national security requirements; and
- (b) technical regulations necessary for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfil other legitimate objectives, as specified in the *WTO Agreement on Technical Barriers to Trade*.

3. Each Party shall retain all authority under its laws to implement its technical regulations. This includes the authority to take appropriate measures for goods that do not conform to the Party's technical regulations. Such measures may include withdrawing goods from the market, prohibiting their placement on the market or restricting their free movement, initiating a product recall or prohibiting an import.

4. The Parties affirm their intention to adopt and to apply, with such modifications as may be necessary, the principles set out in the *APEC Information Notes on Good Regulatory Practice in Technical Regulation* with respect to conformity assessment and approval procedures in meeting their international obligations under the WTO *Agreement on Technical Barriers to Trade*.

#### ARTICLE 704

### **Origin**

This Chapter applies to all goods traded between the Parties, regardless of the origin of those goods, unless otherwise specified by any technical regulations of a Party.

#### ARTICLE 705

### **Harmonisation and Equivalence**

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

2. The Parties shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

#### ARTICLE 706

### **Conformity Assessment Procedures**

1. The Parties shall, recognising the existence of differences in the structure, organisation and operation of conformity assessment procedures in their respective territories, make compatible those procedures to the greatest extent practicable.



2. Each Party shall, wherever possible, accept the results of a conformity assessment procedure conducted in the territory of the other Party, provided that it is satisfied that the procedure offers an assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory the results of which it accepts, that the relevant good complies with the applicable technical regulation or standard adopted or maintained in the Party's territory.
3. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, as appropriate.
4. Recognising that it should be to the mutual advantage of the Parties, each Party may accredit, approve, license or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those accorded to conformity assessment bodies in its territory.
5. Each Party shall, on request of the other Party, take such reasonable measures as may be available to it to facilitate access in its territory for conformity assessment procedures.
6. Each Party shall give sympathetic consideration to a request by the other Party to negotiate agreements for the recognition of the results of that other Party's conformity assessment procedures in the agreed sector.
7. Each Party shall utilise to the maximum possible extent existing mutual recognition arrangements in relation to the acceptance of conformity assessment processes and procedures.
8. Each Party shall take steps to implement Parts 1, 2 and 3 of the *APEC Mutual Recognition Arrangement for Conformity Assessment of Electrical and Electronic Equipment* with respect to the other Party.
9. Each Party shall give serious consideration, where possible, to participation in any future mutual recognition arrangements developed within APEC.

#### ARTICLE 707

### **Technical Cooperation and Contact Point**

1. A Party shall, on request of the other Party:

- (a) provide to that Party technical advice, information and assistance on mutually determined terms and conditions to enhance that Party's technical regulations, standards and conformity assessment procedures; and
- (b) provide to that Party information on its technical cooperation programs regarding technical regulations, standards and conformity assessment procedures relating to specific areas of interest.

2. Each Party shall establish a contact point:

- (a) to have responsibility for co-ordinating with interested parties in their respective territories proposals for enhanced cooperation and responses to such proposals as well as activities for technical cooperation set out under Paragraph 1;
- (b) to consider and facilitate the acceptance of equivalence of standards, sector by sector, on a case by case basis;
- (c) to consider and facilitate mutual recognition arrangements for conformity assessment of specific products as requested by the other Party;
- (d) to broaden the exchange of information; and
- (e) to give favourable consideration to any written request for information.

3. Each Party shall encourage standardising bodies in its territory to cooperate with the standardising bodies in the territory of the other Party in their participation, as appropriate, in standardising activities, such as through membership in international standardising bodies.

# **CHAPTER 8**

## **TRADE IN SERVICES**

### **PART I**

#### **OBJECTIVES, DEFINITIONS AND SCOPE**

##### **ARTICLE 801**

##### **Objectives**

The objectives of this Chapter are:

- (a) to liberalise trade in services between the Parties, in accordance with Article V of GATS; and
- (b) to enhance cooperation in trade in services between the Parties in order to improve the efficiency, competitiveness and diversity of services and service suppliers.

##### **ARTICLE 802**

##### **Definitions**

For the purpose of this Chapter:

- (a) “juridical person of the other Party” means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of the other 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 the other Party; or
  - b. juridical persons of the other Party identified under subparagraph (i)
- (b) “measure” means any measures by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (c) “measures by the Parties affecting trade in services” means measures taken by
  - (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments and authorities;

including measures in respect of:

- (i) the purchase, payment or use of a service;
- (ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;
- (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

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

- (d) “natural person of a Party” means a natural person who resides in the territory of the Party or elsewhere and who under the law of that Party is a national of that Party;
- (e) “qualification procedures” means administrative procedures relating to the administration of qualification requirements;
- (f) “qualification requirements” means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a licence;
- (g) “service consumer” means any person that receives or uses a service;
- (h) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service; and
- (i) “trade in services” is defined as the supply of a service:
  - (i) from the territory of a Party into the territory of the other Party;
  - (ii) in the territory of a Party to the service consumer of the other Party;
  - (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party;

- (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party.

## ARTICLE 803

### **Scope**

1. This Chapter shall apply to measures by the Parties affecting trade in services.
2. This Chapter shall not apply to:
  - (a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;
  - (b) a service supplied in the exercise of governmental authority within the territory of each respective Party, which means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
  - (c) laws, regulations or policies governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;
  - (d) measures affecting natural persons seeking access to the employment market of a Party; or
  - (e) measures regarding citizenship, residence or employment on a permanent basis.
3. Nothing in this Chapter shall prevent a Party from maintaining and introducing measures to regulate service sectors within its territory, provided that such measures are applied on a non-discriminatory basis without the intention to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.
4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

5. Unless they are specifically defined in this Chapter or in Annex 8, terms used in this Chapter and in Annex 8 that are also used in GATS shall be construed in accordance with their meaning in GATS, *mutatis mutandis*.

#### ARTICLE 804

### **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 where the Party establishes that the service supplier is owned or controlled by persons of a non-Party.

## **PART II**

### **GENERAL OBLIGATIONS AND DISCIPLINES**

#### ARTICLE 805

### **Payments and Transfers**

Subject to Article 1605, a Party shall not apply restrictions on international transfers and payment for current transactions<sup>3</sup> relating to its specific commitments.

#### ARTICLE 806

### **Recognition**

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, each Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition may be based upon an agreement or arrangement between the Parties. The Parties acknowledge that, wherever appropriate, recognition should be based on multilaterally agreed criteria.

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<sup>3</sup> “Current transactions” refers to current transactions as defined by the International Monetary Fund (IMF)

2. The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of qualification requirements, qualification procedures, licensing or registration procedures with a view to the achievement of early outcomes. Such commitments may be set out as additional commitments in Annex 8.

#### ARTICLE 807

### **Other Rights and Obligations**

1. The Parties are deemed to have the same rights and obligations under this Agreement that they would have under the relevant GATS provisions, *mutatis mutandis*, if the market access and national treatment commitments inscribed in Annex 8 were inscribed in their respective specific commitments annexed to GATS.

2. The relevant GATS provisions are: Articles VI (1), (2), (3), (5) and (6); VIII (1), (2), (5); the Annex on Financial Services; the Annex on Air Transport Services, paragraphs (1), (2), (3), (4), (6); and the Annex on Telecommunications, paragraphs (1) – (5).

## **PART III**

### **COOPERATION**

#### ARTICLE 808

### **Areas of Cooperation**

1. The Parties shall strengthen and enhance existing cooperation efforts in service sectors and develop cooperation in sectors that are not covered by existing cooperation arrangements, through *inter alia*:

- (a) research and development;
- (b) human resource and professional development and apprenticeship;
- (c) trade in services data management; and
- (d) small and medium enterprises capacity enhancement.

2. The Parties shall foster the development of cooperation in education, healthcare, and tourism.
3. The Parties shall work cooperatively to promote the facilitation of temporary entry of business people in particular, through developing the capacity to grant applications offshore for business entry.

## **PART IV**

### **SPECIFIC COMMITMENTS**

#### **ARTICLE 809**

##### **Market Access**

1. With respect to market access through the modes of supply identified in Article 802 (i), each Party 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 Annex 8.
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 Annex 8, are:
  - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
  - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test (this does not cover measures which limit inputs for the supply of services);
  - (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 810

### **National Treatment**

1. In the sectors inscribed in Annex 8, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>4</sup>
2. A Party may meet the requirement of 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 shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

## ARTICLE 811

### **Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 809 or 810, including those regarding qualifications, standards, registration or licensing matters. Such commitments shall be inscribed in Annex 8.

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

## **PART V**

### **PROGRESSIVE LIBERALISATION AND DEVELOPMENT OF RULES**

#### **ARTICLE 812**

##### **Review of Commitments**

1. In pursuance of the objectives of this Chapter, the Parties shall enter into further negotiations on trade in services within three years from the date of entry into force of this Agreement with the aim of enhancing the overall commitments undertaken by the Parties under this Agreement.
2. In negotiating further commitments in accordance with this Article, the Parties shall recognise the provisions of Article V (1) and (3) of GATS.
3. If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement.
4. If, after this Agreement enters into force, a Party further liberalises any of its services sectors, sub-sectors or activities, it shall consider a request by the other Party for the incorporation in this Agreement of the unilateral liberalisation.
5. If, after this Agreement enters into force, a service previously supplied in the exercise of governmental authority is subsequently supplied on a commercial basis or in competition with one or more service suppliers, the Party concerned shall consider a request by the other Party for the incorporation in this Agreement of new commitments relating to that service.

## ARTICLE 813

### **Schedules of Specific Commitments**

1. Each Party shall set out in a schedule the specific commitments it undertakes under Part IV of this Chapter. With respect to sectors where such commitments are undertaken, each Schedule shall specify:
  - (a) terms, limitations and conditions on market access;
  - (b) conditions and qualifications on national treatment;
  - (c) undertakings relating to additional commitments;
  - (d) where appropriate the time frame for implementation of such commitments; and
  - (e) the date of entry into force of such commitments.
2. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

## ARTICLE 814

### **Modification of Commitments**

By giving three months written notification to the other Party, a Party may modify its commitments. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment required to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in schedules of specific commitments prior to such negotiations. If agreement is not reached, the matter may be referred to arbitration in accordance with Chapter 18.

## ARTICLE 815

### **References to GATS**

All references to GATS in this Chapter are to GATS in effect on the date of entry into force of this Agreement. If, after that date, a Party alters its schedule of specific commitments annexed to GATS, GATS is amended or the results of the negotiations provided for in GATS Articles VI (4), X (1), XIII (2) or XV (1) enter into force, this Chapter shall be amended, as appropriate, by agreement between the Parties.

## ARTICLE 816

### **Preservation of GATS Rights**

This Agreement shall not diminish the scope of any commitment made by either Party under GATS to which the other Party has access.

# **CHAPTER 9**

## **INVESTMENT**

### **PART I**

#### **DEFINITIONS AND SCOPE**

##### **ARTICLE 901**

##### **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 as of the date of entry into force of this Agreement or established, acquired or expanded thereafter and which has been admitted by the latter Party in accordance with its laws, regulations and policies;
- (b) “freely useable currency” means a “freely useable currency” as determined by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund and amendments thereafter, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;
- (c) “direct investment” means a direct investment as defined by the International Monetary Fund under its Balance of Payments manual, fifth edition (BMP 5), as amended;
- (d) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:
  - (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

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

- (e) “permanent resident” means a natural person whose residence in a Party is not limited as to time under its law; and
- (f) “return” means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income.

## ARTICLE 902

### **Application of Chapter**

1. This Chapter shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments.
2. This Chapter shall not apply to laws, regulations or policies governing the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.
3. This Chapter shall not prevent an investor of one Party from taking advantage of the provisions of any law, regulation or policy of the other Party which is more favourable than the provisions of this Chapter.

## **PART II**

### **LIBERALISATION OF INVESTMENTS**

#### **ARTICLE 903**

##### **Scope**

1. This Part applies to measures adopted or maintained by a Party relating to:

- (a) direct investments of investors of the other Party; and
- (b) investors of the other Party,

unless the measure is a measure by that Party affecting trade in services as set out in Article 803 (1).

#### **ARTICLE 904**

##### **Pre-establishment National Treatment**

In the sectors inscribed in Annex 8, and subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party treatment no less favourable than it accords, in like circumstances, to its own investors, with respect to the establishment and acquisition of investments in its territory.

#### **ARTICLE 905**

##### **Denial of Benefits**

Subject to prior notification and consultation, a Party may deny the benefits of this Part to an investor of the other Party that is a juridical person of such Party and to investments of such an investor where the Party establishes that the juridical person is owned or controlled by persons of a non-Party.

## **PART III**

### **POST-ESTABLISHMENT NATIONAL TREATMENT**

#### **ARTICLE 906**

##### **Scope**

This Part applies to measures adopted or maintained by a Party relating to:

- (a) covered investments; and
- (b) investors of the other Party, but only in respect of such investors' management, conduct, operation and sale or other disposition of covered investments,

unless the measure is a measure by that Party affecting trade in services under Article 803 (1).

#### **ARTICLE 907**

##### **Post-establishment National Treatment**

1. Each Party shall accord to covered investments treatment no less favourable than it accords, in like circumstances, to investments in its territory of its own investors, unless otherwise specified in its specific commitments as set out in Annex 8.

2. Each Party shall accord to investors of the other Party treatment no less favourable than it accords, in like circumstances, to its own investors, unless otherwise specified in its specific commitments as set out in Annex 8.



## **PART IV**

### **PROMOTION AND PROTECTION OF INVESTMENTS**

#### **ARTICLE 908**

##### **Scope**

1. Except for Paragraph 2 and Article 914, this Part applies to measures adopted or maintained by a Party relating to:

- (a) covered investments which, if so required, have been specifically approved in writing by the competent authorities concerned of the other Party as being entitled to the benefits of an agreement relating to investments; and
- (b) investors of the other Party, but only in respect of such investors' management, conduct, operation and sale or other disposition of the covered investments referred to in Sub-paragraph (a).

2. Each Party shall accord to:

- (a) investors of the other Party treatment no less favourable than it accords, in like circumstances, to investors of any non-Party; and
- (b) investments of investors of the other Party treatment no less favourable than it accords, in like circumstances, to investments of investors of any non-Party

with respect to measures adopted or maintained by a Party relating to the requirements (if any) that need to be satisfied for investors and investments to receive the benefits of an agreement relating to investments, as referred to in Sub-paragraph (1)(a).

3. Where a juridical person of a Party is owned or controlled by a national or a juridical person of any third country, the Parties may decide jointly in consultation not to extend the rights and benefits of this Part to such juridical person.

4. A juridical person duly constituted or otherwise organised under the law of a Party shall not be treated as an investor of the other Party, but any investments in that juridical person by investors of that other Party shall be protected by this Part.

5. This Part shall not apply to a natural person who is a permanent resident but not a national of either Party where the provisions of an investment agreement between the other Party and the country of which the person is a national have already been invoked in respect of the same matter.

## ARTICLE 909

### **Promotion and Protection of Investments**

1. Each Party shall encourage and promote investments in its territory by investors of the other Party.
2. Each Party shall ensure fair and equitable treatment in its own territory of investments.
3. Each Party shall accord within its territory protection and security to investments.

## ARTICLE 910

### **Most Favoured Nation Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than it accords, in like circumstances, to investors of any non-Party.
2. Each Party shall accord to all covered investments treatment no less favourable than it accords, in like circumstances, to investments in its territory of investors of any non-Party.

## ARTICLE 911

### **Denial of Benefits**

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

## ARTICLE 912

### **Expropriation**

1. Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) the investments of investors of the other Party unless the following conditions are complied with:

- (a) the expropriation is for a public purpose related to the internal needs of that Party and under due process of law;
- (b) the expropriation is non-discriminatory; and
- (c) the expropriation is accompanied by the payment of prompt, adequate and effective compensation.

2. The compensation referred to in Sub-paragraph 1(c) of this Article shall be computed on the basis of the market value of the investment immediately before the expropriation or impending expropriation became public knowledge. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account, where appropriate, the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors.

3. The compensation shall be paid without undue delay, shall include interest at a commercially reasonable rate and shall be freely transferable between the territories of the Parties in a freely useable currency.

## ARTICLE 913

### **Compensation for Losses**

When a Party adopts any measures relating to losses in respect of investments in its territory by persons of any other country owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or other similar events, the treatment accorded to investors of the other Party as regards restitution, indemnification, compensation or other settlement shall be no less favourable than that which the first Party accords to persons of any third country.

## ARTICLE 914

### **Payments and Transfers**

1. Subject to Article 1605, each Party shall, when requested by an investor of the other Party, permit all funds of that investor related to an investment in its territory to be transferred freely and without undue delay in a freely useable currency into and out of its territory.<sup>5</sup> Such funds include the following:

- (a) the initial capital plus any additional capital used to maintain or expand the investment;
- (b) returns;
- (c) proceeds from the sale or partial sale or liquidation of the investment;
- (d) repayments of a claim to money;
- (e) payment for the losses referred to in Article 913; and
- (f) earnings and other remuneration of personnel engaged from abroad in connection with that investment.

2. Unless otherwise agreed by the investor and the Party concerned, transfers shall be made at the market exchange rate prevailing on the date of transfer in accordance with the laws, regulations and policies of the Party that admitted the investment.

3. Notwithstanding Paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and in good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors; or
- (b) ensuring the satisfaction of judgements in adjudicatory proceedings.

## ARTICLE 915

### **Subrogation**

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

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<sup>5</sup> This includes funds of an investor of the other Party that are to be used to establish or acquire an investment in the territory of a Party where such a transfer would be required so as not to nullify or impair a commitment of a Party covered by this Chapter.

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

## ARTICLE 916

### **Access to Dispute Settlement Mechanisms**

1. Each Party shall in accordance with its laws, regulations and policies:
  - (a) provide investors of the other Party who have made investments within its territory and personnel employed by them for activities associated with investments full access to its competent judicial or administrative bodies in order to afford means of asserting claims and enforcing rights in respect of disputes with its own investors;
  - (b) permit its investors to select means of their choice to settle disputes relating to investments with the investors of the other Party, including arbitration conducted in a third country; and
  - (c) ensure the enforcement of any resulting judgments or awards.
2. Nothing in this Article requires a Party to recognise or enforce the judgments or awards of the judicial or administrative bodies of the other Party or of a non-Party.

## ARTICLE 917

### **Settlement of Disputes between a Party and an Investor of the other Party**

1. In the event of a dispute between a Party and an investor of the other Party relating to a covered investment, consultations shall take place between the parties concerned with a view to resolving the case amicably.
2. If the dispute in question cannot be resolved through consultations and negotiations<sup>6</sup>, the dispute may, at the choice of the investor, be:
  - (a) initiated before the Party's competent judicial or administrative bodies, in accordance with the laws and regulations of the Party; or

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<sup>6</sup> The consultations and negotiations should, in principle, continue for three months.

- (b) resolved by an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. If, after the entry into force of this Agreement, a Party enters into an international agreement with a non-Party<sup>7</sup>, that:

- (a) grants investors of that non-Party the right to submit to arbitration a claim relating to a dispute between that investor and the Party relating to an investment; and
- (b) provides for a means to resolve the dispute that is not included in Paragraph 2;

then the investor of the other Party referred to in Paragraph 1 may, at its choice, use that means of resolving the dispute.

4. Once an action referred to in Paragraph 2 or 3 of this Article has been taken, neither Party shall pursue the dispute through diplomatic channels unless:

- (a) the relevant dispute settlement body has decided that it has no jurisdiction in relation to the dispute in question; or
- (b) the other Party has failed to abide by or comply with any judgment, award, order or other determination made by the relevant dispute settlement body.

5. In any proceeding involving a dispute relating to a covered investment, a Party shall not assert, at any stage of proceedings referred to in Sub-paragraph 2 (b) or Paragraph 3, that the investor concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

6. Any arbitral tribunal established under this Article shall, in the event of a dispute related to an alleged breach of an obligation of this Chapter, reach its decision on the basis of the provisions of the present Agreement, as well as applicable rules of international and domestic law.

7. All arbitral awards shall be final and binding on the parties to the dispute.

8. All sums received or payable as a result of a settlement shall be freely transferable in a freely useable currency.

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<sup>7</sup> Excluding any international agreement with the members of the Association of South-East Asian Nations.

9. This Article shall not be construed to allow an investor of a Party to pursue a claim against the other Party in relation to any decision that any foreign investment authority of that Party makes in relation to, or conditions that any foreign investment authority of that Party may have placed on, the establishment, acquisition or expansion of an investment by that investor, or in relation to the enforcement of any such conditions.

## **PART V**

### **MODIFICATION AND REVIEW OF COMMITMENTS**

#### **ARTICLE 918**

##### **Modification of Commitments**

By giving three months' written notification to the other Party, a Party may modify its commitments. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary adjustment required to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in schedules of specific commitments prior to such negotiations. If agreement is not reached, the matter may be referred to arbitration in accordance with Chapter 18.

#### **ARTICLE 919**

##### **Review of Commitments**

1. If, after this Agreement enters into force, a Party enters into any agreement on investment with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement.

2. If, after this Agreement enters into force, a Party further liberalises any of its measures applying to investors or investments, it shall consider a request by the other Party for the incorporation in this Agreement of the unilateral liberalisation.

# CHAPTER 10

## MOVEMENT OF NATURAL PERSONS

### ARTICLE 1001

#### **Objectives**

The objectives of this Chapter are:

- (a) to provide for rights and obligations additional to those set out in Chapter 8 and Chapter 9 in relation to the movement of natural persons between the Parties; and
- (b) to enhance the mobility of natural persons of either Party engaged in the conduct of trade and investment between the Parties, by facilitating temporary business entry and establishing simplified and transparent immigration formalities for business persons.

### ARTICLE 1002

#### **Definitions**

For the purposes of this Chapter:

- (a) “business visitor” means a natural person of either Party who is:
  - (i) a service seller;
  - (ii) an investor of a Party, or a representative of an investor, seeking temporary entry to establish an investment; or
  - (iii) seeking temporary entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sales to the general public;
- (b) “contractual service supplier” means a natural person of a Party who satisfies any requirements under the laws, regulations and policies of the other Party or satisfies any recognition of standards requirements or criteria agreed by the Parties to provide such services in the territory of that Party, and:



- (i) is an employee of a service supplier or a juridical person of a Party not having a commercial presence or investment in the other Party, which has concluded a service contract with a juridical person registered and engaged in substantive business operations in the other Party; or
- (ii) is a national of a Party and employed under an employment contract by a juridical person registered and engaged in substantive business operations in the other Party;

and is seeking temporary entry to provide a service as a manager, executive or specialist;

- (c) “executive” means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision making, and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service or the operation of an investment;
- (d) “immigration formality” means a visa, work permit, or other document or electronic authority granting a natural person of one Party the right to reside or work in the territory of the other Party;
- (e) “intra-corporate transferee” means an employee of a service supplier, investor or juridical person of a Party established in the territory of the other Party through a branch or affiliate, and who is a manager, executive or specialist;
- (f) “manager” means a natural person within an organisation who primarily directs the organisation or a department or sub-division of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor unless the employees supervised are professionals;
- (g) “service seller” means a natural person of a Party who is a sales representative of a service supplier of that Party and is seeking temporary entry to the other Party for the purpose of negotiating the sale of services for that service supplier, where such a representative will not be engaged in making direct sales to the general public or in supplying services directly;
- (h) “specialist” means a natural person within an organisation who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organisation’s service, research equipment, techniques, or management; or a natural person with high-level technical or professional qualifications and skills and experience; and
- (i) “temporary entry” means entry by a business visitor, or an intra-corporate transferee, or a contractual service supplier as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or juridical person which employs that visitor in the visitor’s home country.

## ARTICLE 1003

### **Scope**

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

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

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.

## ARTICLE 1004

### **Short-Term Temporary Entry**

A Party shall, upon application by a business visitor of the other Party who meets its criteria for the grant of an immigration formality, grant that business visitor, through the issue of an immigration formality, the right to temporary entry in the granting Party's territory for a period of up to 90 days.

## ARTICLE 1005

### **Long-Term Temporary Entry**

A Party shall, in accordance with commitments in Annex 8, grant temporary entry to an intra-corporate transferee or a contractual service supplier of the other Party who meets its criteria for the grant of an immigration formality unless there has been a breach of any of the conditions governing temporary entry, or an application for an extension of an immigration formality has been refused on such grounds of national security or public order by the granting Party as it deems fit.

#### ARTICLE 1006

### **Provision of Information**

A Party shall publish or otherwise make available to the other Party such information as will enable the other Party to become acquainted with its measures relating to this Chapter.

#### ARTICLE 1007

### **Immigration Measures**

Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

#### ARTICLE 1008

### **Expeditious Application Procedures**

A Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof.

# **CHAPTER 11**

## **ELECTRONIC COMMERCE**

### **ARTICLE 1101**

#### **Objectives and Definitions**

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 e-commerce alliances.
3. For the purposes of this Chapter:
  - (a) “electronic version” means a document in an electronic format prescribed by a Party, including a document sent by facsimile transmission; and
  - (b) “trade administration documents” means paper forms issued or controlled by the Government of a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

### **ARTICLE 1102**

#### **Customs Duties**

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

#### ARTICLE 1103

### **Domestic Regulatory Frameworks**

1. Each Party shall maintain domestic legal frameworks governing electronic transactions based on the *UNCITRAL Model Law on Electronic Commerce* 1996.
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 1104

### **Electronic Authentication and Digital Certificates**

1. Each Party shall maintain domestic legislation for electronic authentication that:
  - (a) permits parties to electronic transactions to determine the appropriate authentication technologies and implementation models for their electronic transactions, without limiting the recognition of such technologies and implementation models; and
  - (b) permits parties to electronic transactions to have the opportunity to prove in court that their electronic transactions comply with any legal requirements.
2. The Parties shall work towards the mutual recognition of digital certificates at government level, based on internationally accepted standards.
3. The Parties shall encourage the interoperability of digital certificates in the business sector.

#### ARTICLE 1105

### **Online Consumer Protection**

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

#### ARTICLE 1106

### **Online Personal Data Protection**

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

#### ARTICLE 1107

### **Paperless Trading**

1. Each Party shall accept the electronic format 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.

#### ARTICLE 1108

### **Cooperation on E-Commerce**

1. The Parties shall encourage cooperation in research and training activities that would enhance the development of e-commerce, including by sharing best practices on e-commerce development
2. The Parties shall encourage cooperative activities to promote e-commerce, including those that would improve the effectiveness and efficiency of e-commerce.

ARTICLE 1109

**Non-Application of Dispute Settlement Provisions**

Except for Article 1102, Chapter 18 shall not apply to the provisions of this Chapter.

## **CHAPTER 12**

### **COMPETITION POLICY**

#### **ARTICLE 1201**

##### **Objective and Definitions**

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

#### **ARTICLE 1202**

##### **Promotion of Competition**

Each Party shall promote competition by addressing anti-competitive practices in its territory, and by adopting and enforcing such means or measures as it deems appropriate and effective to counter such practices.



## ARTICLE 1203

### **Application of Competition Laws**

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

## ARTICLE 1204

### **Exemptions**

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

## ARTICLE 1205

### **Cooperation and Exchange of Information**

The Parties recognise the importance of cooperation and coordination in achieving effective enforcement outcomes under their respective competition laws. The Parties also recognise the importance of confidentiality in respect of these arrangements. Accordingly, the Parties shall cooperate, where appropriate, on issues of competition law enforcement, including through the exchange of information, notification, consultation, and coordination of enforcement matters that are cross-border in nature.

## ARTICLE 1206

### **Consultations and Review**

1. At the request of either Party, the Parties shall consult with a view to eliminating particular anti-competitive practices that affect trade or investment between the Parties.
2. Within three years of the entry into force of this Agreement, the Parties shall consult in order to review the scope and operation of this Chapter with a view to negotiating amendments to this Chapter that may be necessary to ensure the comprehensive protection in their respective territories of the legitimate commercial interests of businesses of the other Party.
3. In undertaking any consultations in accordance with Paragraph 2, the Parties shall also discuss the desirability of concluding arrangements for cooperation and mutual assistance in competition policy and enforcement, either as amendments to this Chapter or as separate arrangements between their respective competition authorities.
4. Any information or documents exchanged between the Parties in relation to any mutual consultation or review conducted pursuant to the provisions of this Chapter shall be kept confidential. Neither Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party that provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party before such disclosure is made.

## ARTICLE 1207

### **Transparency**

The Parties shall publish or otherwise make publicly available their laws promoting fair competition and their laws addressing anti-competitive practices.

## ARTICLE 1208

### **General**

1. Chapter 18 shall not apply to the provisions of this Chapter.
2. In the event of any inconsistency or conflict between any provision in this Chapter and any provision contained in any other Chapter of this Agreement, the latter shall prevail to the extent of such inconsistency or conflict.

## CHAPTER 13

### INTELLECTUAL PROPERTY

#### ARTICLE 1301

##### **Objective**

1. The objective of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights.
2. “Intellectual property rights” refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, and lay-out designs (topographies) of integrated circuits, rights in plant varieties, and rights in undisclosed information, as defined and described in the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights*.

#### ARTICLE 1302

##### **Observance of International Obligations**

The Parties shall fully respect the provisions of the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights* and any other multilateral agreement relating to intellectual property to which both are parties.

#### ARTICLE 1303

##### **Measures to Prevent the Export of Goods that Infringe Copyright or Trade Marks**

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

## ARTICLE 1304

### **Cooperation on Enforcement**

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

- (a) the notification of contact points for the enforcement of intellectual property rights;
- (b) the exchange, between respective agencies responsible for the enforcement of intellectual property rights, of information concerning the infringement of intellectual property rights;
- (c) policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional fora; and
- (d) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually determined by the Parties.

## ARTICLE 1305

### **Other Cooperation**

The Parties, through their competent agencies, shall:

- (a) exchange information and material on programs pertaining to education in and awareness of intellectual property rights, and to commercialisation of intellectual property, to the extent permissible under their respective laws, regulations and policies; and
- (b) encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, organisations and other entities concerning the protection and development of intellectual property rights with a view to:
  - (i) improving and strengthening the intellectual property administrative systems in areas such as patents examination and trademarks registration;
  - (ii) stimulating the creation and development of intellectual property by persons of each Party, particularly individual inventors and creators as well as small to medium-sized enterprises (SMEs); and
  - (iii) enhancing the capacity of and opportunity for the owners of intellectual property rights to obtain the maximum utilisation and commercial benefits from those rights.

## **CHAPTER 14**

### **TRANSPARENT ADMINISTRATION OF LAWS AND REGULATIONS**

#### **ARTICLE 1401**

##### **Definition**

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 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, service or investment of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

#### **ARTICLE 1402**

##### **Publication**

1. Each Party shall ensure that its laws, regulations, and administrative rulings of general application pertaining to trade in goods, services and investment are promptly published or otherwise made available in such a manner as to enable interested persons from the other Party to become acquainted with them.
2. Each Party shall maintain an official journal or journals and publish any measures referred to in Paragraph 1 in such journals. Each Party shall publish such journals regularly and make copies of them readily available to the public.
3. A Party may comply with Paragraphs 1 and 2 by publication on the Internet.

4. When possible, a Party shall publish in advance any measure referred to in Paragraph 1 that it proposes to adopt and shall provide, where applicable, interested persons a reasonable opportunity to comment on such proposed measures.

5. Each Party shall endeavour promptly to provide information and to respond to questions from the other Party pertaining to any measure referred to in Paragraph 1.

#### ARTICLE 1403

##### **Contact Point**

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

2. Upon request, the contact point shall identify the office responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

#### ARTICLE 1404

##### **Administrative Proceedings**

Each Party shall ensure in its administrative proceedings applying to any measure referred to in Article 1402 that:

- (a) wherever possible, persons of the other Party who are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issues in question;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions before any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

## ARTICLE 1405

### **Review and Appeal**

A Party shall ensure that, where warranted, appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for prudential reasons, regarding matters covered by this Chapter, that:

- (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
- (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
- (c) provide parties to any proceeding with a decision based on the evidence and submissions of record, or, where required by domestic law, the record compiled by the administrative authority; and
- (d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.



## **CHAPTER 15**

### **GOVERNMENT PROCUREMENT**

#### **ARTICLE 1501**

##### **Purpose**

The Parties recognise the importance of government procurement to their economies and the importance of covering government procurement in this Agreement at the earliest opportunity.

#### **ARTICLE 1502**

##### **Establishment of Working Group**

1. A Working Group consisting of government representatives of the Parties having responsibility for government procurement is hereby established.
2. The Working Group shall meet regularly to discuss all relevant issues.
3. The Working Group shall report to the FTA Joint Commission within 12 months of the entry into force of this Agreement with recommendations on the scope for commencing bilateral negotiations to bring government procurement under this Agreement and the coverage of such negotiations.

#### **ARTICLE 1503**

##### **Procurement Principles**

In preparation for the outcome of the negotiations mandated by Article 1502, the Parties shall, to the extent possible, promote and apply transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination in their government procurement procedures.

#### ARTICLE 1504

##### **Exchange of Information on Government Procurement**

The Parties shall, subject to their laws, regulations and policies, exchange information in respect of their government procurement policies and practices.

#### ARTICLE 1505

##### **Dispute Settlement**

Chapter 18 shall not apply to this Chapter unless specifically authorised by the further negotiations mandated by Article 1502.

## **CHAPTER 16**

### **GENERAL EXCEPTIONS**

#### ARTICLE 1601

##### **General Exceptions**

1. For the purposes of Chapters 2 – 7, Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For purposes of Chapters 8 – 10, Article XIV of GATS is incorporated into and made part of this Agreement, *mutatis mutandis*.
3. Article XX (e) – (g) of GATT 1994 is incorporated into and made part of Chapter 9, *mutatis mutandis*.

#### ARTICLE 1602

##### **Security Exceptions**

1. For the purposes of Chapters 2 – 7, Article XXI of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapters 8 - 10, Article XIV *bis* of GATS is incorporated into and made part of this Agreement, *mutatis mutandis*.

## ARTICLE 1603

### **Disclosure of Information**

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

## ARTICLE 1604

### **Balance of Payments**

1. In the case of trade in goods, a Party may, in accordance with GATT 1994 and the *Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, adopt restrictive import measures in order to safeguard its external financial position and its balance of payments.
2. The Party adopting any restrictions under this Article shall initiate consultations with the other Party to review the restrictions adopted by it.

## ARTICLE 1605

### **Restrictions to Safeguard the Balance of Payments**

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments and transfers of funds of any investor of the other Party related to any investment covered by Chapter 9 and international payments and transfers for current transactions<sup>8</sup> related to its specific commitments under Chapter 8. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for stable economic development.
2. The restrictions referred to in Paragraph 1 shall:

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<sup>8</sup> “Current transactions” refers to current transactions as defined by the International Monetary Fund.

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in Paragraph 1;
- (d) be temporary and be phased out progressively as the situation specified in Paragraph 1 improves; and
- (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-Party.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained under Paragraph 1, or any changes therein, shall be promptly notified to the other Party.

5. The Party applying any restrictions under Paragraph 1 shall commence consultations with the other Party in order to review the restrictions applied by it.

## ARTICLE 1606

### **Prudential Measures**

Nothing in this Agreement shall prevent a Party from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service<sup>9</sup> supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

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9 A "financial service" is any service of a financial nature offered by a service supplier of a Party, and includes all insurance and insurance-related services, and all banking and other financial services. An illustrative list of financial services is provided in paragraph 5 of the *Annex on Financial Services* to GATS.

## ARTICLE 1607

### **Taxation Measures**

1. This Agreement shall only grant rights or impose obligations with respect to taxation measures:
  - (a) where a corresponding right or obligation is also granted or imposed by the WTO Agreement; and
  - (b) under Article 912.<sup>10</sup>
2. If there is a dispute described in Article 917 (1) that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 917 shall accept a decision of the Parties as to whether the measure in question is a taxation measure.
3. In the event of any inconsistency relating to a taxation measure between this Agreement and the *Agreement between the Kingdom of Thailand and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion*, done at Canberra on 31 August 1989, the latter shall prevail. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall include representatives of the tax administration of each Party.<sup>11</sup>

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<sup>10</sup> This Sub-paragraph relates to taxation measures having an effect equivalent to expropriation or nationalisation.

<sup>11</sup> Nothing in this Agreement shall be regarded as obliging a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement on the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

## CHAPTER 17

### INSTITUTIONAL PROVISIONS

#### ARTICLE 1701

##### **Establishment of the Free Trade Agreement Joint Commission**

A Free Trade Agreement Joint Commission (FTA Joint Commission) shall be established to ensure the proper implementation of this Agreement and to review periodically the economic relationship and partnership between the Parties. The FTA Joint Commission may meet at the level of ministers or senior officials, as mutually determined from time to time by the Parties. Each Party shall be responsible for the composition of its delegation.

#### ARTICLE 1702

##### **Mandate of the Free Trade Agreement Joint Commission**

1. The FTA Joint Commission shall:
  - (a) review the general functioning of this Agreement;
  - (b) review and consider specific matters related to the operation and implementation of this Agreement;
  - (c) consider any proposal to amend this Agreement;
  - (d) establish, as required, permanent and *ad hoc* subsidiary bodies and refer matters to them for advice and consider matters raised by all subsidiary bodies created under this Agreement;
  - (e) seek advice from non-governmental persons or groups on any matter falling within its responsibilities where this would help the FTA Joint Commission make an informed decision;
  - (f) explore measures for the further expansion of trade and investment between the Parties and identify appropriate areas of commercial, industrial and technical cooperation between relevant enterprises and organisations of the Parties; and

- (g) take such other action as the Parties may mutually determine.
- 2. The FTA Joint Commission shall develop procedures governing the extent to which representatives from the private sector may participate in its deliberations.

#### ARTICLE 1703

### **Meetings of the Free Trade Agreement Joint Commission**

- 1. The FTA Joint Commission shall meet within one year of the date of entry into force of this Agreement and then each year, or as otherwise mutually determined by the Parties.
- 2. The sessions of the FTA Joint Commission shall be held alternately in the territory of each Party.

#### ARTICLE 1704

### **General Reviews**

- 1. The Parties shall undertake a general review at ministerial level of the operation of this Agreement within five years of its entry into force and at least every five years thereafter.
- 2. The conduct of general reviews shall normally coincide with regular meetings of the FTA Joint Commission.



## CHAPTER 18

### CONSULTATIONS AND DISPUTE SETTLEMENT

#### ARTICLE 1801

##### **Scope**

1. This Chapter shall apply to the avoidance and settlement of disputes between the Parties concerning the interpretation, implementation or application of this Agreement except for Chapter 6, Chapter 12 and Chapter 15. In relation to Chapter 11, this Chapter shall only apply to Article 1102.
2. Subject to Paragraph 4, nothing in this Chapter shall affect the rights of the Parties to have recourse to a dispute settlement procedure available under any other international agreement to which they are parties.
3. If a Party decides to have recourse to a dispute settlement procedure under another international agreement, it shall notify the other Party in writing of its intention to bring a dispute to a particular forum before doing so.
4. Once a dispute settlement procedure has been initiated between the Parties with respect to a particular dispute under this Chapter or under any other international agreement to which the Parties are parties, that procedure shall be used to the exclusion of any other procedure for that particular dispute. This paragraph does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.
5. Paragraph 4 shall not apply where the Parties expressly agree to have recourse to dispute settlement procedures under this Chapter and another international agreement.
6. For the purposes of this Article, a dispute settlement procedure under the WTO Agreement shall be regarded as initiated by a Party's request for a panel under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

## ARTICLE 1802

### **Consultations**

1. A Party shall accord adequate opportunity for consultations requested by the other Party with respect to any matter affecting the interpretation, implementation or application of this Agreement.
2. If a request for consultations is made, the Party to which the request is made shall reply to the request within seven days after the date of its receipt and shall enter into consultations within 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations of any matter raised in accordance with this Article.

## ARTICLE 1803

### **Good Offices, Conciliation and Mediation**

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. Good offices, conciliation or mediation may continue while procedures of an arbitral tribunal established in accordance with this Chapter are in progress.

## ARTICLE 1804

### **Request to Establish an Arbitral Tribunal**

1. If the consultations referred to in Article 1802 fail to settle a dispute within 60 days of the date after receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to establish an arbitral tribunal.
2. The request to establish an arbitral tribunal shall identify:
  - (a) the specific measures at issue;

- (b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
- (c) the factual basis for the complaint.

## ARTICLE 1805

### **Establishment of an Arbitral Tribunal**

1. An arbitral tribunal shall consist of three members. Each Party shall appoint a member within 30 days after the receipt of the request under Article 1804. The two members appointed shall, within 30 days after the appointment of the second of them, designate by common agreement the third member.
2. The Parties shall, within seven days after the date of the designation of the third member, approve or disapprove the appointment of that member, who shall, if approved, chair the tribunal.
3. If the third member has not been designated within 30 days after the date of the appointment of the second member, or if one or both of the Parties disapproves the appointment of the third member, the Parties shall consult each other in order to jointly appoint within a further period of 30 days the chair of the arbitral tribunal.
4. An arbitral tribunal shall be regarded as established on the day on which the appointment of the third member of the tribunal has been approved or agreed by the Parties in accordance with this Article.
5. If a member appointed under this Article resigns or becomes unable to act, a successor member shall be appointed in the same manner as prescribed for the appointment of the member being replaced and the successor shall have all the powers and duties of the member being replaced.
6. A person appointed as a member of an arbitral tribunal:
  - (a) shall have expertise or experience in law, international trade, other matters covered by this Agreement or the settlement of disputes arising under international trade agreements;
  - (b) shall be chosen strictly on the basis of objectivity, reliability, sound judgement and independence; and
  - (c) shall be independent of, and not be affiliated with or take instructions from, either Party.

7. A person appointed as chair of an arbitral tribunal shall not be a national of, nor have his or her usual place of residence in the territory of, nor be employed by, either Party nor have dealt with the dispute in any capacity.

## ARTICLE 1806

### **Functions of Arbitral Tribunals**

1. An arbitral tribunal established under Article 1804:
  - (a) shall consult the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory settlement of the dispute;
  - (b) shall make its award in accordance with this Agreement and applicable rules of international law;
  - (c) shall set out, in its award, its findings of law and fact, together with its reasons; and
  - (d) may, in addition to its findings of law and fact, include in its award options for the Parties to consider in implementing the award.
2. The award of an arbitral tribunal shall be final and binding on the Parties.
3. An arbitral tribunal shall attempt to make its decision, including its award, by consensus but may also make such decisions by majority vote.

## ARTICLE 1807

### **Proceedings of Arbitral Tribunals**

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by an arbitral tribunal to appear before it.
2. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall not disclose information submitted by the other Party to an arbitral tribunal which the latter Party has designated as confidential.

3. The Parties shall transmit to the tribunal written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:
  - (a) for the Party which requested the establishment of the arbitral tribunal, within 21 days after the date of the establishment of that tribunal; and
  - (b) for the other Party, within 21 days after the date of the transmission of the written submission of the Party which requested the establishment of the arbitral tribunal.
4. At its first substantive meeting with the Parties, an arbitral tribunal shall ask the Party which requested the establishment of the tribunal to present its submission. At the same meeting, the arbitral tribunal shall ask the other Party to present its submission.
5. Formal rebuttals shall be made at the second substantive meeting of an arbitral tribunal. The Party which did not request the establishment of the tribunal shall have the right to present its submission first. Before the meeting, the Parties shall submit written rebuttals to the tribunal.
6. An arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting or in writing.
7. The Parties shall make available to an arbitral tribunal a written version of their oral statements.
8. The submissions, rebuttals and statements referred to in paragraphs 4 to 6 shall be made in the presence of the Parties. Each Party's written submissions, including any comments on the draft award made in accordance with Article 1809 (2), written versions of oral statements and responses to questions put by an arbitral tribunal, shall be made available to the other Party.
9. An arbitral tribunal shall have no *ex parte* communications concerning a dispute it is considering.
10. At the request of a Party, or on its own initiative, an arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may set. This paragraph does not apply to information and technical advice provided by any person or body as part of the submissions referred to in paragraphs 4 to 6.
11. An arbitral tribunal shall, in consultation with the Parties, regulate its own procedures governing the rights of Parties to be heard and its own deliberations where such procedures are not otherwise set out in this Chapter.

## ARTICLE 1808

### **Suspension or Termination of Proceedings**

1. Where the Parties agree, an arbitral tribunal may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitral tribunal has been suspended for more than 12 months, the tribunal's authority for considering the dispute shall lapse unless the Parties agree otherwise.
2. The Parties may agree at any time to terminate the proceedings of an arbitral tribunal established under this Agreement by jointly notifying the chair of that arbitral tribunal.
3. An arbitral tribunal may, at any stage of the proceedings prior to release of its final award, propose that the Parties seek to settle the dispute amicably.

## ARTICLE 1809

### **Awards of Arbitral Tribunals**

1. Unless the Parties otherwise agree, an arbitral tribunal shall base its award on the submissions and arguments of the Parties and on any information it has obtained in accordance with Article 1807 (10).
2. An arbitral tribunal shall prepare a draft award and accord adequate opportunity for the Parties to review this draft. The Parties may submit to the tribunal written comments on the draft award within 14 days after the date of its receipt. The tribunal shall consider any comments received from the Parties in finalising its award.
3. An arbitral tribunal shall release to the Parties its final award on a dispute within 120 days after the date of its establishment. If the tribunal considers it cannot release its final award within 120 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 award.
4. The final award of an arbitral tribunal shall become a public document within 10 days of its release to the Parties.

## ARTICLE 1810

### **Implementation**

1. The Parties shall promptly comply with an award of an arbitral tribunal.
2. A Party shall notify the other Party in writing of any action it proposes to take to implement an award of an arbitral tribunal within 30 days after the date of the receipt of the final award by the Parties.
3. If a Party considers that prompt compliance with an award of an arbitral tribunal is impracticable, or if a Party which requested the establishment of an arbitral tribunal considers that an action proposed or subsequently taken by the other Party does not implement the award of the tribunal, the Parties shall immediately enter into consultations with a view to developing a mutually acceptable resolution, such as compensation or any alternative arrangement and agreeing on a reasonable period to implement any such resolution. Compensation and any alternative arrangement are temporary measures, neither of which is preferred to full implementation of the original award.

## ARTICLE 1811

### **Compensation and Suspension of Benefits**

1. If:
  - (a) the Party which requested the establishment of an arbitral tribunal has not received any notice from the other Party under Article 1810 (2); or
  - (b) the Parties are unable to agree on a mutually acceptable resolution under Article 1810 (3) within 30 days of the commencement of consultations under Article 1810 (3); or
  - (c) the Parties have agreed on a mutually acceptable resolution under Article 1810 (3) and the Party which requested the establishment of the arbitral tribunal considers that the other Party has failed to observe the terms of such agreement,

the Party which requested the establishment of an arbitral tribunal may at any time thereafter provide written notice to the other Party that it intends to suspend the application of benefits of equivalent effect to the non-conformity found by the tribunal. The notice shall specify the level of benefits that the Party proposes to suspend. The Party which requested the establishment of an arbitral tribunal may begin suspending benefits 30 days after the date on which it provides notice to the other Party.

2. In considering what benefits to suspend under this Article:

- (a) the Party which requested the establishment of an arbitral tribunal shall first seek to suspend the application of benefits in the same sector or sectors as affected by the matter that the tribunal has found to be inconsistent with this Agreement;
- (b) the Party which requested the establishment of an arbitral tribunal may suspend the application of benefits in other sectors if it considers that it is not practicable or effective to suspend the application of benefits in the same sector; and
- (c) the Party which requested the establishment of the arbitral tribunal shall aim to ensure that the level of suspension of benefits is of equivalent effect to the non-conformity found by the tribunal.

Any suspension of benefits under this Article shall be temporary and shall only be applied until such time as the Party that must implement an arbitral tribunal's award has done so, or until a mutually satisfactory solution is reached.

3. If the Party complained against considers that:

- (a) the level of benefits that the other Party has proposed to suspend under paragraph 2 is excessive; or
- (b) it has eliminated the non-conformity found by the tribunal

it may, within 30 days after the other Party provides notice under Paragraph 1, request that the tribunal be reconvened to consider this matter. The Party complained against shall deliver its request in writing to the other Party. The tribunal shall reconvene within 30 days after delivery of the request to the other Party and shall present its determination to the Parties within 90 days after it reconvenes. If the tribunal determines that the level of benefits proposed to be or actually suspended is excessive, it shall determine the level of benefits it considers to be of equivalent effect to the non-conformity found by the tribunal, adjusted to reflect any loss sustained by a Party as a result of excessive suspension.

4. The compliance tribunal's award shall be final and binding on the Parties.

## ARTICLE 1812

### **Expenses**

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



## **CHAPTER 19**

### **FINAL PROVISIONS**

#### **ARTICLE 1901**

##### **Headings**

The headings of the Chapters and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

#### **ARTICLE 1902**

##### **Annexes and Footnotes**

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

#### **ARTICLE 1903**

##### **Amendments**

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

#### ARTICLE 1904

##### **Application**

Each Party is fully responsible for the observance of all provisions in this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities.

#### ARTICLE 1905

##### **Association with the Agreement**

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

#### ARTICLE 1906

##### **Consultations on Inconsistencies with other Agreements**

If either Party considers there is any inconsistency between this Agreement and any other agreement to which both Parties are parties, the Parties shall consult each other with a view to finding a mutually satisfactory solution.

#### ARTICLE 1907

##### **Preferences under other Agreements**

1. Except for Article 908 (2), Article 917 (3) and Article 1605, nothing in this Agreement shall be regarded as obliging a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or any future customs union, free trade area, free trade arrangement, common market, monetary union or similar international agreement or other similar forms of bilateral or regional cooperation to which either of the Parties is or may become party; or as preventing the adoption of an agreement designed to lead to the formation or extension of such a union, area or arrangement or market.

2. Where, by virtue of the Annex on Article II Exemptions to GATS, a Party is exempt from the obligations of Paragraph 1 of Article II of GATS in relation to an agreement or arrangement with a non-Party, nothing in this Agreement shall be regarded as obliging that Party to extend to the other Party the benefit of any treatment, preference or privilege arising from such agreement or arrangement. This Paragraph applies whether or not the treatment, preference or privilege under that agreement or arrangement would itself be subject to the obligations of Paragraph 1 of Article II of GATS except for the Annex on Article II Exemptions to GATS.

#### ARTICLE 1908

### **Termination of 1979 Trade Agreement**

*The Trade Agreement Between the Government of the Kingdom of Thailand and the Government of Australia*, done at Bangkok on 5 October 1979, shall terminate on the day of entry into force of this Agreement.

#### ARTICLE 1909

### **Financial Provisions**

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the laws, regulations and policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.

#### ARTICLE 1910

### **Entry into Force, Duration and Termination**

1. This Agreement shall enter into force 30 days after the date on which the Parties have notified each other in writing that their respective internal procedures for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force until one Party gives written notice of its intention to terminate it, in which case this Agreement shall terminate twelve months after the date of the notice of termination.

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

DONE in duplicate at Canberra, this 5th day of July, two-thousand and four, in the English language.

For the Kingdom of Thailand

For Australia

Mr. Watana Muangsook

Mr. Mark Vaile

Minister of Commerce

Minister for Trade

