THE IDEAL U.S.-U.K. FREE TRADE AGREEMENT

A Free Trader's Perspective

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Preamble

This paper endeavors to describe the principles that should be reflected—as well as the substantive issues, elements, and provisions that should be included—in what free traders would consider the ideal free trade agreement between the United States and the United Kingdom. Immediately, conflict exists.

Real free traders may consider the notion of an ideal free trade agreement oxymoronic. After all, real free traders are most concerned about eliminating domestic barriers to trade, whereas trade agreement negotiators consider those same barriers to be assets. Free traders seek the removal of domestic barriers, regardless of whether other governments promise to do the same; we understand that the primary benefits of trade are the imports we obtain, not the exports we give up. The benefits of trade are measured by the value of imports that can be purchased for a given unit of exports—the more, the better. The benefits of unimpeded access to the wares produced and services provided by people in other countries include greater variety, lower prices, more competition, better quality, and the innovation that competition inspires.

Free trade is a condition characterized by the absence of trade barriers. Establishing the most important conditions for free trade—the elimination of domestic barriers—requires no formal agreements between or among governments. It is misguided to believe that the economic freedom of people living in one sovereign nation should depend on the consent of a foreign government. But the benefits that accrue to producers, workers, consumers, and taxpayers when their own government eliminates or reduces its own trade barriers—regardless of whether a foreign government agrees to do the same for its citizens—are ample and well-documented.

The stories behind the compelling 20th-century economic turnarounds in places such as Hong Kong and Singapore, Australia and New Zealand, Chile and Mexico, and China and India have in common the commitments of those governments to deep and broad unilateral

reforms. Those examples and others notwithstanding, trade liberalization throughout history—and especially over the past 85 years—has followed a model best described as "mercantilist reciprocity." Although economists tend to appreciate that trade enables us to specialize, and that by specializing we can produce and thus consume more, trade policy is less informed by economics than it is shaped by matters of political economy.

The primary architecture that enabled the world to achieve massive reductions in tariffs and other trade barriers since the end of World War II was built around this idea: because of the political costs to exposing one's industries to foreign competition, negotiators agreeing to that outcome would have to receive compensation in the form of better foreign market access for their exporters to balance the domestic scorecard. Although it is incongruous—even intellectually dishonest—to conduct trade negotiations premised on the idea that one's barriers are assets to spend sparingly and only if exchanged for export market access, the fact is that between 1947 and 1994 average global tariffs fell from 40 percent to 4 percent. At the risk of spinning Adam Smith in his grave, mercantilist reciprocity has delivered a healthy dose of freer trade.

Historically, free trade agreements have not been about "free trade" per se. These deals are better characterized as managed trade agreements because they tend to simultaneously liberalize, divert, and stymie trade and investment flows. Whereas some parts of these agreements clearly reduce barriers, other provisions work to insulate incumbents and the status quo from dynamic, competitive forces.

In 2016, the Cato Institute published a chapter-by-chapter assessment of the Trans-Pacific Partnership (TPP) agreement from a free trader's perspective. Most of the chapters were deemed to be at least moderately trade liberalizing, but some were found to be protectionist. In the end, the authors found that—despite its shortcomings—the agreement was "net liberalizing," and they were able to lend their endorsement to the pact, concluding that free traders who could refrain from making the perfect the enemy of the good should be able to support the TPP.

It is with that critique in mind—by grading each TPP chapter for what it achieved and what it would have had to achieve in order to receive a perfect free trade score—that we approach the current endeavor. But instead of evaluating something that has already been created, identifying its virtues and flaws and rendering judgment, here we are starting with

a tabula rasa with the goal of drafting the ideal free trade agreement from the free trader's perspective.

This paper is intended to serve several related purposes. First, it is to persuade policymakers and the public in both the United States and the United Kingdom that it is in their respective national interests to enter into a comprehensive bilateral trade and investment agreement. Specifically, the goal is to establish that the type of agreement that will have the greatest positive effect on the economies of both countries is one that removes border barriers and behind-the-border barriers to trade across all sectors of both economies without exception.

Second, this paper is intended to provide the intellectual foundation for what limited-government, free-market supporters would consider the ideal free trade agreement (FTA). Third, and ultimately, the objective is to produce the text—the specific language, terms, and provisions—of an FTA that would be more "liberalizing" than any other FTA in the world, and that would be attractive and open to other countries to join.

In the sections that follow, we will (a) describe the various kinds of FTAs in force today, (b) explain why certain provisions must be included and why others must be avoided in a U.S.-U.K. FTA, (c) offer a summary of the kinds of reforms that an ideal FTA would entail, and, finally, (d) include a rough approximation of the actual language of this ideal FTA.

Why a U.S.-U.K. Free Trade Agreement?

At the outset, it should be made clear that free trade and FTAs are not the same thing. Free trade is about the freedom of people to transact as they wish, when they wish, with whom they wish, and without politicians and bureaucrats as gatekeepers. Free trade is about removing impediments that benefit some at the expense of others so that each of us individually has the fullest battery of choices to decide how best to use our own resources.

FTAs are really more about managed trade, which often includes labyrinthine rules intended to distribute particular benefits to specific interests. In some respects, FTAs give free trade a bad name. However, despite their flaws, FTAs have helped reduce domestic impediments to trade, expand our economic freedoms, and lock in positive reforms. Over the years, FTAs have delivered freer trade.

Even though liberalization is beneficial if undertaken without regard to others' reforms, the economic benefits can be much greater if liberalization is mutual. Agreements that remove more tariffs, abolish more market-distorting subsidies, dismantle discriminatory regulations that serve to protect incumbent firms at the expense of society, and, in the process, lock in more countries to those commitments can be more liberalizing than a single country committing to reform unilaterally. Formal commitments between and among governments can prevent protectionist backsliding in a way that unilateral reforms do not. Accordingly, trade agreements can and have played a constructive role in the process of trade liberalization.

But reciprocity-based negotiations are not costless. First, reciprocal negotiations reinforce the notion that import barriers are assets to be dispensed with only in exchange for better market access abroad. The idea that reforms to eliminate barriers already under consideration might be viewed as desirable by current or prospective negotiating partners can change the perception of those barriers from burdensome liability to negotiating chit. That misconception can retard the liberalization process, even in countries that may already have been inclined toward reform.

Second, a country's reform efforts could be stunted through negotiations with countries that are less ambitious about liberalization. Instead of 100 percent unilateral reduction in tariffs by one ambitious government, the result might be a 25 percent reduction—the negotiating partner's red line—for both.

Third, although agreements might help consolidate and buffer domestic reforms from subsequent political pressures to backslide, negotiations could cause countries to recoil from reforms they might otherwise undertake. The same can be said about the concept of a "single undertaking," which is trade parlance for the typical framework under which trade deals are negotiated. It means that nothing is agreed until everything is agreed. It means that an industrial market access agreement is conditioned upon agreement on trade remedies that is conditioned upon agreement on intellectual property, and so on. It means that areas that have agreement to move forward and liberalize today cannot be liberalized until the slowest, most politically fraught items on the agenda are agreed. It means lost time and opportunity cost.

The argument supporting a single undertaking is predicated on the idea that by suspending agreement until the end, greater scope exists for negotiating tradeoffs to facilitate a more balanced final outcome. History suggests, however, that this approach leads to interminable negotiations, lost time, and significant opportunity costs (see, for example, the Doha Round).

Many good reasons exist to negotiate and conclude a bilateral trade agreement between the United States and the United Kingdom. One of the best reasons is that it affords two of the world's largest economies—both deeply committed to the institutions of free-market capitalism and the rule of law—the opportunity to break new ground and pioneer the rules of a genuinely liberalizing 21st-century trade agreement.

Former U.S. president Barack Obama used to warn that if the United States didn't ratify the TPP, the Chinese would become the primary architects of the rules of trade. Although that is a bit hyperbolic, there should be no doubt of the existence of an ongoing competition among governments to create trade rules that become the standards for future agreements. Oftentimes, those rules advantage particular commercial interests in particular countries. At present, dozens of FTAs are in various stages of negotiation around the world. In many respects, each is a laboratory for experimenting with creative solutions to some of the more vexing forms of protectionism, while some are creating precedents for heavy-handed governance protocols.

The rules that endure and serve as the global standard should be simple, fair, transparent, and efficacious. In other words, they should reflect the primacy and efficiency of free markets and free trade.

What Kind of Free Trade Agreement?

It is one thing to support and advocate the merits of a bilateral U.S.-U.K. free trade agreement, but what exactly should a meritorious agreement include? Ideally, the language would be short, sweet, and unequivocal: "There shall be free trade among the Parties." Regrettably, in a world of increasing levels of services trade and nontariff barriers, that free trade mantra does not suffice to address the complex challenges of many modern forms of protectionism.

The whole point of trade is to expand the size of the market to enable greater and more refined levels of specialization, and economies of scale. Reducing tariffs and other border barriers to enable goods and services to cross frontiers is one way—the traditional, textbook way—to expand the size of the market. Remarkably, these kinds of barriers are still formidable in some manufacturing and agricultural sectors of rich countries. However, integration and market expansion will remain hindered if the laws and regulations governing commerce differ between or among the countries that reduced their border barriers.

Some degree of harmonization of product standards, equivalence of regulations, similarity of intellectual property regimes, and coherence among other domestic frameworks that govern or affect commerce is also necessary to expand the "effective size" of the market, provided that this "harmonization" is around pro-competitive and not anti-competitive standards and rules. The latter form of harmonization would be profoundly wealth destructive even as costs of differences would be reduced. It is this latter form of market expansion that has made the pursuit of modern trade agreements so contentious and their terms so controversial.

Not long ago, most products were produced in a single country and selling those products in foreign markets involved exporting from one location to an unaffiliated importer abroad. The kinds of trade barriers that concerned foreign producers, exporters, and importers were border barriers, such as tariffs and slow customs clearance procedures, which could increase the costs of their transactions. Minimizing discrimination against imports mostly required addressing protectionism at the border only.

Revolutions in communications and transportation—along with continuous reductions in tariffs throughout the second half of the 20th century—spurred a proliferation of cross-border investment and the emergence of transnational production and value chains. These developments changed the complexion of international competition. With products and services being created and delivered in multiple countries and with companies setting up operations abroad and competing directly with incumbent domestic firms, the scope for discrimination expanded. Or to be more accurate, discrimination in legal and regulatory environments became more noticeable. No longer was protectionism perceived as just a problem of border barriers. It now lurked in national regulations, performance requirements, buy-local provisions, investment benchmarks, regulatory standards, intellectual property laws, and other domestic laws, regulations, and rules.

Accordingly, modern trade agreements have expanded coverage in efforts to prevent, mitigate, and discipline these more hidden forms of discrimination. But in so doing, the terms of trade agreements have occasionally encroached into areas of domestic policymaking space, generating resistance amid concerns that bundling commitments in international trade agreements might serve to circumvent domestic regulatory and legal processes.

The ideal free trade agreement from a free trader's perspective is one that forecloses governments' access to discriminatory protectionism and obligates the parties to refrain from backsliding. It accomplishes maximum market barrier reduction and enables maximum

market integration, while simultaneously preserving national sovereignty to legislate and regulate in ways that do not discriminate against imported goods, services, and capital.

Over the past two decades, the United States has developed and refined its approach to bilateral and regional trade agreements. Although no formal "Model FTA" exists, as does a formal bilateral investment treaty, U.S. FTAs contain a standard package of provisions that has remained fairly consistent over time. The precise contours of these standard features shift with changes in the balance of political power in and between Congress and the White House, have shifted during the Trump presidency, and will very likely shift again with the new Congress in January 2019. But by and large, the core elements have remained fairly consistent. Congressional objectives articulated in the current "trade promotion authority" language provide the most comprehensive view of the standard features expected in a U.S. free trade agreement.

The United Kingdom, on the other hand, has no recent independent experience of its own negotiating FTAs, having relinquished autonomy over trade policy to the European Union (EU) more than four decades ago. As the United Kingdom prepares to repatriate its trade policy decisionmaking in 2019, the government has many issues to consider, including whether it wishes to pursue free trade agreements and, if so, with whom, how quickly, how deeply, and how exclusively.

Trade agreements come in all shapes and sizes. In broad terms, the substantive provisions of most FTAs tend to fall into one of two categories: liberalization or governance. Provisions in the liberalization basket are typically obligations assumed by the parties to reduce and constrain their own protectionism. Explicit tariff reductions, facilitation of customs clearance procedures, and commitments to open services markets to foreign participants are among the kinds of obligations assumed in trade agreements that fall into the category of liberalization.

Governance provisions—while included in trade agreements ostensibly to constrain protectionism—often establish the conditions under which governments can engage in actions that protect domestic industry. Governance provisions often require the establishment of rules, regulations, and regulators, who are susceptible to the arguments of actors with economic interests in the outcomes of their regulatory decisionmaking. Although governance provisions affect trade, they do not necessarily lower trade barriers—and sometimes may even raise them.

Commencement of U.S.-U.K. FTA negotiations would present a fine opportunity to lay the groundwork for an ideal, model, 21st-century agreement that maximizes economic benefits and is open to other countries to join. Keeping in mind the distinction between liberalization and governance can help guide the process of creating the ideal FTA. In short, the liberalization should be maximized and the governance minimized.

Core Elements of the Ideal Free Trade Agreement

The core provisions common to all trade agreements—and essential to the ideal U.S.-U.K. FTA—concern market access for goods, services, and investment. The ideal FTA provides for the elimination of tariffs as quickly as possible on as many goods as possible and to the lowest levels possible. It should limit the use of so-called trade remedy or trade defense measures. It should open all government procurement markets to goods and services providers from the other party. It should open all sectors of the economy to investment from businesses and individuals in the other party. It should open all services markets without exception to competition from providers of the other party. It should ensure that the rules that determine whether products and services are originating (meaning that they come from one or more of the agreement's parties) are not so restrictive that they limit the scope for supply chain innovations. Those rules should reflect the fact that globalization has made it difficult—and sometimes arbitrary—to define a product's origin. Because of cross-border investment and global supply chains, the DNA of products and services is very difficult to trace nowadays, and that is good. Finally, the ideal agreement should simplify, streamline, and make transparent all administrative procedures governing customs clearance for goods and the admission of all qualifying persons for the purpose of conducting business services.

In addition to those free-market requirements, the ideal FTA must also include rules governing e-commerce. Digital trade—data flows that are essential components in the provision of goods and services in the 21st century—must remain untaxed and protected from misuse and abuse. Rules that prohibit governments from imposing localization requirements or any particular data architectures that reduce the efficacy of digital services should be included, and obligations should be imposed on entities to ensure data privacy, consistent with the requirement that data flow as smoothly as possible.

When border barriers come down, the potentially protectionist aspects of regulation and regulatory regimes become more evident. Certainly, when businesses have to comply with

two sets of regulations to sell in two different markets, it limits their capacity to realize economies of scale and reduces their capacity to pass on cost savings in the form of lower prices or reinvestment.

If those regulations are comparable when it comes to achieving the same social outcomes—consumer safety, product reliability, worker safety, environmental friendliness—there may be scope to require businesses to comply with only one set. A regulatory cooperation mechanism to promote mutual recognition would be a useful innovation, as a means to reducing business costs (provided no deep cultural aversion or science-based reason exists for considering one regulation better than the other and worth the greater cost). It would not have to be fully functioning as part of the FTA upon signing, but including basic elements that can be developed later would be useful. However, for financial and certain other services, sophisticated arrangements for mutual recognition and the reliance on the other party's rules and enforcement would operate from day one.

As to regulatory barriers, keep in mind that the World Trade Organization (WTO) already has extensive and effective disciplines in place. Protectionist tax and regulatory measures already violate core provisions of the General Agreement on Tariffs and Trade (GATT), as well as several other WTO agreements.

Finally, the rules of the ideal FTA must be enforceable. What's the point of a trade agreement if its terms are just suggestions? To make sure governments keep their promises, trade agreements should have a binding and enforceable dispute settlement mechanism, to ensure that the agreement is followed. That mechanism would not be a true court, with the power to order governments to comply. Rather, the standard mechanism used in most trade agreements—with recourse to a third-party adjudicator for a ruling and then self-enforcement through authorized suspension of the trade agreement obligations—is sufficient.

Some other common FTA provisions are—to some extent—superfluous, because the WTO already has rules in these areas that work well enough. In the Tokyo Round, the GATT negotiators developed rules for product standards and regulations, and then in the Uruguay Round they added new rules on food safety regulations. The resulting Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures have seen extensive litigation in recent years, yielding a substantial body of jurisprudence to rely on to understand their boundaries and role.

Those disputes make clear that the impact of these provisions has been limited in cases where there are political or cultural sensitivities. But the many cases in which responding parties have complied with rulings against them demonstrate the value of these agreements. There is the possibility of improving some of these rules, and perhaps more importantly subjecting them to a more effective dispute settlement mechanism than exists at the multilateral level. In addition, given difficulties in the WTO and the potential for members to exit, ensuring that WTO disciplines are legally enforceable and that the provisions of the agreement can stand alone—whatever the future of the WTO—has some independent value.

Some other common free trade agreement provisions simply don't belong in free trade agreements. Their inclusion is based on successful lobbying from particular interest groups, whether businesses or nongovernmental organizations.

The most prominent example from the business side is overly protective intellectual property rules. Economists generally agree on the merits of free trade, but widespread disagreement exists on a number of aspects of intellectual property protection as carried out in trade agreements, such as the length of copyright terms. And even more controversially, the EU has pushed for so-called geographical indication protections, which many view as simple protectionism for its farmers.

Trade agreements now have established rules in these and other areas of intellectual property, but it is not even clear that those rules are always economically beneficial. It is important that intellectual property rules protect what is actually intellectual property and do not go beyond that or create rights where none actually exist.

On the other side of the political spectrum, nongovernmental organizations have used trade agreements as a vehicle to argue for provisions on labor rights protections and environmental protections. That situation has expanded the scope of trade agreements far beyond traditional trade and commercial issues, raising concerns from many on the right. The scope and reach of labor laws and environmental protections are a controversial domestic policy issue, and the use of international agreements to create a one-size-fits-all solution in these areas is problematic.

Furthermore, the United States and the United Kingdom have open, transparent, and free market–oriented economies. But if a U.S.-U.K. FTA is to be open to other countries, it is useful to set it up in a way that deals with issues that may arise down the road.

Other countries' economies are less open and have more state intervention; therefore, it is worth having the United States and the United Kingdom work out rules in this FTA that could apply to others who join later. Examples in this regard are transparency, the behavior of state-owned enterprises, and government regulations that are anti-competitive (anti-competitive market distortions). The United States and the United Kingdom should be able to agree to very high standards in these areas, standards that other parties might not reach. And then through the open accession clause, parties that wanted to reap the benefits of this agreement would have to accept these disciplines.

The United States and the United Kingdom are generally very transparent with their legislation and regulation. But in many other countries, it can be hard to know even what laws and regulations apply and how they will be implemented. Guidelines for making these domestic processes more transparent are therefore useful.

And some countries still rely on state-owned enterprises for a significant part of their economic activity. Defining these entities, and requiring them to act in a nondiscriminatory and commercial manner, can push them toward more market-oriented practices. The TPP was a first step in this direction, and a U.S.-U.K. FTA should push further.

Summing up, the ideal FTA is one that removes all barriers to trade in goods and services, opens up all sectors of the economy to investment, and, ultimately, goes as far as possible to remove all administrative impediments to integration of the economies of the parties without encroaching on the sovereignty of governments to pass laws and regulate in the public interest in ways that do not discriminate against foreign goods, services, and companies.

In practical terms, that means that the ideal agreement will result in the following:

- Zero tariffs on all goods (agricultural commodities, primary industry resources, and manufacturing industry goods);

- Zero discriminatory nontariff barriers, which means no discrimination by either party in the content or exercise of the laws, regulations, or practices affecting the provision of services of either party, including no restrictions on the entry of businesspeople in the conduct of the provision of business services;

- Zero restrictions on competition for government procurement;

- Zero restrictions on foreign direct investment in the economy;

- Zero restrictions on cross-border data flow;

- Elimination to the fullest extent possible of impediments to expeditious customs clearance procedures for both imports and exports;

- Preclusion of the adoption of antidumping or safeguard measures between or among parties; and

- Strict prohibitions against the use of nontariff barriers, such as performance requirements, restrictions based on scientifically unsubstantiated public health and safety concerns, and restrictions based on national security concerns that fail to meet certain minimum standards.

What this means substantively is that, without the need to articulate exceptions and carve-outs, which are so common in other agreements, the U.S.-U.K. FTA can be shorter and simpler, and its provisions can be covered in fewer chapters. We see a need for 18 substantive chapters in the ideal U.S.-U.K. FTA (compared with 17 in the Australia-Singapore agreement, 24 in both the U.S.-Korea and U.S.-Chile agreements, and 30 in both the TPP and the EU-Canada Comprehensive and Economic Trade Agreement).

Summary of the Chapters and Provisions of the Ideal FTA

Chapter 1. Initial Provisions and National Treatment

Chapter 1 establishes the structure of the agreement, determines how it relates to the obligations of the parties under other trade agreements, and provides general and technical definitions. The United States and United Kingdom (and, presumably, any potential future members) already have obligations to each other as World Trade Organization (WTO) members. The provisions in this chapter acknowledge that the U.S.-U.K. free trade agreement (FTA) is sensitive to those obligations and does not intend to create any new obligations that would be inconsistent with those agreements. Parties have recourse to consultations with other parties if they believe inconsistencies exist.

The WTO enshrines the principles of "most-favored nation" (all trade liberalization by a member country should apply on a nondiscriminatory basis to all other members) and "national treatment" (foreign entities and their products and services should be accorded the same treatment under law as domestic entities and their products and services are accorded). However, that institution has long recognized that some members might wish to pursue deeper and broader liberalization outside the WTO. As long as certain core conditions are met—especially that the liberalization between or among the countries party to the agreement applies to substantially all of their trade and that the agreement does not raise barriers to external trade—these preferential (bilateral or regional) agreements are permitted.

This chapter establishes that the parties will extend national treatment to the goods and services of the other party under the laws and regulations of all levels of government. This fundamental principle is reflected in all trade agreements. It also establishes that the parties agree to refrain from using their respective antidumping laws against entities exporting from

the other parties and to exempt the other parties from any remedies that might be imposed pursuant to domestic safeguards cases.

Chapter 2. Market Access for Goods

This chapter establishes the basic rules for trade in goods between the parties. The parties commit to eliminating tariffs and tariff-rate quotas (TRQs)—upon entry into force of the agreement—on imports of all goods from all other parties that meet the origination requirements. Limited exceptions from the requirement of no tariffs and no TRQs upon entry into force will be granted by way of publication of party-specific annexes. Each party will list products (by Harmonized Tariff Schedule code) that will continue to be assessed with tariffs subject to the following limitations: (a) the aggregate import value of the listed products cannot exceed 10 percent of the total value of imports from the parties in calendar year 2018 and (b) tariffs will go to zero for all products on the list within 10 years of entry into force.

This chapter also (a) prohibits export restrictions and "performance requirements" as conditions of reducing import tariffs and (b) establishes rules on import and export licensing to ensure that such programs operate transparently and in a nondiscriminatory manner and that they do not constitute some form of disguised protectionism.

Additionally, this chapter limits any administrative fees and formalities (e.g., customs fees) associated with importation or exportation to the approximate cost of the services rendered and commits the parties to publishing promptly any changes to the rules, regulations, and procedures governing the importation or exportation of goods.

Chapter 3. Rules of Origin and Origin Procedures

Chapter 3 establishes the rules for customs authorities to determine whether an imported good "originates" within the free trade area, qualifying it for the preferential treatment afforded under the agreement. Generally, a product is considered originating if it was wholly made within the region (in the countries party to the agreement), or if it was significantly transformed within the region from imported materials and components, or if the relative value of originating materials and manufacturing performed in the region constitutes a large enough percentage of the product's value.

Conceptually, rules of origin are necessary in preferential trade agreements because, by definition, without such rules there would be no way to distinguish qualifying from nonqualifying goods. Rules that permit greater use of nonoriginating inputs or apply broader definitions of what constitutes product transformation tend to be more trade liberalizing than more proscriptive rules, which impose greater restrictions on qualification for the agreement's preferential tariff rates.

In today's global economy, strict rules of origin impede the operations of more diversified supply chains and can act to limit competition to the benefit of incumbent producers. They increase the likelihood and cost of trade diversion, which occurs when less efficient producers are chosen simply for the tariff advantages they receive.

Moreover, complicated rules of origin tend to generate higher compliance and verification costs, which erode the benefits of preferential duties causing importers to simply forgo their claims to preferences. So while parties to a preferential agreement might want to make sure that their entities are benefiting the most from the deal's provisions, if the origin rules are too restrictive, fewer will choose to incur the costs of complying with the qualification procedures and forgo preferential access altogether, negating the benefits that the deal was intended to deliver.

The most recent trade agreement to which the United States was a party—the Trans-Pacific Partnership (TPP)—included rules of origin that were generally more liberal than previous U.S. trade agreements. Whereas the average content origination threshold in earlier U.S. agreements was roughly 35 percent, the threshold in the TPP was about 30 percent. Origination requirements vary across products or sectors and some, such as chemicals, apparel, and automobiles, are subject to much higher thresholds, but they were about 5 percentage points lower across the board in the TPP than in other U.S. FTAs.

The TPP's rules of origin content requirements for automobiles are between 35 percent and 45 percent, which is significantly more liberal than those of the North American Free Trade Agreement (NAFTA), which are about 62.5 percent. The Trump administration seems to be reversing course on this trend and is seeking much more restrictive rules in the NAFTA renegotiation.

For the ideal U.S.-U.K. FTA, we are requiring a minimum local content value threshold of 25 percent and requiring the product in question to be produced or substantially transformed

(in accordance with the World Customs Organization's definition of "substantial transformation") in order to obtain originating status.

Chapter 4. Customs Administration and Trade Facilitation

Studies conducted by economists at the World Bank and elsewhere have found that border delays constitute significant barriers to trade. The purpose of having rules in this area is to ensure that customs procedures facilitate—and do not inhibit—trade by maximizing predictability, consistency, and transparency to the rules governing the clearance of goods at the border. The provisions are intended to reduce transaction costs by reducing administrative barriers to trade. Moreover, opaqueness of customs processing and clearance procedures creates greater scope for corruption, which also raises the costs and reduces the benefits of trade.

Recognizing that time in transit is a trade barrier, this chapter mandates maximum time limits for shipment processing at borders. Customs authorities are required to release all express shipments within 6 hours of document submission and to release all shipments within 48 hours of arrival. Modern communications and tracking technology make it possible to expedite the process of moving goods across borders and make it easier to detect customs evasion and corruption.

The chapter includes language requiring customs authorities to respond expeditiously to requests for information, including the issuance of advance product classification rulings requested by importers. It requires that governments publish, and make available to importers and exporters, customs laws and procedures, and that automated systems be available to traders to facilitate classification, valuation, and customs clearance procedures.

Among the liberalizing provisions of this chapter is one that prohibits customs duties on express shipments valued at or below $999.

Chapter 5. Cross-Border Trade in Services

In the 23 years since the WTO's General Agreement on Trade in Services (GATS) took effect, very little enforceable services liberalization has been achieved globally. The GATS schedule

follows a "positive list" approach, which means that only the sectors selected and listed by the parties are required to liberalize. For most parties, only a few services industries were on the list.

Subsequently, attempts to secure stronger commitments in the Doha Round failed, and efforts to push those commitments forward as part of the WTO Trade in Services Agreement have floundered.

By adopting a so-called negative list approach to liberalization, the U.S.-U.K. FTA would commit the parties to much greater openness to competition in their services industries than was accomplished under GATS. The negative list approach means that the parties commit to full liberalization of every service sector that has not been carved out as a "nonconforming measure," which is essentially an exception to the general rule. The U.S.-U.K. FTA permits limited nonconforming measures, which means—for example—that U.S. maritime services and commercial airline services industries, which have languished in inefficiency for decades behind protectionist walls, likely would be opened to competition.

The U.S.-U.K. FTA forbids any "local presence" requirements, conditions that require service suppliers of another party to have an office or store or any form of presence to qualify as a cross-border supplier of services. It also requires each party to ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.

A specific instance of cross-border trade in services can be found with respect to financial services in Annex I, as this is a novel and groundbreaking area. It is anticipated that other similar schedules, for other professional services such as law and accounting, would be created in due course on a similar basis.

Chapter 6. Regulatory Coherence

The divergence of regulations and regulatory practices between countries, while expected and understandable, can also serve to increase costs and frustrate market integration. Sometimes, those divergences mask protectionism. Clearly, when businesses must comport with two sets of regulations to sell in two different markets, it limits their capacity to realize economies of scale and reduces the scope for passing on cost savings in the form of lower prices or new investment.

Many regulations across countries are intended to achieve the same kinds of objectives, such as consumer safety, worker safety, or environmental friendliness. Sometimes, the differences in requirements—a minimum length of a washing machine's electrical cord of one meter versus three feet, for example—generate no discernible differences in outcomes (the incidence of fires or electrocution) but drive up business costs nonetheless. Under these circumstances (and many other examples exist), it may be possible to permit businesses to comply with only one of the two standards.

This chapter establishes a regulatory cooperation mechanism to find the scope for, and develop the rules of, a mechanism to promote mutual recognition of effectively equivalent regulations. This innovation will put the U.S.-U.K. FTA at the forefront of pioneering techniques to facilitate market integration behind the border.

The parties will make commitments to apply agreed coordination and to review obligations when proposing new regulatory measures and to implement "core good regulatory practices." These commitments will be important to ensure that each party is moving toward progressively more competitive regulation that is least trade restrictive and least damaging to competition consistent with clearly articulated legitimate regulatory goals. As a result, bad practices cannot be hidden in supposedly reasonable regulatory goals. Good regulatory practices also ensure that disguised methods of protection are resisted.

Also included are provisions governing the promulgation of regulations, in order to address the problem of regulations that were developed opaquely, without sufficient input from stakeholders, without a sound rationale, or for the benefit of a particular industry, company, or stakeholder. The rules encourage the publication of impact assessments of proposed regulations and cost–benefit analyses to determine whether the regulations performed effectively and as expected.

The chapter requires the parties to promulgate regulation that has the least trade restrictive and anti-competitive impact while being consistent with legitimate regulatory goals. It also enables a party to request information from another party on any upcoming regulatory initiatives. It includes an ability to provide consultation comments on new regulatory measures, a regular retrospective review of regulations, and an ability for interested persons to petition for review of a party's regulations. The parties are also required to maintain publicly accessible electronic databases of national regulations to ease the compliance burden for cross-border businesses.

Chapter 7. Movement of Labor

The free movement of people will be an important feature of an ideal U.S.-U.K. free trade agreement. It will open opportunity for workers in both nations to raise their productivity and their standards of living. It will allow for more competition and division of labor in the provision of tradeable services, primarily through the Mode 4 provision of services through the movement of natural persons.

The aim of the agreement will be to allow the free movement of labor between the two nations. That can be accomplished through the text of the agreement and the resulting modification of each nation's immigration laws. Existing models include the free movement of labor within the EU, the New Zealand–Australia Closer Economic Relations Agreement of 1983, and the E-3 visa created in conjunction with the 2005 U.S.-Australia Free Trade Agreement.

To further facilitate the benefits of the free movement of people, the agreement should contain language to establish the mutual recognition of professional credentials. Here, the agreement can follow the precedent of the Trans-Tasman Mutual Recognition Act 1997 that allows anyone who is registered to practice an occupation in one country to practice in the other.

Chapter 8. Investment

International trade and investment go hand in hand, as most trade is conducted between affiliates of the same multinational enterprises. In fact, about 88 percent of the revenue generated from U.S.-U.K. commerce comes from affiliates' sales. This process often involves parent companies in the United States (United Kingdom) exporting components or finished products to affiliates in the United Kingdom (United States), which then process or package and sell down the supply chain or to end users abroad.

This chapter provides basic guarantees and protections for investors and investments, including "national treatment," "most favored nation treatment," and rights to compensation for government expropriation of an investment.

Like the investment chapters in several other trade agreements, this one obligates the parties not to interfere with capital flows related to covered investments, including transfers of profits, dividends, interest payments, and royalties, subject to exceptions that ensure that governments have the flexibility to engage in prudential measures to manage potentially volatile capital flows.

It prohibits the use of "performance requirements," including local content requirements, minimum export requirements, technology transfer, and localization requirements as conditions of investment. It guarantees that investors have the ability to appoint senior managers without regard to nationality and ensures that any restrictions of the appointment of board members based on nationality do not adversely affect an investor's control of its investment.

The chapter requires the parties to take a "negative list" approach to identifying which sectors are open to investment, meaning that the rules of the chapter apply to all sectors and activities that are not explicitly identified as exemptions.

The chapter does not include "investor–state dispute settlement."

Chapter 9. E-Commerce

The free flow of information is essential to free trade in electronic commerce, as well as to the industries for which data are crucial components of the product manufactured or the service provided. The provisions on electronic commerce concern measures that affect trade by electronic means and are intended to (a) ensure the free flow of data, (b) prevent forced localization of data servers and technologies, (c) promote the security of the internet, and (d) protect the privacy of individuals and businesses as they use and create content.

The language is intended to prohibit the parties from (a) imposing customs duties on electronic transmissions, (b) requiring foreign companies to provide software source code as a condition of doing business, (c) restricting the cross-border transfer of information by electronic means, and (d) requiring use of local computing facilities as a condition of doing business in the territory.

Chapter 10. Government Procurement

With limited scope for nonconforming measures, Chapter 10 commits the parties to accept bids for all public procurement projects from producers and service providers of the other party, and to consider those bids on a nondiscriminatory basis. The chapter harmonizes the procedures associated with announcing public procurement projects and considering the offered proposals and provides rules to ensure transparency in the decisionmaking process. The chapter requires the United States to waive its Buy America provisions, which represent significant and persistent obstacles to the estimated $1.7 trillion U.S. government procurement market (federal, state, and local).

Chapter 11. Intellectual Property

Both the United States and the United Kingdom have high standards of intellectual property protection. The United States has traditionally pushed for stronger protection for intellectual property in trade agreements. The United Kingdom is likely to do the same. Between these two jurisdictions, the only necessary language may be a requirement to enforce domestic laws.

With regard to countries that are potential accession candidates to the agreement, the concerns about inadequate intellectual property protection are likely to vary and may change over time. That could make it difficult to negotiate such rules as part of a U.S.-U.K. FTA, since right now it is hard to address issues that may exist or become apparent later. As a result, the best approach to intellectual property protection in this FTA may be to limit it to a requirement to enforce domestic laws and to address it in the accession process on a country-by-country basis as others join.

Chapter 12. Sanitary and Phytosanitary Measures

It is critical that measures to protect animal, human, or plant health are based on sound science and that the parties do not adopt measures that are disguised barriers to trade and competition. The purpose of this chapter is to afford appropriate protections and to impose disciplines on the parties to ensure that measures in this area are not corrupted toward impeding trade.

Chapter 13. Technical Barriers to Trade

The United Kingdom and the United States agree to ensure that technical barriers to trade do not attenuate the liberalization achieved in the rest of the agreement. The provisions in the chapter build on best practices in the WTO and in the work of the WTO Committee on Technical Barriers to Trade to ensure that product regulations are not developed in a way that is trade restrictive or anti-competitive.

A particular example of this includes labeling regulations for synthetic biology (genetic modification and other gene technologies) products. These provisions will ensure that any labeling requirement is not deployed in ways that are disguised barriers to trade.

This chapter also lays out a framework for advanced mutual recognitions of conformity assessment—a crucial means by which to smooth technical barriers to trade between the parties.

Chapter 14. Competition Policy

The purpose of this chapter is to ensure that the reduction of border barriers is accompanied by reductions in "behind-the-border" barriers. That applies both to private anti-competitive practices, but more important, to anti-competitive regulations and other government restraints (anti-competitive market distortions). Moreover, this chapter includes provisions to discipline the potentially market-distorting practices of state-owned enterprises by focusing on their effect on the market, while being somewhat agnostic about their structure.

Also included are meaningful disciplines on what has become one of the biggest problems in services trade: anti-competitive market distortions behind the border. Providing for disciplines on the parties in this area is important to ensuring freer trade and more competitive markets.

Chapter 15. Defense Trade Cooperation

If either party chooses to define its national defense industrial base in legislation or policy, the other party shall be included in that definition. Each party shall reduce the barriers to the seamless integration of the persons and organizations that compose their national defense industrial base and shall consult regularly with the other party to achieve that end.

To give effect to the U.S.-U.K. Defense Trade Cooperation Treaty (2007), each party shall adapt its system of defense trade controls to allow all defense-related exports to the other party to (a) proceed absent an explicit decision to refuse within a specified and limited time; (b) be licensed at the system level within the approved community as defined by the 2007 treaty; and (c) automatically include the provision that all follow-on parts, components, servicing, and technical plans be obtained directly from commercial suppliers.

Purchases made by one party for the purposes of national defense from the other party shall be deemed to meet all domestic content provisions of the first party. Each party shall—with the agreement of and in cooperation with the other party—seek to expand the provisions to other close and traditional allies. Neither party shall—without the agreement of the other party—enter into research, development, or procurement relationships with third parties that are closed to the other party of this agreement.

Chapter 16. Dispute Settlement

For trade obligations to have a liberalizing effect, they must be binding and enforceable. The enforceability of obligations in any trade agreement is of great importance, because if governments cannot be held accountable to their commitments, the value of those commitments is significantly diminished. Accordingly, the U.S.-U.K. FTA includes robust, broadly applicable, properly functioning dispute settlement provisions.

The language in this chapter establishes that all of the obligations undertaken by the parties in this agreement are subject to dispute settlement. The provisions call for transparent, accessible, and expeditious dispute settlement procedures, which include a process for consultations, dispute panel composition and adjudication, and a secretariat.

Chapter 17. Exceptions

Exceptions for nontrade policies are a standard part of most trade agreements. The specific language can be important, as differences in wording can lead to more or less deference to governments in pursuing these policies.

With regard to policies other than security, we have adapted the language used in GATT Article XX.

As for security, every U.S. trade agreement includes a broad security exception. For some prospective trade agreement, such as a U.S.-Vietnam FTA, such an exception would be appropriate and could enhance prospects for ratification. For a U.S.-U.K. FTA, however, national security concerns are less prevalent, and narrowing the exception may be desirable.

Security was a nagging issue before 2017 and has received greater visibility by the Trump administration's invocation of national security to apply tariffs to steel and aluminum and to investigate auto trade. A danger exists in that national security will become entwined with notions of self-sufficiency, which are antithetical to genuinely open trade. We have added language that narrows the typical security exception.

Chapter 18. Institutional and Final Provisions

The long-term effect of an FTA depends in part on how the parties implement it. The substantive obligations of trade agreements may need to be updated; disputes arise and need to be resolved; and other countries may want to accede. Having the appropriate rules and institutions can help with all of those issues. To that end, this chapter establishes two institutional bodies that can assist in those matters: a joint committee made up of U.S. and U.K. government officials and a small administrative secretariat. It also sets out some basic rules on accession.

Annex I. Financial Services

Annex I sets out the requirements for a specific iteration of cross-border trade in services. It supplements Chapter 5, as described earlier.

Financial services cover a broad swathe of activities, including banking, investment banking, dealing, broking, asset management, derivatives trading, custody, market infrastructure, insurance, and reinsurance. Trade in financial services already constitutes a significant share of U.S.-U.K. commerce, but the parties' commitments to open those markets fully will likely expand trade considerably.

The financial services annex provides for parties to enter into a master agreement under which specific mutual recognitions are established. We envisage mutual recognition under

these arrangements across all financial services areas, which would permit the parties to continue with their divergent approaches to regulation while seeking to collaborate in identifying the necessary outcomes that regulations should achieve. Those outcomes have largely been harmonized between the United States and United Kingdom since the 2007–2008 financial crisis, when the issues pertinent to systemic risk were much discussed and broadly agreed.

Services and products would be regulated solely in the home state under a regime recognized as equivalent, and purchasers in the other country would operate on a caveat emptor basis. Remedies would be solely available in the home state (i.e., originating state). Both states have highly sophisticated regulatory and judicial systems that can provide reliable redress to corporations and citizens of the other country affected adversely by any misselling or misperforming products or services. Customers can evaluate the service or product against the backdrop of the relevant legal and regulatory regime.

Overall recognition principles, conditions for mutual recognition, and consultation are established at the master level in the annex. The annex's schedule is left open for the parties to negotiate and to "fill in," which as mentioned will cover the gamut of financial services. It is expected that the annex's schedule would set out (a) definitions of the types of parties benefiting from the agreed equivalence recognition (we envisage that all will be covered, but, at the very least, wholesale customers), (b) the intended legal effect of the particular equivalence recognition (e.g., that a party's banks are treated under national law as having the same authorized status for a particular financial activity as domestically authorized banks), and (c) any conditions applicable to equivalence recognition (e.g., a requirement for parties benefiting from an agreed equivalence recognition to be listed on a national financial services register or to have membership in an appropriate investor compensation scheme).

It would also be possible for other types of equivalence recognitions to be agreed in the chapter's schedule that do not directly relate to cross-border market access or licensing and authorization requirements—but that ease compliance burdens for financial institutions operating on a cross-border basis. For example, it might be possible to agree that financial institutions carrying out cross-border business—which might otherwise be subject to both parties' regulatory regimes for mitigating the risks of over-the-counter derivatives—would need to comply only with the regime of one jurisdiction. We envisage that such additional recognitions will be negotiated swiftly and maximally.

Overall, the financial services annex requires the same kinds of commitments to nondiscrimination and liberalization that are required in the cross-border trade in services chapter and in other parts of the agreement. These are reflected in the recognition principles.

Financial services have typically been a sensitive area in trade negotiations, in part because of fears that the rules established would interfere with issues of prudential and systemic risk regulation. However, the proposal here caters to such concerns by ensuring agreement on the necessary regulatory outcomes that each party's system must achieve.

We think both systems already achieve those outcomes and are pretty much certain to continue doing so, given the sophistication of the regulators in each jurisdiction, and the sophisticated legislative oversight that protects taxpayers from the consequences of systemic risk. However, the financial services annex states that equivalence recognitions may be suspended for a sector by a party if another party's financial services regime in that sector is no longer materially equivalent. Tests for material equivalence are proposed, using an outcomes-based approach that would benchmark against relevant international standards, reducing the ability for one party to refuse or suspend mutual recognition in one sector because of any regulatory idiosyncrasies.

Annex II. Professional Services

Annex II addresses barriers to trade that take the form of restrictions on the provision of professional services, such as occupational licensing and professional registration. It is intended to encourage the parties to permit employment of persons who have met the qualifications for licensing or registration in other jurisdictions without having to requalify.

The Ideal U.S.-U.K. Free Trade Agreement[1]

CHAPTER 1
Initial Provisions and National Treatment

Article 1.1: Establishment of 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), the Parties hereby establish a free trade area in accordance with the provisions of this Agreement.

Article 1.2: Relation to Other Agreements

1. The Parties affirm their rights and obligations under existing multilateral agreements to which some or all Parties are party, including the World Trade Organization (WTO) Agreement.

2. For greater certainty, this Agreement shall not be construed to derogate from any international legal obligation between or among the Parties that provides for more favorable treatment of goods, services, investments, or persons than that provided for under this Agreement.

3. The Parties agree to refrain from invoking their antidumping or safeguard laws and from imposing antidumping or safeguard measures against any other Party. The Parties retain their rights to invoke their countervailing duty (anti-subsidy) laws and to impose countervailing measures against other Parties, and they retain their rights to use any or all of their trade remedy laws and to impose trade remedy measures with respect to non-Parties.

Article 1.3: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the Provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by regional levels of government.

Article 1.4: National Treatment

1. Each Party shall accord national treatment to the goods and services of the other Party in accordance with Article III of GATT 1994 and Article XVII of GATS.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.

CHAPTER 2
Market Access for Goods

Article 2.1: Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Except with respect to products listed in Annex 2A or as otherwise provided in this Agreement, all Parties shall eliminate their customs duties on all originating goods upon entry into force of the agreement. The list of products in Annex 2A will be identified by eight-digit Harmonized Tariff Schedule number and include the 2018 value of imports of each line item.

   The aggregate 2018 import value of all of the products listed in Annex 2A must not exceed 10 percent of each Party's total value of 2018 imports from the other Party. Annex 2B will include a list of the same products with tariff elimination schedules for each. Tariffs must go to zero for no fewer than half the products by no later than 5 years after entry into force, and for all products by no later than 10 years after entry into force.

3. At the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in Annex 2B.

Article 2.2: Waiver of Customs Duties

1. No Party may adopt any new waiver of customs duties or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. No Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

Article 2.3: Temporary Admission of Goods

Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

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

(b) goods intended for display or demonstration;

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

(d) goods admitted for sports purposes.

Article 2.4: Goods Reentered after Repair or Alteration

Neither Party may apply a customs duty to a good, regardless of its origin, that reenters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, under any circumstances.

Article 2.5: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value and to printed advertising materials, imported from the territory of the other Party, regardless of their origin.

Article 2.6: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except

in accordance with Article XI of GATT 1994 and its interpretative notes, 2–4, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, mutatis mutandis.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining the following:

   (a) export and import price requirements;

   (b) import licensing conditioned on the fulfillment of a performance requirement; or

   (c) voluntary export restraints.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2A.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in the territory of the other Party.

Article 2.7: Import Licensing

1. The Parties may not adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing import licensing procedures, if any. The notification shall include the information specified in Article 5 of the Import Licensing Agreement and be without prejudice as to whether the import licensing procedure is consistent with this Agreement.

3. Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government internet site or in a single official journal. To the extent possible, the Party shall do so at least 20 days before the new procedure or modification takes effect.

Article 2.8: Administrative Fees and Formalities

1. All Parties shall ensure that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax, or other internal charge) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. The Parties may not require consular transactions, including related fees and charges, in connection with the importation of any good of any other Party.

3. The Parties shall make available and maintain through the internet a current list of the fees and charges they impose in connection with importation or exportation.

4. The Parties may not adopt or maintain a merchandise-processing fee on originating goods.

Article 2.9: Export Duties, Taxes, or Other Charges

The Parties may not adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

Article 2.10: Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall meet on the request of a Party or the Joint Committee to consider any matter arising under Chapter 2, Chapter 3, or Chapter 4.

3. The Committee's functions shall include the following:

   (a) promoting trade in goods among the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;

(b) addressing tariff and nontariff barriers to trade in goods among the Parties and, if appropriate, referring such matters to the Committee for its consideration; and

(c) discussing and endeavoring to resolve any difference that may arise between or among the Parties on matters related to the classification of goods under the Harmonized System.

Annex 2A: National Treatment and Import and Export Restrictions

Section A: Measures of the United Kingdom [. . .][2]

Section B: Measures of the United States [. . .]

Annex 2B: Tariff Elimination Schedules

1. Except as otherwise provided in a Party's Schedule to this annex, the following staging categories apply to the elimination of customs duties by each Party:

   (a) duties on originating goods provided for in the items in staging category A in a Party's Schedule shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force;

   (b) duties on originating goods provided for in the items in staging category B in a Party's Schedule shall be removed by no later than 5 years after entry into force; and

   (c) duties on originating goods provided for in the items in staging category C in a Party's Schedule shall be removed by no later than 10 years after entry into force.

CHAPTER 3
Rules of Origin and Origin Procedures

Article 3.1: Originating Goods

Except as otherwise provided in Annex 3, the Parties shall provide that a good is originating where it is:

(a) a good wholly obtained or produced entirely in the territory of one or more of the Parties;

(b) produced entirely in the territory of one or more of the Parties and

i. the total value of the originating materials used in the production of the good is at least 25 percent of the value of all materials used in the production of the good, or

ii. the final good has gone through a process or processes that constitute "substantial transformation," which is defined as a change in Harmonized Tariff Schedule classification.

Article 3.2: Regional Value Content

1. Where regional value content tests are required to determine whether a good is originating, the Parties shall provide that the importer, exporter, or producer may calculate regional value content based on one or the other of the following methods:

(a) Method based on value of nonoriginating materials (Build-Down Method)

$$RVC = (AV - VNM)/AV \times 100$$

(b) Method based on value of originating materials (Build-Up Method)

$$RVC = VOM/AV \times 100$$

where

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

AV is the adjusted value of the good;

VNM is the value of nonoriginating materials, other than indirect materials, acquired and used by the producer in the production of the good;

VNM does not include the value of a material that is self-produced; and

VOM is the value of originating materials, other than indirect materials, acquired or self-produced and used by the producer in the production of the good.

2. Each Party shall provide that all costs considered for the calculation of regional value content shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

Article 3.3: Exceptions

The broadly applicable thresholds for conferring origination status established in Article 3.1 or the formulas permitted in Article 3.2 may not be appropriate for all products in all industries. Product- or industry-specific rules of origin are presented in Annex 3.

Annex 3: Sector-Specific Rules of Origin

Rules of origin may differ by industry, and therefore industry-specific adjustments may be required after consultations with U.S. and U.K. industry experts.

CHAPTER 4
Customs Administration and Trade Facilitation

Article 4.1: Customs Procedures and Facilitation of Trade

Each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent, and transparent. The purpose of rules in this area is to reduce transaction costs by reducing administrative barriers to trade.

Article 4.2: Customs Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall do as follows:

   (a) encourage cooperation with other Parties regarding significant customs issues that affect goods traded between the Parties; and

   (b) provide each Party with advance notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that governs importations or exportations, that is likely to substantially affect the operation of this Agreement.

2. Each Party shall, in accordance with its law, cooperate with the other Parties through information sharing and other activities as appropriate, to achieve compliance with their respective laws and regulations that pertain to the following:

   (a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment, and verification procedures;

   (b) the implementation, application, and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports or exports;

(d) investigation and prevention of customs offenses, including duty evasion and smuggling; and

(e) other customs matters as the Parties may decide.

3. If a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, it may request that another Party provide specific confidential information that is normally collected in connection with the importation of goods.

4. If a Party makes a request under paragraph 3, the request shall

(a) be in writing;

(b) specify the purpose for which the information is sought; and

(c) identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from which the information is requested under paragraph 3 shall, subject to its law and any relevant international agreements to which it is a party, provide a written response containing the requested information.

6. Each Party shall endeavor to provide another Party with any other information that would assist that Party to determine whether imports from, or exports to, that Party are in compliance with the receiving Party's laws or regulations that govern importations, in particular those related to unlawful activities, including smuggling and similar infractions.

7. To facilitate trade between the Parties, a Party receiving a request shall endeavor to provide the Party that made the request with technical advice and assistance for the purpose of the following:

(a) developing and implementing improved best practices and risk management techniques;

(b) facilitating the implementation of international supply chain standards;

(c) simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner;

(d) developing the technical skill of customs personnel; and

(e) enhancing the use of technologies that can lead to improved compliance with the requesting Party's laws or regulations that govern importations.

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

Article 4.3: Advance Rulings

1. Each Party shall issue, prior to the importation of a good of a Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of another Party, with regard to the following:

   (a) tariff classification;

   (b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;

   (c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and

   (d) such other matters as the Parties may decide.

2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, provided that the requester has submitted all the information that the receiving Party requires to make the advance ruling.

Article 4.4: Response to Requests for Advice or Information

On request from an importer in its territory, or an exporter or producer in the territory of another Party, a Party shall expeditiously provide advice or information relevant to the facts contained in the request.

Article 4.5: Automation

1. Each Party shall do as follows:

   (a) use international standards with respect to procedures for the release of goods;

   (b) make electronic systems accessible to customs users;

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

   (d) implement common standards and elements for import and export data in accordance with the World Customs Organization (WCO) Data Model;

   (e) take into account, as appropriate, WCO standards, recommendations, models, and methods developed through the WCO or Asia-Pacific Economic Cooperation; and

   (f) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations as well as guidelines to facilitate government-to-government electronic sharing of data for purposes of analyzing trade flows.

2. Each Party shall provide a facility that allows importers and exporters to electronically complete standardized import and export requirements at a single entry point.

Article 4.6: Express Shipments

Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall do as follows:

(a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;

(b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means;

(c) to the extent possible, provide for the release of certain goods with a minimum of documentation;

(d) under normal circumstances, provide for express shipments to be released within 6 hours after submission of the necessary customs documents, provided the shipment has arrived;

(e) apply to shipments of any weight or value recognizing that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and

(f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below $999.

Article 4.7: Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk goods and that simplifies the clearance and movement of low-risk goods.

2. To facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

Article 4.8: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if its requirements for release have not been met.

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

   (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the arrival of the goods;

   (b) provide for the electronic submission and processing of customs information in advance of the arrival of the goods in order to expedite the release of goods from customs control upon arrival;

   (c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and

   (d) allow an importer to obtain the release of goods prior to the final determination of customs duties, taxes, and fees by the importing Party's customs administration when these are not determined prior to or promptly upon arrival, provided that the good is otherwise eligible for release and any security required by the importing Party has been provided or payment under protest, if required by a Party, has been made. Payment under protest refers to payment of duties, taxes, and fees if the amount is in dispute and procedures are available to resolve the dispute.

Article 4.9: Publication

1. Each Party shall make publicly available, including online, its customs laws, regulations, and general administrative procedures and guidelines, to the extent possible in the English language.

2. Each Party shall designate or maintain one or more inquiry points to address inquiries from interested persons concerning customs matters and shall make information concerning the procedures for making such inquiries publicly available online.

3. To the extent possible, each Party shall publish in advance regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before the Party adopts the regulation.

CHAPTER 5
Cross-Border Trade in Services

Article 5.1: Scope

1. Chapter 5 shall apply to measures adopted or maintained by a Party affecting trade in services by service suppliers of another Party. Trade in services is defined as the supply of a service as follows:

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

   (b) in the territory of one Party to the service consumer of any other Party;

   (c) by a service supplier of one Party, through commercial presence in the territory of any other Party;

   (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party.

2. Such measures include measures affecting the following:

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

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

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

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

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

Article 5.2: Nondiscrimination

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

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

Article 5.3: Market Access

No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that do the following:

(a) impose limitations on the following:

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

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

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

iv. the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

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

Article 5.4: Local Presence

No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 5.5: Nonconforming Measures

Parties may apply nonconforming measures provided that such measures, in the aggregate, do not restrict more than 10 percent of the value of the Party's services economy. These shall be listed in Annex 5.

Article 5.6: Transparency

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of Chapter 5.

2. Each Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

Article 5.7: Payments and Transfers

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

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

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, nondiscriminatory and good-faith application of its laws that relate to (a) bankruptcy, insolvency, or the protection of the rights of creditors; (b) issuing, trading, or dealing in securities, futures, options, or derivatives; (c) financial reporting or

record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; (d) criminal or penal offenses; or (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Annex 5: Nonconforming Measures

List of professions, services not subject to the general rules of this chapter (not to exceed 10 percent of a Party's services economy). [. . .]

CHAPTER 6
Regulatory Coherence

Article 6.1: Definitions

For the purposes of Chapter 6, the following definitions apply:

(a) **Competition Agency** means the following:

i. in the case of the United Kingdom, the Competition and Markets Authority; and

ii. in the case of the United States, the Federal Trade Commission;

(b) **Covered Action** means any of the following actions to the extent that they are material:

i. legally binding substantive rules including subordinate regulations;

ii. interpretation of rules that have a binding effect on agencies or private parties;

iii. adjudications that have a binding effect on one or more Parties;

iv. procedural rules that bind agencies or the public; and

v. decisions to grant, revoke, extend, or modify a License;

(c) **international instruments** means any document adopted by international bodies or forums in which both Parties' Regulatory Agencies participate, including as observers, and which provide requirements or related procedures, recommendations, or guidelines on the supply or use of a service, such as, for example, authorization, licensing, qualification, or on characteristics or related production methods, presentation, or use of a product;

(d) **Joint Committee** means the committee formed by the Parties pursuant to Article 3;

(e) **License** means any license, permit, grant, approval, registration, charter, statutory exemption, or other form of government permission or approval required for a person to engage in a regulated activity;

(f) **Regulation** means as follows:

i. in the case of the United States

a. Federal Statutes;

b. Rules, as defined in 5 USC § 551 (4);

c. Orders, as defined in 5 USC § 551 (6);

d. Guidance documents, as defined in Executive Order 12,866 §3(g), issued by any federal agency, government corporation, government-controlled corporation or establishment in the executive branch of government covered by 5 USC § 522 (f)(1) of the Administrative Procedures Act, as amended; and

e. Executive orders and [other executive documents that lay down general rules or mandate conduct by government bodies]; and

ii. in the case of the United Kingdom

a. Acts of Parliament;

b. Statutory instruments; and

c. any rules, regulations, codes, orders, requirements, or guidance promulgated under either of the foregoing, including any rules, guidance, examples, practice documents, and handbooks of regulators, including the Financial Conduct Authority, Prudential Regulation Authority, Competition and Markets Authority, and Bank of England.

(g) **Regulatory Agency** means a government department or commission of a Party that engages in any Covered Action.

Article 6.2: General Provisions

1. For the purposes of Chapter 6, regulatory coherence refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing, and reviewing legal and regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts by the Parties to enhance regulatory cooperation and to minimize regulatory divergence provided that the ultimate goal is to promote international trade and investment, markets characterized by competition, economic growth, and employment.

2. The Parties affirm the importance of the following:

   (a) sustaining and enhancing the benefits of this Agreement through regulatory coherence in terms of facilitating increased trade in goods and services and increased investment between the Parties;

   (b) promoting an effective, pro-competitive regulatory environment that is transparent for citizens and economic operators;

   (c) furthering the development of international instruments, and their timely implementation and application, as a means to work together more effectively with each other and with third countries to strive toward consistent regulatory outcomes;

   (d) aligning with international standards (including, without limitation, those developed by the International Organization of Securities Commissions, the Financial Stability Board, the Basel Committee on Banking Supervision, and the Financial Action Task Force) and conforming with related international obligations;

   (e) each Party's sovereign right to identify its regulatory priorities and establish and implement legal and regulatory measures to address these priorities, at the levels that the Party considers appropriate;

   (f) the role that law and regulation play in achieving public policy objectives;

   (g) taking into account input from interested persons in the development of legal and regulatory measures;

(h) developing legal and regulatory cooperation and capacity building between the Parties; and

(i) developing mechanisms to ensure that unnecessarily burdensome, duplicative, or divergent regulatory requirements do not emerge over time, consistent with the Parties' efforts to stimulate economic growth [and jobs], and with their commitments to protect the environment; consumer welfare; innovation; working conditions; human, animal, and plant health; and other prudential objectives.

3. The Parties affirm their shared commitment to good regulatory principles and practices, as laid down in the Organization for Economic Cooperation and Development (OECD) Recommendation of March 22, 2012, on Regulatory Policy and Governance, and the OECD Competition Assessment Toolkit, based on the OECD Recommendation of October 22, 2009.

Article 6.3: Establishment of Joint Committee

1. The Parties have agreed to establish a joint committee for the purposes of assisting and monitoring the regulatory coherence relationship established under this chapter (the Joint Committee).

2. The Joint Committee shall consist of [3] permanent members appointed by the United Kingdom and [3] permanent members appointed by the United States.

3. The Joint Committee's permanent members shall elect a seventh member to carry out the functions of the chair of the Joint Committee, at its first meeting by mutual consent of the permanent members, and thereafter in accordance with any relevant internal procedures established by the Joint Committee.

4. The Joint Committee shall conduct itself by majority vote, and in the event of a tied vote, the chair shall cast the final binding vote.

5. The Joint Committee shall adopt its internal procedures initially by mutual consent of the permanent members, and subsequently in accordance with Article 6.5.

6. The Joint Committee's chair, permanent members, and any other ancillary staff members shall be chosen on the basis of appropriate technical or regulatory expertise, practice, or other relevant experience.

7. The Joint Committee shall be able to request specialist technical, legal, or other advice and to employ ancillary additional staff members if it considers necessary.

8. The costs of the Joint Committee shall be shared equally by the Parties.

9. […]

Article 6.4: Scope of Covered Action

Each Party shall promptly, and no later than one year after the date of entry into force of this Agreement, determine and make publicly available the scope of its Covered Actions. In determining the scope of its Covered Actions, each Party should aim to achieve significant coverage.

Article 6.5: Coordination and Review Processes

1. The Parties recognize that regulatory coherence can be facilitated through domestic mechanisms that increase interagency consultation and coordination associated with processes for developing regulatory measures. Accordingly, each Party shall endeavor to ensure that it has processes or mechanisms to facilitate the effective interagency coordination and review of proposed Covered Actions. Each Party should consider establishing and maintaining a national or central coordinating body for this purpose.

2. The Parties recognize that while the processes or mechanisms referred to in Article 5.1 may vary between the Parties depending on their respective circumstances (including differences in levels of development and political and institutional structures), they should generally have as overarching characteristics the ability to do the following:

   (a) review proposed Covered Actions to determine the extent to which the development of such measures adheres to good regulatory practices, which may include but are

not limited to those set out in Article 6.17 (Implementation of Core Good Regulatory Practices), and make recommendations based on that review;

(b) strengthen consultation and coordination among domestic agencies so as to identify potential overlap and duplication and to prevent the creation of inconsistent requirements across agencies;

(c) make recommendations for systemic regulatory improvements; and

(d) publicly report on regulatory measures reviewed, any proposals for systemic regulatory improvements, and any updates on changes to the processes and mechanisms referred to in Article 5.1.

3. Each Party should generally produce documents that include descriptions of those processes or mechanisms and that can be made available to the public.

Article 6.6: Legitimate Regulatory Objectives[3]

1. The Parties will promulgate regulation that is the least trade restrictive, and anti-competitive consistent with a legitimate, publicly stated regulatory goal.

2. A legitimate regulatory goal means a regulatory goal that is either prudential; protective of animal, plant, or human health; or protective of national security.

3. Legitimate regulatory goals cannot be so detailed, prescriptive, or specific as to require a specific regulatory solution and cannot be to ban products, or to prescribe a particular technological process.

Article 6.7: Trade Effects

When developing a Regulation, a Regulatory Agency of a Party shall give notice to, give opportunity for submissions by, and consider any information provided in comments by the other Party or a Regulatory Agency of the other Party [or private party established in

or authorized by the other Party that would be affected by such a Regulation] regarding the potential trade effects of the Regulation that it receives during the comment period and shall provide its views on substantive issues raised.

Article 6.8: Competitive Effects

1. When developing a Regulation, a Regulatory Agency of a Party shall give notice to, give opportunity for submissions by, and consider any information provided in comments by the other Party or a Regulatory Agency of the other Party [or private party established in or authorized by the other Party that would be affected by such a Regulation] regarding the potential competitive effects of the Regulation that it receives during the comment period and shall provide its views on substantive issues raised.

2. The Party's Competition Agency shall be given notice at the earliest practicable stage in the regulatory promulgation process of the competitive effect of Regulations.

3. The Party shall ensure that the relevant national regulator makes itself available to the Competition Agency, as well as making sure that any data, studies, market surveys, or other preparatory work is shared with the Competition Agency in as expeditious a manner as possible.

4. In making its decisions, the Parties agree that the Competition Agency will use the following methodology:

   (a) The analysis must take into account the issues addressed in Article 6.2.

   (b) Such analysis must include the following:

      i. a treatment on the effect on related industries, consumers, and competitiveness, including whether the Covered Action will erect entry barriers that might reduce innovation by impeding new entrants into the market; and

      ii. whether the Covered Action has any other effects on competition.

Article 6.9: Statement of Cost–Benefit Methodology

1. The Parties agree that a Regulatory Agency proposing a Covered Action will produce a statement of cost–benefit methodology to describe the methodology employed by the Regulatory Agency, including a description of its assumptions in calculating a baseline scenario (the scenario without the Covered Action) and the policy scenario (the scenario with the Covered Action).

2. The statement shall include the results of the analysis using the cost–benefit methodology, including separate and itemized lists of the costs and benefits identified, as well as descriptions of costs and benefits that cannot be monetized.

3. If a Regulatory Agency proceeds to engage in a Covered Action even though the analysis using the cost–benefit methodology shows that the costs outweigh the benefits, that Party must include reasons why it is overriding the analysis either in the original statement or in a subsequent statement referring to the original statement.

4. In cases where the governing statutes or other authorities would expressly prohibit the use of the cost–benefit methodology or any other form of cost–benefit analysis or impact analysis or any aspect hereof in respect of a Covered Action, the Regulatory Agency engaging in the Covered Action shall include in its statement an explanation of why it is unable to perform a cost–benefit analysis (or ignore the result) as otherwise required by Chapter 6.

Article 6.10: Access to Government Documents

1. Each Party shall make publicly available the following:

   (a) a description of each of its Regulatory Agencies' functions and organization, including the appropriate offices through which the public can obtain information, make submissions or requests, or obtain submissions; and

   (b) any rules of procedure or forms used or promulgated by any of its Regulatory Agencies as well as any associated fees.

2. Each Party shall adopt or maintain laws or procedures that allow for persons to request access to documents from a Regulatory Agency of a Party. Such laws or procedures that allow for persons to request access to documents from a Regulatory Agency of a Party shall provide no less favorable treatment to persons of the other Party than it provides to persons of the Party.

Article 6.11: Description of Regulatory Processes

Each Party shall make publicly available a detailed description of the processes and mechanisms employed by its Regulatory Agencies to develop Regulations. The description shall identify the following:

(a) the applicable guidelines or rules for providing the public with opportunities to participate in the development of Regulations;

(b) the procedures for ensuring that Regulatory Agencies have considered public input;

(c) the judicial or administrative procedures available to challenge Regulations or the procedures by which they were developed; and

(d) the processes or mechanisms referred to in Article 6.5.

Article 6.12: Regulatory Collection

1. Each Party shall ensure that all of its Regulations that are currently in effect are published in a designated collection. The collection shall be organized logically to promote easy access to relevant Regulations. To that end, the collection should be clearly organized by topic.

2. Each Party shall make its respective collection of Regulations available on a single, freely accessible public internet website that is capable of performing searches for Regulations by citation or by word.

3. Each Party shall make sure that its collection is updated when Regulations are amended, repealed, or replaced.

Article 6.13: Decisionmaking Based on Evidence

1. Each Party recognizes the need for Regulations to be based upon information that is reliable and of high quality. To that end, each Party should adopt or maintain publicly available guidance or mechanisms that encourage a Regulatory Agency when it is developing a Regulation to do the following:

   (a) seek the best reasonably obtainable information, including scientific, economic, technical, or other information relevant to the Regulation it is developing; and

   (b) rely on information that is of high quality (including with respect to utility, objectivity, integrity, clarity, and accuracy).

2. When publishing any final administrative decision with respect to a Regulation, the Party shall make publicly available an explanation of the following:

   (a) the Regulation, including its policy objectives, how the Regulation achieves those objectives, and the rationale for and an explanation of the material features of the Regulation; and

   (b) the relationship between the Regulation and the key evidence, data, cost–benefit analysis, and other information the Regulatory Agency considered in preparing the final administrative decision.

3. Such explanation should also identify any major alternatives that the Regulatory Agency considered in developing the Regulation and provide an explanation supporting the alternative that is selected for the final administrative decision.

4. Each Party shall prepare annually a public report setting forth the following:

   (a) an estimate, to the extent feasible, regarding the total annual costs and benefits of major final Regulations issued in that period by its respective Regulatory Agencies;

(b) any proposals for systemic regulatory improvements; and

(c) any updates on changes to relevant processes and mechanisms.

Article 6.14: Petitions

Each Party shall provide for any interested person to petition any Regulatory Agency of the Party for the issuance, amendment, or repeal of a Regulation. The basis for such petition may include, for example, that in the view of the person submitting the petition, the Regulation has become more burdensome, trade restrictive, or damaging to competition than necessary to achieve its objective, as well as technical or legal commentary. For the purposes of this Article, an "interested person" means any person in the jurisdiction of either of the Parties who is directly or indirectly affected by a Regulation.

Article 6.15: Retrospective Review of Regulation

1. Each Party shall maintain procedures or mechanisms to promote periodic reviews of Regulations that are in effect in order to determine whether they are in need of revision or repeal, including on a Regulatory Agency's own initiative or in response to a petition filed pursuant to Article 6.14.

2. Each Party shall make publicly available the results of any such retrospective reviews or analyses conducted by its Regulatory Agencies, including any supporting data whenever practicable.

Article 6.16: Reducing Information Collection Burdens Associated with Regulation

Each Party shall provide that, to the extent Regulatory Agencies use surveys to request or compel information from the public in developing a Regulation, these Regulatory Agencies should endeavor to do so in a manner that minimizes unnecessary burdens and avoids duplication.

Article 6.17: Implementation of Core Good Regulatory Practices

1. The Parties agree that the optimal way of avoiding unnecessary differences in laws and regulations is to agree to similar core good regulatory practices.

2. The Parties agree that in achieving the legitimate and publicly stated goal(s) of any Covered Action taken or to be taken by a Party to achieve such goal(s) the measure should be the least anti-competitive and least restrictive on trade while being consistent with the relevant objective(s) for the Covered Action.

3. To assist in designing a measure to best achieve the Party's objectives, each Party should generally encourage relevant Regulatory Agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed Covered Actions that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.

4. [Recognizing that differences in the Parties' institutional, social, cultural, legal, and developmental circumstances may result in specific regulatory approaches, regulatory impact assessments conducted by a Party should, among other things do the following:

   (a) assess the need for a regulatory proposal, including a description of the nature and significance of the problem;

   (b) examine feasible alternatives, including, to the extent feasible and consistent with laws and regulations, their costs and benefits, such as damage to international trade or to competition, recognizing that some costs and benefits are difficult to quantify and monetize;

   (c) when highlighting the costs and benefits of new laws and regulations, the Parties agree to separate the costs analysis from the benefits analysis, in particular recognizing that benefits are often difficult to quantify and monetize, but the costs side can be more objectively analyzed if it is limited to business compliance costs, impact on international trade, and impact on competition;

(d) explain the grounds for concluding that the selected alternative achieves the policy objectives in an efficient manner, including, if appropriate, reference to the costs and benefits and the potential for managing risks; and

(e) rely on the best reasonably obtainable existing information, including relevant scientific, technical, economic, or other information, within the boundaries of the authorities, mandates, and resources of the particular Regulatory Agency.][4]

5. When conducting regulatory impact assessments, a Party may take into consideration the potential effect of the proposed Regulation on small and medium enterprises and shall apply principles of proportionality in determining the level of regulation required.

6. Each Party should ensure that new Covered Actions are plainly written and are clear, concise, well organized, and easy to understand, recognizing that some measures address technical issues and that relevant expertise may be needed to understand and apply them.

7. A Regulatory Agency of either Party, when considering a Covered Action, shall propose such Covered Action to the public and will provide for a public notice-and-comment period. This notice-and-comment period shall be of reasonable duration, having regard to the nature, scope, and complexity of the Covered Action. The notice shall include a statement of cost–benefit analysis as expressed in Article 6.9. This publication requirement shall apply to all statements of policy and all interpretations issued by a Regulatory Agency in its official capacity that are not solely internal and related to the internal management structure of the Regulatory Agency.

8. The Parties agree that Regulatory Agency decisions on License applications will be made in a reasonable period of time. Apart from voluntary or requested License cancellations, suspensions, or modifications, a Regulatory Agency may not revoke or modify Licenses without prior written notice, and it must afford the affected person a reasonable opportunity to demonstrate compliance with the law. Parties must provide written reasons for License rejections or modifications. Parties may not revoke or modify Licenses without prior written notice, and must afford the affected person a reasonable opportunity to demonstrate compliance with the law.

9. Subject to its laws and regulations, each Party should ensure that relevant Regulatory Agencies provide public access to information on new Covered Actions and, where practicable, make this information available online.

10. If a Party submits a request for information to a Regulatory Agency of the other Party, the Regulatory Agency of the responding Party should, in a manner it deems appropriate, and consistent with its Regulations, provide the requesting Party with notice of any Covered Action that it reasonably expects to issue within the following 12-month period from the date that the request made by the requesting Party is received.

11. To the extent appropriate and consistent with its law, each Party should encourage its relevant Regulatory Agencies to consider Regulations of the other Party, as well as relevant developments in international, regional, and other forums when planning Covered Actions.

Article 6.18: Cooperation

1. The Parties shall cooperate in order to facilitate the implementation of this chapter and to maximize the benefits arising from it. Cooperation activities shall take into consideration each Party's needs, and may include the following:

   (a) information exchanges, dialogues, or meetings with the other Party;

   (b) information exchanges, dialogues, or meetings with interested persons, including with small and medium enterprises, of the other Party;

   (c) strengthening cooperation and other relevant activities between regulatory agencies; and

   (d) other activities that the Parties may agree to.

2. The Parties further recognize that cooperation between Parties on regulatory matters can be enhanced through, among other things, ensuring that each Party's Regulations are centrally available.

Article 6.19: Notification of Implementation

1. For the purposes of transparency, and to serve as a basis for cooperation and capacity-building activities under this chapter, each Party shall submit a notification of implementation to the Joint Committee through the contact points designated pursuant to Article 6.23 (Contact Points) within 2 years of the date of entry into force of this Agreement and at least once every 4 years thereafter.

2. In its initial notification, each Party shall describe the steps that it has taken since the date of entry into force of this Agreement and the steps that it plans to take to implement Chapter 6, including those to do as follows:

   (a) establish processes or mechanisms to facilitate effective interagency coordination and review of proposed Covered Actions in accordance with Article 6.5 (Coordination and Review Processes);

   (b) encourage relevant regulatory agencies to conduct regulatory impact assessments in accordance with Article 6.17 (Implementation of Core Good Regulatory Practices);

   (c) ensure that Covered Actions are written and made available in accordance with Article 6.17 (Implementation of Core Good Regulatory Practices);

   (d) review its Covered Actions in accordance with Article 6.17 (Implementation of Core Good Regulatory Practices); and

   (e) provide information to the public in its annual notice of prospective Covered Actions in accordance with Article 6.17 (Implementation of Core Good Regulatory Practices).

3. In subsequent notifications, each Party shall describe the steps, including those set out in Article 6.19.2, that it has taken since the previous notification and those that it plans to take to implement Chapter 6 and to improve its adherence to it.

4. In its consideration of issues associated with the implementation and operation of Chapter 6, the Joint Committee may review notifications made by a Party pursuant to Article 6.19.1. During that review, Parties may ask questions or discuss specific aspects of that Party's notification. The Joint Committee may use its review and discussion of a

notification as a basis for identifying opportunities for assistance and cooperative activities to provide assistance in accordance with Article 6.18 (Cooperation).

Article 6.20: Permitted Deviations and Management of Differences

A Regulatory Agency shall not be deemed to have breached any of the provisions of this chapter in the following circumstances:[5]

(a) The deviating Party has satisfied the good regulatory practices provisions of this chapter;

(b) The regulatory goals of the Parties are the same, the scope of regulatory goals being limited to prudential matters; the protection of human, animal, or plant health; or national security matters and may not be so specific and limited as to prescribe a particular regulatory choice in achieving a regulatory outcome.[6]

Article 6.21: Regulatory Recognition

1. The Parties shall agree to regulatory recognition in as many sectors as possible, and shall be guided by the principle that, provided the Parties have satisfied the provisions of this chapter, recognition should generally be granted.

2. The Parties agree that these Regulatory Recognition Agreements shall take the form of Mutual Recognition Agreements, Enhanced Mutual Recognition Agreements, and agreements that accept the decisions of a regulator in one Party with respect to goods or services to be marketed in that Party, such that those same goods and services can be marketed in the other Party without the need for further regulatory approvals of any kind.

Article 6.22: Relation to Other Chapters

In the event of any inconsistency between this chapter and another chapter of this Agreement, this chapter shall prevail to the extent of the inconsistency, except where there is a sectoral annex for specific services areas in which case that sectoral annex shall apply.

Article 6.23: Contact Points

[. . .]

CHAPTER 7
Movement of Labor

Article 7.1: Visas

1. The Parties to this agreement commit to the provision of unlimited visas to nationals of the other Parties to visit, study, and work in their nation.

2. The applicable visas will be available for 5-year increments and can be renewed indefinitely. Employment-based visas will be conditional on a job offer and will not be tied to a particular job or employer.

3. Each Party reserves the authority to limit visas issued to nationals from the other Party if an increase in the number of visas is determined to cause or threaten to cause serious injury to the domestic economy. The Parties agree to provide a minimum of 30,000 visas each year to nationals of the other Parties in addition to visas available through other categories that are generally available outside this Agreement.

4. Nothing in this Agreement will preclude either Party from exercising normal vetting to protect public health and safety, national security, and other criteria that apply to nationals from third parties.

Article 7.2: Mutual Recognition of Occupational Licensing

1. With the exception of those occupations and conditions identified in Annex 7, the Parties agree to permit anyone who is licensed to practice any occupation within the jurisdiction of one Party to have satisfied the licensing requirements for that occupation in their own jurisdictions.

2. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers and to provide recommendations on mutual recognition to the Joint Committee.

Annex 7: Exceptions

It is the intention of the Parties to minimize exemptions and exclusions to the agreement. [. . .]

CHAPTER 8
Investment

Article 8.1: Definitions

For purposes of Chapter 8, the following definitions apply:

(a) **enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

(b) **investment** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.[7] Forms that an investment may take include the following:

i. an enterprise;

ii. shares, stock, and other forms of equity participation in an enterprise;

iii. bonds, debentures, other debt instruments, and loans;[8]

iv. futures, options, and other derivatives;

v. turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

vi. intellectual property rights;

vii. licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;[9] and

viii. other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.[10]

For the purposes of this Agreement, a claim to payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment.

(c) **investor of a non-Party** means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

(d) **investor of a Party** means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the state of his or her dominant and effective nationality.

Article 8.2: Scope and Coverage

1. Chapter 8 applies to measures adopted or maintained by a Party relating to the following:

   (a) investors of the other Party; and

   (b) covered investments.

2. For purposes of Chapter 8, measures adopted or maintained by a Party means measures adopted or maintained by:

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

   (b) nongovernmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

Article 8.3: Nondiscrimination

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors or investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors or investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 8.4: Expropriation and Compensation[11]

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except for the following:

   (a) for a public purpose;

   (b) in a nondiscriminatory manner;

   (c) on payment of prompt, adequate, and effective compensation; and

   (d) in accordance with due process of law.

2. The compensation referred to in paragraph 1(c) shall be as follows:

   (a) paid without delay;

(b) equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation); and

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c)—converted into the currency of payment at the market rate of exchange prevailing on the date of payment—shall be no less than the following:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 11 (Intellectual Property).

Article 8.5: Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include the following:

(a) contributions to capital, including the initial contribution;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement; and

(e) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, nondiscriminatory, and good-faith application of its laws relating to the following:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 8.6: Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an

investor of a Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking as follows:[12]

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or

(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement as follows:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Other Conditions, Exceptions, and Elaborations.

(a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.[13]

(b) Paragraph 1(f) does not apply to the following:

i. when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

ii. when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws.[14]

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), 1(c), 1(f), 2(a), and 2(b) shall not be construed to prevent a Party from adopting or maintaining measures, including the following environmental measures:

i. necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

ii. necessary to protect human, animal, or plant life or health; or

iii. related to the conservation of living or nonliving exhaustible natural resources.

(d) Paragraphs 1(a), 1(b), 1(c), 2(a), and 2(b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), 1(c), 1(f), 1(g), 2(a), and 2(b) do not apply to government procurement.

(f) Paragraphs 2(a) and 2(b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement. For purposes of this Article, private parties include designated monopolies or state enterprises, where such entities are not exercising delegated governmental authority.

Article 8.7: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 8.8: Denial of Benefits

1. A Party may deny the benefits of Chapter 8 to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party does the following:

(a) does not maintain normal economic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of Chapter 8 were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of Chapter 8 to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise. If, before denying the benefits of Chapter 8, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

Annex 8: Expropriation

The Parties confirm their shared understanding that

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.

2. Article 8.4.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 8.4.1 is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

   (a) The determination of whether an action or a series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the following:

i. the economic impact of the government action, although the fact that an action or a series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

ii. the extent to which the government action interferes with distinct, reasonable investment-backed expectations;[15] and

iii. the character of the government action, including its objectives and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest.

CHAPTER 9
E-Commerce

Article 9.1: Scope and General Provisions

Chapter 9 shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

Article 9.2: Customs Duties

No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.

Article 9.3: Nondiscriminatory Treatment of Digital Products

No Party shall accord less favorable treatment to digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer, or owner is a person of another Party, than it accords to other like digital products.

Article 9.4: Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts.

2. Each Party shall endeavor to avoid any unnecessary regulatory burden on electronic transactions.

Article 9.5: Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. No Party shall adopt or maintain measures for electronic authentication that would do as follows:

   (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

   (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 9.6: Paperless Trading

Each Party shall endeavor to make trade administration documents available to the public in electronic form; and accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 9.7: Location of Computing Facilities

1. The Parties recognize that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure does the following:

   (a) is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

   (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

Article 9.8: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure does the following:

   (a) is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

   (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

CHAPTER 10
Government Procurement

Article 10.1: Scope

Chapter 10 applies to any measure regarding covered procurement, which for purposes of this chapter means all government procurement of goods and services.

Article 10.2: Covered Procurement

Except with respect to the specific forms of procurement requested by the specific government agencies under the specific conditions identified in the list of nonconforming measures in Annex 10, or as otherwise provided in this Agreement, all national, state, provincial, and local government procurement is open to tenders from entities of all Parties.

Article 10.3: Nondiscrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favorable than the treatment that the Party, including its procuring entities, accords to (a) domestic goods, services, and suppliers and (b) goods, services, and suppliers of any other Party.

2. With respect to any measure regarding covered procurement, no Party, including its procuring entities, shall do as follows:

   (a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

   (b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of any other Party.

3. All orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2 of this Article.

Article 10.4: Exceptions

A Party may exempt its procurement spending from the terms of this chapter provided that the Party does the following:

1. Publishes and makes available to the other Parties the value of all of its government procurement spending (national and local), disaggregated by level of government, agency, and purpose;

2. Publishes a list of procurement that is exempted along with the most recent government spending figures on the exempted procurement; and

3. Does not exempt procurement that exceeds an aggregate value of 25 percent of all of the Party's government procurement spending at the national and local levels. To this end, Parties shall encourage subnational governments to open their procurement markets.

Annex 10: List of Exceptions (including U.S. states not agreeing to open their procurement markets to bids from the other Party).

[. . .]

CHAPTER 11
Intellectual Property

Article 11.1: Enforcement of Existing Laws

All Parties are required to enforce all of their laws with respect to copyrights, patents, trademarks, trade secrets, and all other forms of acknowledged intellectual property.

Article 11.2: Intellectual Property Committee

The Parties agree to create, upon entry into force, a committee consisting of representatives of all Parties that will meet annually to discuss developments with respect to intellectual property law, concerns, infringements, enforcement, and whether the provisions in this chapter should be modified.

CHAPTER 12
Sanitary and Phytosanitary Measures

Article 12.1: Definitions

1. The definitions in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereafter SPS Agreement) are incorporated into this chapter and shall form part of Chapter 12, mutatis mutandis.

2. In addition, for the purposes of Chapter 12, the following definitions apply:

   (a) **appropriate level of protection** shall have the same meaning ascribed to the term "appropriate level of sanitary and phytosanitary protection" in the SPS Agreement;

   (b) **area** shall have the meaning ascribed to that term by the World Organization for Animal Health (hereafter OIE) when used in relation to animal health, and shall have the meaning ascribed to that term by the International Plant Protection Convention (hereafter IPPC) when used in relation to plant health;

   (c) **competent authority** means the authorities in both Parties responsible for measures and matters referred to in this chapter;

   (d) **demarcation** means an area or zone, place of production, or subpopulation that maintains a distinct status with respect to a pest or disease prevalence and may be identified on a geographical basis using natural, artificial, or legal boundaries or on the basis of management and biosecurity practices employed at particular establishments or places of production;

   (e) **emergency measure** means a sanitary or phytosanitary measure that is applied by an importing Party to the other Party to address an urgent problem of human, animal, or plant life or health protection that arises or threatens to arise in the Party applying the measure;

(f) **final administrative decision, regulation, and regulatory authority** shall have the same meaning ascribed to those terms in Chapter 6 (Regulatory Coherence);

(g) **import check** means any inspections, examinations, sampling, review of documentation, tests, or procedures, including laboratory, organoleptic, and identity, conducted at the border by an importing Party or its representative to determine if a consignment complies[16] with the sanitary and phytosanitary requirements of the importing Party;

(h) **import program** means mandatory sanitary or phytosanitary policies, procedures, or requirements of an importing Party that govern the importation of goods;

(i) **international standards, guidelines, and recommendations** shall have the same meaning ascribed to those terms in the SPS Agreement;

(j) **low-level presence** means the inadvertent low-level presence in a shipment of plants or plant products of recombinant DNA plant material that is authorized for use in at least one country, but not in the importing country;

(k) **modern technology** means any technology that has been developed over the past 10 years;

(l) **place of production** shall have the meaning ascribed to that term by the IPPC;

(m) **primary representative** means the government body of a Party that is responsible for the implementation of this chapter and the coordination of that Party's participation in Committee activities under Article 12.5 (Committee on Sanitary and Phytosanitary Measures);

(n) **relevant international organization** means as follows:

i. with respect to food safety, the Codex Alimentarius Commission (hereafter Codex);

ii. with respect to animal health and zoonoses, the World Animal Health Organization; and

iii. with respect to plant health, the Secretariat of the International Plant Protection Convention;

(o) **risk analysis** means the process that consists of three components: risk assessment, risk management, and risk communication;

(p) **risk assessment** shall have the same meaning ascribed to the term in the SPS Agreement;

(q) **risk communication** means the exchange of information and opinions concerning risk and risk-related factors between risk assessors, risk managers, consumers, and other interested parties;

(r) **risk management** means the weighing of policy alternatives in light of the results of risk assessment and, if required, selecting and implementing appropriate control options, including regulatory measures;

(s) **SPS measure** shall have the same meaning ascribed to the term "sanitary and phytosanitary measure" in the SPS Agreement; and

(t) **zone, establishment, and subpopulation** shall have the meaning ascribed to those terms by the OIE.

Article 12.2: Objectives

The objectives of Chapter 12 are to do as follows:

(a) protect human, animal, or plant life or health in the territories of the Parties while facilitating and expanding trade by using a variety of means to address and seek to resolve sanitary and phytosanitary issues;

(b) reinforce and build on the SPS Agreement;

(c) strengthen communication, consultation, and cooperation between the Parties, and particularly between the Parties' competent authorities and primary representatives;

(d) ensure that sanitary or phytosanitary measures implemented by a Party do not create unjustified obstacles to trade;

(e) enhance transparency in and understanding of the application of both Parties' sanitary and phytosanitary measures; and

(f) encourage the development and adoption of international standards, guidelines, and recommendations, and promote their implementation by the Parties.

Article 12.3: Scope

1. Chapter 12 shall, unless otherwise specified, apply to all sanitary and phytosanitary measures (of a Party) that may, directly or indirectly, affect trade between the Parties.

2. Nothing in Chapter 12 prevents a Party from adopting or maintaining halal or kosher requirements for food and food products in accordance with Islamic or Jewish law.

Article 12.4: General Provisions

1. The Parties affirm their rights and obligations under the SPS Agreement.

2. Nothing in this Agreement shall limit the rights and obligations that each Party has under the SPS Agreement.

Article 12.5: Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this chapter, the Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (Committee), composed of government representatives of both Parties responsible for sanitary and phytosanitary matters.

2. The functions of the Committee shall include the following:

(a) consulting on issues and positions related to the meetings and work of the WTO SPS Committee, the IPPC, the OIE, and the Codex;

(b) providing a forum for discussion of and reviewing progress on addressing specific trade concerns related to the application of SPS measures and other SPS matters with a view to reaching mutually acceptable solutions;

(c) referring issues to technical working groups in support of work that the Committee considers to be a priority, establishing additional technical working groups, and eliminating technical working groups other than those established pursuant to this chapter;

(d) reporting, at least annually, to the Joint Committee on its activities and progress on resolving specific trade concerns and other SPS matters, including those specific trade concerns for which a technical working group has developed an action plan.

3. A Party may request the Committee to refer a specific trade concern regarding an SPS measure or other SPS matter to a technical working group. If the Committee decides to refer the matter to a technical working group, it shall forward the request to the relevant technical working group and the requesting Party shall at that time provide the technical working group with technical information in support of its preferred approach for resolving the matter. Any decision to refer a matter to a technical working group shall take into account the resources of both Parties and the need to balance the respective interest of both Parties. The Committee may refer matters to a technical working group no more than once a year, except in cases of exceptional urgency.

4. The Committee shall do as follows:

(a) shall provide a forum to improve the Parties' understanding of sanitary and phytosanitary issues that relate to the implementation of the SPS Agreement and this chapter;

(b) shall provide a forum to enhance mutual understanding of both Parties' sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(c) shall exchange information on the implementation of this chapter;

(d) shall determine the appropriate means, which may include ad hoc working groups, to undertake specific tasks related to the functions of the Committee;

(e) may identify and develop technical assistance and cooperation projects between the Parties on sanitary and phytosanitary measures;

(f) may serve as a forum for a Party to share information on a sanitary or phytosanitary issue that has arisen between it and the other Party or Parties, provided that the Parties between which the issue has arisen have first attempted to address the issue through discussions between themselves; and

(g) may consult on matters and positions for the meetings of the Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement (WTO SPS Committee), and meetings held under the auspices of the Codex Alimentarius Commission, the World Organization for Animal Health, and the International Plant Protection Convention.

5. No later than [15] days after the date of entry into force of this Agreement, the Parties shall establish the Committee's terms of reference and identify through an exchange of letters the primary representative of both Parties that shall serve as its cochair on the Committee.

6. The Committee shall meet at least once a year, unless the Parties decide otherwise.

7. Each Party shall ensure that its representatives on the Committee are the appropriate officials from its relevant trade agencies or ministries and competent authorities with responsibility for the development, implementation, and enforcement of SPS measures.

Article 12.6: Competent Authorities and Contact Points

1. Upon entry into force of this Agreement, both Parties shall provide the other Party with the following information in writing:

(a) with respect to each of the Parties' competent authorities that have responsibility for developing, implementing, and enforcing SPS measures that may affect trade between the Parties;

i. a description of each authority, including the authority's specific responsibilities, and

ii. a point of contact within each authority; and

(b) the name and contact information for a representative of the Party with authority to accept correspondence or inquiries from the other Party regarding matters arising under this chapter.

2. Both Parties shall promptly transmit to the other Party any material changes to this information.

Article 12.7: Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Each Party recognizes that adaption of SPS measures to regional pest or disease conditions can facilitate trade. Each Party shall provide that such adaption may be made on the basis of an area or zone, place of production, or subpopulation.

2. The Parties shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines, and recommendations.

3. The Parties may cooperate on the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence with the objective of acquiring confidence in the procedures followed by both Parties for the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.

4. When an importing Party receives a request for a determination of regional conditions from an exporting Party and determines that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time.

5. When an importing Party commences an assessment of a request for a determination of regional conditions, that Party shall promptly, on request of the exporting Party, explain its process for making the determination of regional conditions.

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment of the exporting Party's request for a determination of regional conditions.

7. When an importing Party adopts a measure that recognizes specific regional conditions of an exporting Party, the importing Party shall communicate that measure to the exporting Party in writing and implement the measure within a reasonable period of time.

8. The importing and exporting Parties involved in a particular determination may also decide in advance the risk management measures that will apply to trade between them in the event of a change in the status.

9. The Parties involved in a determination recognizing regional conditions are encouraged, if mutually agreed, to report the outcome to the Committee.

10. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognize pest- or disease-free areas, or areas of low pest and disease prevalence, the importing Party shall provide the exporting Party with the rationale for its determination.

11. If there is an incident that results in the importing Party modifying or revoking the determination recognizing regional conditions, on request of the exporting Party, the Parties involved shall cooperate to assess whether the determination can be reinstated.

12. The competent authorities of both Parties shall work together to establish the risk management measures that would apply to trade between the Parties in the event either Party has made any change with respect to disease or pest status of a demarcation in its territory.

13. Both Parties shall normally recognize the demarcations of the other Party located in the other Party's territory.

14. Both Parties, in determining the pest or disease status in respect to a particular demarcation located in the other Party, shall take into account the following where applicable:

    (a) decisions of the WTO SPS Committee;

    (b) the work of the relevant international organizations; and

    (c) knowledge acquired through experience with the exporting Party's relevant sanitary or phytosanitary authorities.

Article 12.8: Equivalence

1. The Parties acknowledge that recognition of the equivalence of sanitary and phytosanitary measures is an important means to facilitate trade. Further to Article 4 of the SPS Agreement, the Parties shall apply equivalence to a group of measures or on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures, or on a systems-wide basis, both Parties shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines, and recommendations. Both Parties recognize that determining that SPS measures of the other Party achieve an equivalent level of sanitary or phytosanitary protection as its own SPS measures can facilitate trade between the Parties. Both Parties shall permit such determinations of equivalence to be made with respect to a specific measure, on the basis of a product or category of products or on a system-wide basis.

2. On request of the exporting Party, the importing Party shall explain the objective and rationale of its sanitary or phytosanitary measure and clearly identify the risk the sanitary or phytosanitary measure is intended to address.

3. When an importing Party receives a request for an equivalence assessment and determines that the information provided by the exporting Party is sufficient, it shall initiate the equivalence assessment within a reasonable period of time.

4. When an importing Party commences an equivalence assessment, that Party shall promptly, on request of the exporting Party, explain its equivalence process and plan for making the equivalence determination and, if the determination results in recognition, for enabling trade.

5. In determining the equivalence of a sanitary or phytosanitary measure, an importing Party shall take into account available knowledge, information, and relevant experience, as well as the regulatory competence of the exporting Party.

6. The importing Party shall recognize the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measure does as follows:

   (a) achieves the same level of protection as the importing Party's measure; or

(b) has the same effect in achieving the objective as the importing Party's measure.[17]

7. When an importing Party adopts a measure that recognizes the equivalence of an exporting Party's specific sanitary or phytosanitary measure, group of measures, or measures on a systems-wide basis, the importing Party shall communicate the measure it has adopted to the exporting Party in writing and implement the measure within a reasonable period of time.

8. The Parties involved in an equivalence determination that results in recognition are encouraged, if mutually agreed, to report the outcome to the Committee.

9. If an equivalence determination does not result in recognition by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

10. Both Parties, in determining whether an SPS measure of the other Party achieves the Party's appropriate level of protection, shall take into account the following, where relevant:

    (a) decisions of the WTO SPS Committee;

    (b) the work of the relevant international organizations;

    (c) knowledge acquired through experience with the other Party's relevant competent authorities; and

    (d) the extent to which the Party has complied with the provisions of the chapter on Regulatory Coherence in this Agreement.

Article 12.9: Science and Risk

1. In undertaking a risk assessment appropriate to the circumstances, each Party shall ensure that it takes into account the following:

    (a) relevant available scientific evidence, including quantitative or qualitative data and information; and

(b) relevant guidance from the WTO SPS Committee and international standards, guidelines, and recommendations concerning the risk at issue.

2. Prior to adopting an SPS regulation, each Party shall evaluate—in light of the results of any risk assessment that it undertook or relied upon in developing the SPS regulation—any alternatives to achieve the appropriate level of protection being considered by the Party or identified through timely submitted public comments, including where raised, the alternative of not adopting any regulation. The Parties will ensure that any SPS regulation is promulgated in a way that minimizes trade and competition restrictions consistent with a clearly stated, sound science-based regulation. Both Parties shall conduct such evaluation with a view to ensuring compliance with the Party's obligation under Article 5.6 of the SPS Agreement.

3. Each Party shall ensure that any risk assessment that it undertakes related to developing or reviewing an SPS regulation is under normal circumstances made available on the internet for public review and comment. Each Party shall ensure that any of its competent authorities responsible for undertaking a risk assessment take into account any relevant comments the Party receives during the period afforded for interested parties to provide public comment, including where appropriate by revising the risk assessment. Each Party shall also ensure that any of its competent authorities that are responsible for undertaking the risk assessment or that may use it in connection with developing or reviewing an SPS regulation, shall, upon request, discuss with the other Party in a timely manner any matters the other Party raises in its comments related to the risk assessment, including possible alternatives to achieve the Party's appropriate level of protection.

4. At the time a Party makes a risk assessment available for public comment, it shall include the following explanations:

   (a) how the assessment is appropriate to the circumstances of the particular risk at issue and takes into account relevant scientific evidence, including quantitative or qualitative data and information;

   (b) how, if at all, the assessment takes into account the relevant international standards, guidelines, and recommendations concerning the risks at issue; and

   (c) how the assessment takes into account any risk assessment techniques developed by the relevant international organizations.

5. When issuing or submitting any final administrative decision for an SPS regulation, the Party shall make publicly available on the internet an explanation of the following:

   (a) the relationship between the regulation and the scientific evidence and technical information, including any risk assessment and any other analyses or information the regulatory authority considered in preparing the regulation, as well as how the specific requirements set out in the regulation address the risks the regulation seeks to address;

   (b) any alternative identified through public comments, including by a Party, as significantly less restrictive to trade; and

      i. whether any of those alternatives are significantly less restrictive to trade;

      ii. whether such alternatives were able to achieve the Party's appropriate level of protection or were technically or economically feasible; and

      iii. its reasons for selecting the measure set out in the final administrative decision.

6. Where a regulatory authority of a Party submits a proposal for an SPS measure for approval by a committee comprising national representatives and

   (a) the committee rejects or modifies the proposal; or

   (b) the regulatory authority of a Party modifies the proposal in response to feedback, including any rejection, from the committee; then

   each member of the committee or the regulatory authority of the Party, as the case might be, shall make publicly available an explanation of the basis for rejecting or modifying the proposal, including the extent to which it is supported by relevant scientific evidence and technical information and analysis, including any risk assessment.

7. Each Party that provisionally adopts an SPS measure pursuant to Article 5.7 of the SPS Agreement that affects trade between Parties shall, upon request, explain the following:

   (a) to the extent possible, any alternatives significantly less restrictive to trade it considered and why it considered that any such alternatives do not achieve the Party's appropriate level of protection or are not technically or economically feasible;

(b) its view on any comments and information submitted by the other Party;

(c) the additional information it believes necessary for a more objective assessment of risk and plans for obtaining such information; and

(d) under what circumstances, and if possible when, it will review whether to maintain or modify the measure.

Article 12.10: Audits[18]

1. To determine an exporting Party's ability to provide required assurances and meet the sanitary and phytosanitary measures of the importing Party, each importing Party shall have the right, subject to this Article, to audit the exporting Party's competent authorities and associated or designated inspection systems. That audit may include an assessment of the competent authorities' control programs, including, if appropriate, reviews of the inspection and audit programs; and onsite inspections of facilities.

2. An audit shall be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.

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

4. Prior to the commencement of an audit, the importing Party and exporting Party involved shall discuss the rationale and decide (a) the objectives and scope of the audit, (b) the criteria or requirements against which the exporting Party will be assessed, and (c) the itinerary and procedures for conducting the audit.

5. The auditing Party shall provide the audited Party the opportunity to comment on the findings of the audit and take any such comments into account before the auditing Party makes its conclusions and takes any action. The auditing Party shall provide a report setting out its conclusions in writing to the audited Party within a reasonable period of time.

6. A decision or action taken by the auditing Party as a result of the audit shall be supported by objective evidence and data that can be verified, taking into account the auditing

Party's knowledge of, relevant experience with, and confidence in the audited Party. This objective evidence and data shall be provided to the audited Party on request.

7. The costs incurred by the auditing Party shall be borne by the auditing Party, unless both Parties decide otherwise.

8. The auditing Party and audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

Article 12.11: Import Checks

1. Each Party shall ensure that its import programs are based on the risks associated with importations, and the import checks are carried out without undue delay.[19]

2. Upon request, each Party shall provide the other Party with information on any import procedures and its basis for determining the nature and frequency of import checks, including the factors it considers to determine the risks associated with importations.

3. A Party may amend the frequency of its import checks as a result of experience gained through import checks or as a result of actions or discussions provided for in this chapter.

4. Upon request, each Party shall provide the other Party with information regarding the analytical methods, quality controls, sampling procedures, and facilities that the importing Party uses to test a good as part of an import check. Both Parties shall ensure that any testing it conducts as part of an import check on goods of the other Party is done in accordance with appropriate scientifically valid analytical methods, and in facilities operating under a quality assurance program that is consistent with international laboratory standards. Each Party shall maintain physical or electronic documentation regarding the identification, collection, sampling, transportation, and storage of the test samples of goods of the other Party, and the analytical methods used to test the samples.

5. The importing Party shall ensure that its final decision in response to a finding of nonconformity with the importing Party's sanitary or phytosanitary measure is limited to what is reasonable and necessary, and is rationally related to the available science.

6. When one Party prohibits or restricts the importation of a good of the other party on the basis of an adverse result of an import check, the importing Party shall provide a notification, where practicable by electronic means, about the adverse result to at least one of the following: (a) the importer or its agent, (b) the exporter, (c) the manufacturer, or (d) the exporting Party.

7. When providing the notification, the Party shall do as follows:

   (a) include in the notification

      i. the reason for the prohibition or restriction;

      ii. the legal basis or authorization for the action; and

      iii. information on the status of the affected goods and, as appropriate, on their disposition;

   (b) provide the notification as soon as possible and normally not later than 10 days[20] after the date it prohibits or restricts the importation of the goods unless the goods are seized by a customs authority of the Party;

   (c) do so in a manner consistent with its laws, regulations, and requirements as soon as possible and no later than 7 days after the date of the decision to prohibit or restrict, unless the good is seized by a customs administration; and

   (d) if the notification has not already been provided through another channel, transmit the notification by electronic means, if practicable.

8. Where a Party that has prohibited or restricted the importation of a good of the other Party on the basis of an adverse result of an import check it shall provide an opportunity for a review of the decision and consider any relevant information submitted to assist in the review. The review request and information should be submitted to the importing Party within a reasonable period of time.[21]

9. Where a Party has determined a significant, sustained, or recurring pattern of nonconformity with a sanitary or phytosanitary measure, it shall notify the other Party of the nonconformity.

10. On request, an importing Party shall provide to the exporting Party available information on goods from the exporting Party that were found not to conform to a sanitary or phytosanitary measure of the importing Party.

Article 12.12: Certification

1. Each Party shall endeavor to use means other than certification to demonstrate that imports from the other Party satisfy its appropriate level of protection or meet its applicable SPS requirements. To help ensure that any certification requirements, including any attestation or information requirements, are applied only to the extent necessary to protect human, animal, or plant life or health, each Party shall ensure that its certification forms:

   (a) are prepared in a manner that avoids imposing unnecessary burdens on the other Party's regulatory and certification authorities, including duplicative attestations;

   (b) are adapted to recognize the competent authorities of the other Party and facilitate their ability to make the requested certifications; and

   (c) take into account relevant decisions of the WTO SPS Committee, international standards, guidelines, and recommendations, and determinations made by the Parties related to regional conditions and equivalence.

2. Both Parties shall, on request, assist the other Party in determining the authenticity of specific certificates.

3. No later than [15] days after the date of entry into force of this Agreement, the Parties shall establish model certificates that take into account the circumstances of trade between the Parties. To the extent feasible, each Party shall base its certification requirements for imports from the other Party on these model certificates.

Article 12.13: Transparency

1. The Parties recognize the value of sharing information about their sanitary and phytosanitary measures on an ongoing basis, and of providing interested persons and other Parties with the opportunity to comment on their proposed sanitary and phytosanitary measures.

2. In implementing this Article, both Parties shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines, and recommendations.

3. A Party shall notify a proposed sanitary or phytosanitary measure that may have an effect on the trade of the other Party, including any that conforms to international standards, guidelines, or recommendations, by using the WTO SPS notification submission system as a means of notifying the other Parties.

4. Unless urgent problems of human, animal, or plant life or health protection arise or threaten to arise, or the measure is of a trade-facilitating nature, a Party shall normally allow at least 60 days for interested persons and other Parties to provide written comments on the proposed measure after it makes the required notifications. If feasible and appropriate, the Party should allow more than 60 days. The Party shall consider any reasonable request from an interested person or the other Party to extend the comment period. On request of the other Party, the Party shall respond to the written comments of the other Party in an appropriate manner.

5. During the time period described above, when a regulatory authority of a Party is developing an SPS regulation, it shall, under normal circumstances,[22] make publicly available on the internet the following:

   (a) the text of the regulation it is developing;

   (b) any risk assessment, as well as the scientific evidence and technical information and any other analyses and information the regulatory authority relied upon in support of the regulation and an explanation of how such evidence, information, and analyses support the regulation;

(c) an explanation of how the regulation, including its objectives, achieves those objectives, the rationale for the material features of the regulation, and any major alternatives being considered; and

(d) the name and contact information of an official who may be contacted for questions regarding the regulation.

6. Both Parties shall make publicly available the information described in Article 12.5:

(a) after the relevant authority of the Party has developed a text for the regulation that contains sufficient detail so as to allow persons to evaluate how the regulation, if adopted, would affect their interests; and

(b) before the relevant authority of the Party that is developing the measure issues or submits any final administrative decision with respect to the regulation so that this authority may take into account timely received comments and, as appropriate, revise the regulation.

7. Where a regulatory authority of a Party is developing an SPS regulation and makes publicly available the information described in Article 12.5, the Party shall ensure that any person, regardless of domicile, has an opportunity, on no less favorable terms than any person of the Party, to submit comments on the regulation, including by providing written comments and other input with respect to the information described in Article 12.5, to the regulatory authority. The Party shall promptly make publicly available any comments it receives on the regulation, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content, in which case the Party shall ensure it makes publicly available a version that redacts such information or a summary of the comment that does not contain such information.

8. In determining the time period during which interested persons may submit comments on the regulation, both Parties shall take into account the relevant decisions of the WTO SPS Committee.

9. Where a regulatory authority of a Party issues any final administrative decision for an SPS regulation, both Parties shall also make publicly available the following:

   (a) the text of the regulation;

   (b) an explanation of the regulation, including its objectives, and how the regulation achieves those objectives, and the rationale for the material features of the regulation, to the extent different from the explanation provided in accordance with Article 12.5;

   (c) the regulatory authority's views on substantive issues raised in the comments; and

   (d) an explanation of the nature and the reason for any significant revisions to the regulation since the Party made it available for public comment.

10. If a Party proposes a sanitary or phytosanitary measure that does not conform to an international standard, guideline, or recommendation, the Party shall provide to the other Party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, the relevant documentation that the Party considered in developing the proposed measure, including documented and objective scientific evidence that is rationally related to the measure, such as risk assessments, relevant studies, and expert opinions.

11. A Party that proposes to adopt a sanitary or phytosanitary measure shall discuss with the other Party, on request and if appropriate and feasible, any scientific or trade concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the objective of the measure.

12. Both Parties shall publish, in print or electronically, all final SPS regulations in a single official journal or website. Both Parties shall publish in this single official journal or website the text of any SPS regulation it is developing and that should be made publicly available in accordance with Articles 12.5 and 12.6.

13. Both Parties shall notify the other Parties of final sanitary or phytosanitary measures through the WTO SPS notification submission system. Both Parties shall ensure that the text or the notice of a final sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure. A Party shall also make

available to the other Party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, significant written comments and relevant documentation considered to support the measure that were received during the comment period.

14. If a final sanitary or phytosanitary measure is substantively altered from the proposed measure, a Party shall also include in the notice of the final sanitary or phytosanitary measure that it publishes, an explanation of the following:

    (a) the objective and rationale of the measure and how the measure advances that objective and rationale; and

    (b) any substantive revisions that it made to the proposed measure.

15. An exporting Party shall notify the importing Party through the contact points referred to in Article 12.6 (Competent Authorities and Contact Points) in a timely and appropriate manner as follows:

    (a) if it has knowledge of a significant sanitary or phytosanitary risk related to the export of a good from its territory;

    (b) of urgent situations where a change in animal or plant health status in the territory of the exporting Party may affect current trade;

    (c) of significant changes in the status of a regionalized pest or disease;

    (d) of new scientific findings of importance that affect the respect to food safety, pests, or diseases; and

    (e) of significant changes in food safety, pest or disease management, or control or eradication policies or practices that may affect current trade.

16. If feasible and appropriate, a Party should provide an interval of more than 6 months between the date it publishes a final sanitary or phytosanitary measure and the date on which the measure takes effect, unless the measure is intended to address an urgent

problem of human, animal, or plant life or health protection or the measure is of a trade-facilitating nature.

17. A Party shall provide to the other Party, on request, all sanitary or phytosanitary measures related to the importation of a good into that Party's territory.

Article 12.14: Emergency Measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal, or plant life or health, the Party shall promptly notify the other Parties of that measure through the primary representative and the relevant contact point referred to in Article 12.6 (Competent Authorities and Contact Points). The Party that adopts the emergency measure shall take into consideration any information provided by other Parties in response to the notification.

2. If a Party adopts an emergency measure, it shall review the scientific basis of that measure within 6 months and make available the results of the review to any Party on request. If the emergency measure is maintained after the review, because the reason for its adoption remains, the Party should review the measure periodically.

Article 12.15: Cooperation

1. The Parties shall explore opportunities for further cooperation, collaboration, and information exchange between the Parties on sanitary and phytosanitary matters of mutual interest, consistent with this chapter. Those opportunities may include trade facilitation initiatives and technical assistance. The Parties shall cooperate to facilitate the implementation of this chapter.

2. The Parties shall cooperate and may jointly identify work on sanitary and phytosanitary matters with the goal of eliminating unnecessary obstacles to trade between the Parties.

Article 12.16: Information Exchange

A Party may request information from the other Party on a matter arising under this chapter. A Party that receives a request for information shall endeavor to provide available information to the requesting Party within a reasonable period of time, and if possible, by electronic means.

Article 12.17: Cooperative Technical Consultations to Resolve SPS Trade Concerns

1. Both Parties may request cooperative technical consultations to discuss any SPS measure of the other Party that it considers might adversely affect trade. The request shall be made in writing and identify the following:

   (a) the measure at issue;

   (b) the provisions of this chapter or the SPS Agreement to which the concerns relate; and

   (c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

2. A Party shall deliver its request to the representative of the other Party identified above and, where the measure is under discussion by a technical working group or the working group on modern agricultural technologies, to the chairs of the relevant working group.

3. In the event the measure identified in the request is not under discussion in a working group or no consensus exists in the working group that further work by it could address the concerns in the request, the Party to which the request is made shall, unless the Parties decide otherwise, reply to the request in writing within [15] days of the date it receives the request whether it is willing to discuss the concerns identified in the request. If the Party to whom the request is made is willing to discuss the concerns in the request, it shall meet with the other Party, in person or via video or teleconference, to discuss the matters identified in the request no later than [60] days after the date it receives the request. If the Party requesting cooperative technical consultations believes that the matter is urgent, it may request that any discussions take place within a shorter time frame. In such cases, the Party to whom the request is made shall give positive consideration to the request.

4. Prior to the meeting of the Parties provided for above, either Party may request an expert to serve as a facilitator to resolve the concerns identified in the request for cooperative technical consultations. The other Party shall respond to the request within [7] days of the date it receives it. If the Parties agree to use a facilitator, the Parties shall try to agree on an individual to serve as facilitator.

5. If the Parties are unable to agree on an individual to serve as the facilitator within [7] days

   (a) both Parties shall nominate an individual who is not a national of any Party to serve as the facilitator; and

   (b) the Party requesting cooperative technical consultations shall select by lot an individual to serve as the facilitator, unless the Parties decide otherwise. The Party to which the request has been made shall have the right to be present for the selection.

6. A facilitator shall be deemed to be appointed on the date the Parties receive written notification from the individual that he or she agrees to serve as the facilitator and confirms that he or she agrees to abide by the requirements set out above. The Parties shall meet with the facilitator, in person or by electronic means, within [30] days of the date the facilitator is appointed.

7. Any individual appointed to serve as a facilitator shall do as follows:

   (a) be independent of, and not be affiliated with or take instructions from, any Party;

   (b) not have a financial interest in the matter;

   (c) abide by terms and conditions that may be determined by the Parties;

   (d) not comment on the consistency of the measure at issue with respect to this Agreement or the WTO SPS Agreement, during the course of his or her duties or afterwards;

   (e) agree to keep confidential, except between the Parties, any of the following received in the course of the facilitator's duties:

      i. any technical or scientific information submitted by a Party;

ii. any statements by a Party regarding its position on the matter before the facilitator; and

iii. the substance of any discussions between the Parties; and

(f) not serve as an arbitrator or expert in any dispute concerning the matter.

The remuneration and expenses paid to the facilitator shall be borne equally by the Parties, unless the Parties decide otherwise.

8. Both Parties shall ensure that representatives from the relevant trade and competent authorities participate in any meetings held pursuant to this Article. Where the Parties choose to meet in person, the meeting shall take place in the territory of the Party to which the request has been made, unless the Parties decide otherwise.

9. All communications related to cooperative technical discussions sought or carried out pursuant to this Article shall be kept confidential, unless the Parties decide otherwise, and shall be without prejudice to the rights and obligations under this Agreement or the WTO Agreement.

10. Both Parties shall seek to resolve any concerns with respect to an SPS measure of the other Party through cooperative technical consultations pursuant to this Article prior to initiating dispute settlement proceedings under this Agreement.

11. Either Party may terminate cooperative technical consultations by notifying the other Party in writing. Such notification may be provided at any time, provided that more than [45] days have elapsed, or such other period of time as the Parties may decide, since the date on which the Party receiving a request for cooperative technical consultations replied that it is willing to enter into such consultations.

Article 12.18: Dispute Settlement

1. This chapter shall be subject to the dispute settlement mechanisms of this Agreement.

2. In a dispute under this chapter that involves scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the Parties involved in the dispute. To this end, the panel may, if it deems appropriate, establish an advisory technical experts group, or consult the relevant international standard setting organizations, at the request of either Party to the dispute or on its own initiative.

Article 12.19: Regulatory Approvals for Products of Modern Technology

1. Where either Party requires a product of modern agricultural technology to be approved or authorized prior to its importation, use, or sale in its territory, the Party shall allow any person to submit an application for approval at any time.

2. Where either Party requires a product of modern agricultural technology to be approved or authorized prior to its importation or sale in its territory, both Parties shall make publicly available the following:

   (a) a description of the processes it applies to accept, consider, and decide applications for approval or authorization;

   (b) the competent authorities responsible for receiving and deciding applications for approval or authorization;

   (c) the timelines for completion of any steps or procedures in the approval or authorization processes;

   (d) any documentation, information, or actions it requires from applicants as part of its approval or authorization processes; and

   (e) under normal circumstances[23] each Party shall promptly make publicly available any risk assessment it conducts as part of an approval or authorization process for a product of modern agricultural technology.

3. Each Party shall endeavor to meet applicable timelines for all steps in its approval or authorization processes for products of modern agricultural technology. Where a Party does not meet the timeline for a step in an approval or authorization process, upon

request of the other Party, the Party shall provide a timely notification to the other Party explaining why the timeline for that step was not met and identify and update the timeline for all remaining steps in the approval or authorization process.

4. Each Party shall avoid unnecessary duplication and burdens with respect to the following:

   (a) any documentation, information, or actions required of applicants as part of its approval or authorization processes for products of modern agricultural technology; and

   (b) any information the Party evaluates as part of the approval or authorization processes for products of modern agricultural technology.

5. Each Party shall promptly publish any changes to its required approval or authorization processes or related requirements for products of modern agricultural technology. Except in urgent circumstances, each Party shall endeavor to provide a transition period between publication of any material changes to its approval or authorization processes or related requirements for products or modern agricultural technology and their entry into force to allow interested persons to become familiar with and adapt to such changes, and endeavor to accommodate and avoid lengthening the approval or authorization process for applications that were submitted prior to publication of the changes. However, where the change reduces burdens on interested persons, entry into force should not be unnecessarily delayed.

6. Both Parties shall maintain mechanisms or processes that provide an applicant seeking approval or authorization for a product of modern agricultural technology to timely obtain the following:

   (a) information on the status of its application for approval or authorization;

   (b) answers to questions regarding the approval or authorization processes and regulatory requirements for approval;

   (c) notice that the Party requires clarification or additional information from the applicant;

(d) opportunities to provide clarification with respect to its application or additional information in support of it during the review of the application; and

(e) opportunities to correct, or identify potential concerns regarding, information being considered or relied upon by the Party in considering and deciding on the application, including with respect to any risk or safety assessments conducted.

7. Both Parties shall participate in the Global Low Level Presence Initiative to develop an approach or set of approaches to manage low-level presence in order to reduce unnecessary disruptions affecting trade.

8. The Parties hereby establish a Working Group on Trade in Products of Modern Agricultural Technologies (Working Group) to be cochaired by representatives of both Parties' trade agency. Each Party shall designate officials from its competent authorities, including officials from authorities that conduct or evaluate risk assessments in connection with applications for approval of products of modern agricultural technology, to participate in the Working Group. The Working Group shall be a forum for the Parties to do as follows:

(a) discuss specific measures or issues related to modern agricultural technologies that may affect, directly or indirectly, trade between the Parties;

(b) discuss and resolve specific trade concerns arising from a measure of a Party affecting products of modern agricultural technology;

(c) facilitate the exchange of information, including on laws, regulations, and policies of each Party related to the trade of products of modern biotechnology; and

(d) consult on issues and positions related to international cooperative and standard-setting efforts related to modern agricultural technologies.

9. The Working Group shall provide an annual report to the Joint Committee concerning its activities, as well as any progress it has made toward resolving trade concerns raised by a Party.

Article 12.20: Technical Working Groups

1. Recognizing that the resolution of SPS matters is best achieved through bilateral cooperation and consultation informed by the applicable science and understanding of the relevant risks, the Parties hereby establish technical working groups to be cochaired by representatives of both Parties concerning the following subjects:

   (a) animal health;

   (b) plant health; and

   (c) food safety.

2. The Parties may decide to designate existing bodies to serve as the relevant technical working group for purposes of this Article. No later than [15] days after the date of entry into force of this Agreement, the Parties shall establish the terms of reference or rules of procedure for each technical working group. The cochairs of a technical working group may decide to establish subgroups that may include, as appropriate, experts that are not representatives of the technical working group to consider particular technical issues.

3. Any technical working groups established shall, with respect to the subject matter of the working group do as follows:

   (a) consider specific SPS measures or sets of measures that are likely to affect, directly or indirectly, trade;

   (b) engage, at the earliest appropriate point, in scientific and technical exchange and cooperation regarding SPS matters that may, directly or indirectly, affect the trade;

   (c) provide a forum to facilitate consideration, discussion, and reviews of specific risk assessments and possible risk mitigation and management options;

   (d) seek to resolve specific trade concerns; and

(e) provide a regular opportunity for both Parties' representatives to update the technical working group on the progress the Party has made on addressing and resolving specific trade concerns.

4. Each technical working group established under this chapter shall annually develop a work program taking into account the resource constraints of both Parties and the need to balance both Parties' respective interests.

5. The work program shall include action plans to address, with a view to resolving, specific trade concerns regarding SPS measures or other SPS matters.

6. Each technical working group shall provide the Committee with a report, at least annually, regarding the progress of its current work programs, including timelines for future actions where appropriate.

CHAPTER 13
Technical Barriers to Trade

Article 13.1: Definitions

1. The definitions of the terms used in this chapter contained in Annex 1 of the Technical Barriers to Trade (TBT) Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into this chapter and shall form part of this chapter, mutatis mutandis.

2. In addition, for the purposes of this chapter, the following applies:

   (a) **central government body**[24] has the meaning assigned to that term in Annex 1 of the TBT Agreement;

   (b) **conformity assessment procedures** has the meaning assigned to that term in Annex 1 of the TBT Agreement;

   (c) **consular transactions** means requirements that products of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for conformity assessment documentation;

   (d) **covered body** means a central government body of a Party or a body of the European Union, its ministries, and departments or any body subject to its control;

   (e) **local government body** has the meaning assigned to that term in Annex 1 of the TBT Agreement;

   (f) **marketing authorization** means the process or processes by which a Party approves or registers a product in order to authorize its marketing, distribution, or sale in the Party's territory. The process or processes may be described in a Party's laws or regulations in various ways, including "marketing authorization," "authorization," "approval," "registration," "sanitary authorization," "sanitary registration," and

"sanitary approval" for a product. Marketing authorization does not include notification procedures;

(g) **mutual recognition agreement** means a binding government-to-government agreement for recognition of the results of conformity assessment conducted against the appropriate technical regulations or standards in one or more sectors, including government-to-government agreements to implement the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment of May 8, 1998, and the Electrical and Electronic Equipment Mutual Recognition Arrangement of July 7, 1999, and other agreements that provide for the recognition of conformity assessment conducted against appropriate technical regulations or standards in one or more sectors;

(h) **mutual recognition arrangement** means an international or regional arrangement (including a multilateral recognition arrangement) between accreditation bodies recognizing the equivalence of accreditation systems (based on peer review) or between conformity assessment bodies recognizing the results of conformity assessment;

(i) **postmarket surveillance** means procedures taken by a Party after a product has been placed on its market to enable the Party to monitor or address compliance with the Party's domestic requirements for products;

(j) **proposed technical regulation or conformity assessment procedure** means a proposal for a technical regulation or conformity assessment procedure that provides sufficient detail about the likely content of the measure so as to adequately inform persons about whether and how the measure might affect them and, in normal circumstances, includes a draft legal text;

(k) **standard** has the meaning assigned to that term in Annex 1 of the TBT Agreement;

(l) **TBT Agreement** means the WTO Agreement on Technical Barriers to Trade, as may be amended;

(m) **technical regulation** has the meaning assigned to that term in Annex 1 of the TBT Agreement; and

(n) **verify** means to take action to confirm the veracity of individual conformity assessment results, such as requesting information from the conformity assessment body or the body that accredited, approved, licensed, or otherwise recognized the conformity assessment body, but does not include requirements that subject a product to conformity assessment in the territory of the importing Party that duplicates the conformity assessment procedures already conducted with respect to the product in the territory of the exporting Party or a third party, except on a random or infrequent basis for the purpose of surveillance, or in response to information indicating noncompliance.

Article 13.2: Objective

The objective of Chapter 13 is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

Article 13.3: Scope

1. Chapter 13 applies to the preparation, adoption, and application of all technical regulations, standards, and conformity assessment procedures of covered bodies and, where explicitly provided for, technical regulations, standards, and conformity assessment procedures of government bodies at the level directly below that of the central level of government that may, directly or indirectly, affect trade in goods between the Parties, except as provided elsewhere in this chapter, including any amendments thereto and any additions to their rules or product coverage, except amendments and additions of an insignificant nature.

2. Each Party shall take reasonable measures that are within its authority to encourage observance by regional or local government bodies, as the case may be, on the level directly below that of the central level of government within its territory that are responsible for the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures, of Article 13.5 (International Standards, Guides, and Recommendations), Article 13.7 (Conformity Assessment), and Article 13.9 (Compliance Period for Technical Regulations and Conformity Assessment Procedures).

3. All references in this chapter to technical regulations, standards, and conformity assessment procedures shall be construed to include any amendment.

4. This chapter shall not apply to technical specifications prepared by a government entity for its production or consumption requirements. These specifications are covered by Chapter 10 (Government Procurement).

5. Chapter 13 shall not apply to sanitary and phytosanitary measures. These are covered by Chapter 12 (Sanitary and Phytosanitary Measures).

6. For greater certainty, nothing in this chapter shall prevent a Party from adopting or maintaining technical regulations, standards, or conformity assessment procedures in accordance with its rights and obligations under this Agreement, the TBT Agreement, and any other relevant international agreement.

Article 13.4: Incorporation of Certain Provisions of the TBT Agreement

The following provisions of the TBT Agreement are incorporated into and made part of this Agreement, mutatis mutandis:

(a) Articles 2.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 2.12;

(b) Articles 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9; and

(c) paragraphs D, E, and F of Annex 3.

Article 13.5: International Standards, Guides, and Recommendations

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

2. In this respect, and further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, to determine whether there is an international standard, guide, or recommendation within

the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, both Parties shall apply the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since January 1, 1995 (G/TBT/1/Rev.12), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall cooperate with each other, when feasible and appropriate, to ensure that international standards, guides, and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

Article 13.6: Standards

1. Both Parties shall apply the Decision of the TBT Committee on Principles for the Development of the International Standards, Guides and Recommendations with relation to Articles 2 and 5 and Annex 3 of the TBT Agreement (the Committee Decision), issued by the WTO Committee on Technical Barriers to Trade (G/TBT/1Rev.10) in determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement or Article 5 of this chapter exists.

2. Both Parties shall treat any standard, guide, or recommendation that is developed in accordance with the principles set forth in the Committee Decision as an international standard, guide, or recommendation for purposes of Articles 2 and 5 and Annex 3 of the TBT Agreement. Accordingly, neither Party shall refuse to treat a standard as an international standard based on the following:

   (a) the domicile of the body that developed the standard;

   (b) whether the body that developed the standard is an intergovernmental body; or

   (c) whether the body that developed the standard provides for participation in its standards activities through national delegations or limits participation in its standards activities to persons affiliated with a government.

3. Where a Party requests or directs a body or bodies to prepare a standard with a view to mandating that a product comply with that standard, establishing a generally applicable

presumption that a product complies with a technical regulation or conformity assessment procedure if it conforms to that standard, or otherwise allowing the standard to be used as a basis for or in support of compliance with technical regulation or conformity assessment procedure it shall observe, mutatis mutandis, the obligations set out in Articles 2.9.1 through 2.9.4 and Articles 5.6.1 through 5.6.4 of the TBT Agreement and this chapter.

4. For purposes of implementing Article 6.3, a Party shall carry out the steps set out in Articles 2.9.1 through 2.9.4 and Articles 5.6.1 through 5.6.4 of the TBT Agreement and this chapter with respect to any document in which the Party requests or directs a body or bodies to develop the standard and any related documents describing the standard to be developed. For greater certainty, the Party shall ensure that it allows any request or direction to develop a standard to be amended to take into account any discussions or comments received.

5. Where a Party requests a body to develop a standard that may be used for purposes of complying in whole or part with technical regulation or conformity assessment procedure, the Party shall specify in the request that the body shall do as follows:

   (a) allow persons of the other Party with relevant technical expertise to participate in any of its technical bodies, including by accessing working documents, attending meetings, submitting technical proposals and advice concerning development of the standard, and ensuring prompt consideration of any such proposals and advice;

   (b) not impose conditions on such participation that impede persons of the other Party with relevant technical expertise from participating, such as obligations to adopt or implement the standard, to withdraw an existing standard, to be affiliated with a national standards body or other entity that includes persons of the Party, or represent a national position or view;

   (c) make publicly available, at least upon request, a list of persons and their affiliations that are participating or have participated in the development of the standard; and

   (d) consider any relevant standard developed in accordance with the Committee Decision, as the basis for the standard it is requested to develop.

6. Prior to adopting any standard developed by a body in response to a request subject to Article 6.5, the Party shall verify that the body complied with the requirements of the request as specified in Articles 6.5(a) to 6.5(d) when it developed the standard.

7. If a Party systematically gives preference, for purposes of complying with technical regulations and conformity assessment procedures, to standards that are developed through processes that do not allow persons of the other Party to participate on terms no less favorable than persons of the Party or that do not consider using as a basis for the standard any relevant standard developed in accordance with the Committee, the Party shall do the following:

   (a) maintain a process for persons of the other Party to submit an assessment to the Party that a standard other than the standard given preference for purposes of complying with the technical regulation or conformity assessment procedure fulfills the relevant requirements of that technical regulation or conformity assessment procedure; and

   (b) no later than [30] days from the date it receives an assessment under Article 6.7(a), the Party shall:

      i. decide whether to accept the assessment based on whether the standard fulfills the relevant requirements of the technical regulation or conformity assessment procedure and notify the person of its decision and the reasons therefor; and

      ii. publish its decision, including its reasons therefor, and transmit instructions to its customs and market surveillance authorities that any product from any supplier that conforms to the standard, or for which a conformity assessment procedure was performed in accordance with the standard, shall be presumed to be in conformity with the relevant requirements of the technical regulation or conformity assessment procedure.

8. For purposes of Article 6.7, a Party shall do as follows:

   (a) may require that an assessment contain supporting documentation adequate to make the decision provided for in Article 6.7(b)(i);

(b) shall permit an assessment to be conducted by any of the following: a producer, independent expert, or body that developed the standard.

9. Where an administrative authority of a Party incorporates by direct reference a standard in a technical regulation or conformity assessment procedure, it shall do the following:

   (a) prior to incorporating the standard into the technical regulation or conformity assessment procedure, consider whether additional standards raised in comments on the proposed technical regulation or conformity assessment procedure could fulfill relevant requirements and therefore also be incorporated or otherwise allowed for purposes of complying with the technical regulation or conformity assessment procedure; and

   (b) after adopting the technical regulation or conformity assessment procedure, provide for the consideration of petitions for a rulemaking or a retrospective review to amend the technical regulation or conformity assessment procedure to allow the use of a standard other than the one referenced in the original regulation for purposes of compliance with the regulation.

Article 13.7: Conformity Assessment

1. Further to Article 6.4 of the TBT Agreement, both parties shall accord to conformity assessment bodies located in the territory of the other party treatment no less favorable than that it accords to conformity assessment bodies located in its own territory or in the territory of any other Party. In order to ensure that it accords such treatment, both parties shall apply the same or equivalent procedures, criteria, and other conditions to accredit, approve, license, or otherwise recognize conformity assessment bodies located in the territory of the other party that it may apply to conformity assessment bodies in its own territory.

2. Further to Article 6.4 of the TBT Agreement, if a Party maintains procedures, criteria, or other conditions as set out in Article 7.1 and requires test results, certifications, or inspections as positive assurance that a product conforms to a technical regulation or standard, the Party shall do as follows:

(a) shall not require the conformity assessment body that tests or certifies the product, or the conformity assessment body conducting an inspection, to be located within its territory;

(b) shall not require a conformity assessment body to be located within its territory as a condition to accredit, approve, license, or otherwise recognize the conformity assessment body;

(c) shall not impose requirements on conformity assessment bodies located outside its territory that would effectively require those conformity assessment bodies to operate an office in that Party's territory;

(d) shall permit conformity assessment bodies in other Parties' territories to apply to the Party for a determination that they comply with any procedures, criteria, and other conditions the Party requires to deem them competent or to otherwise approve them to test or certify the product or conduct an inspection;

(e) shall apply no less favorable procedures, criteria, or other conditions to accredit, approve, license, or otherwise recognize conformity assessment bodies located in the other Party's territory as it applies to accredit, approve, license, or otherwise recognize conformity assessment bodies located in its territory, including by permitting conformity assessment bodies located in the other Party's territory to apply to be accredited, approved, licensed, or otherwise recognized by a body located in the Party's territory; and

(f) shall permit any conformity assessment body located in the territory of the other Party to apply to the Party, or any body that it has recognized or approved for this purpose, to be accredited, approved, licensed, or otherwise recognized under any procedures, criteria, and other conditions the Party applies to accredit, approve, license, or otherwise recognize conformity assessment bodies.

3. Articles 7.1 and 7.2 shall not preclude a Party from undertaking conformity assessment in relation to a specific product solely within specified government bodies located in its own territory or in the other party's territory, in a manner consistent with its obligations under the TBT Agreement, nor from limiting recognition of conformity assessment bodies in

relation to specific products to specified government bodies of the Party located within the Party's territory or the territory of the other Party.

4. If a Party undertakes conformity assessment under Article 7.3, and further to Articles 5.2 and 5.4 of the TBT Agreement concerning limitation on information requirements, the protection of legitimate commercial interests, and the adequacy of review procedures, the Party shall, on the request of the other party, explain

   (a) how the information required is necessary to assess conformity and determine fees;

   (b) how the Party ensures that the confidentiality of the information required is respected in a manner that ensures legitimate commercial interests are protected; and

   (c) the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

5. Where a Party does not accept the results of a conformity assessment procedure conducted by a conformity assessment body located in the territory of the other Party, it shall, upon request of the other Party, provide the person that submitted the results, and the requesting Party, with an explanation of the reasons for not accepting the results.

6. Articles 7.1 and 7.2(d) shall not preclude a Party from using mutual recognition agreements to accredit, approve, license, or otherwise recognize conformity assessment bodies located outside its territory.

7. Where a Party refuses to accredit, approve, license, or otherwise recognize a conformity assessment body located in the territory of the other Party, it shall inform the other Party. In addition, the Party shall provide the conformity assessment body, and upon request, the other Party, with an explanation of the reasons for its refusal. Furthermore, the Party shall ensure a procedure exists to review complaints regarding the refusal and to take corrective action when a complaint regarding the refusal is justified.

8. Nothing in Articles 7.1, 7.2, and 7.6 precludes a Party from verifying the results of conformity assessment procedures undertaken by conformity assessment bodies located outside its territory.

9. In relation to any technical regulation or standard for which a Party requires third-party conformity assessment, both parties shall make publicly available a list of the bodies that it has accredited, approved, licensed, or otherwise recognized to perform such conformity assessment and relevant information on the scope of each such body's accreditation, approval, license, or recognition.

10. Further to Article 7.8, in order to enhance confidence in the continued reliability of conformity assessment results from the Parties' respective territories, a Party may request information on matters pertaining to conformity assessment bodies located outside its territory.

11. Where a Party undertakes conformity assessment in relation to specific products within specified government bodies located in its own territory or the other Party's territory, the Party shall, upon the request of the other Party or the applicant, explain:

    (a) the order in which conformity assessment procedures are undertaken and completed;

    (b) how fees for its conformity assessment procedures are calculated;

    (c) how the information it requires is necessary to assess conformity and determine fees;

    (d) how the Party ensures that the confidentiality of the information is respected in a manner that ensures the protection of legitimate commercial interests; and

    (e) the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

12. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement.[25] The Parties recognize that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

13. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation or standard, it shall not prohibit a conformity assessment

body from using subcontractors, or refuse to accept the results of conformity assessment on account of the conformity assessment body using subcontractors, to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party. For greater certainty, nothing in this Article 7.13 shall be construed to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself.

14. Further to Article 9.2 of the TBT Agreement neither Party shall refuse to accept conformity assessment results from a conformity assessment body or take actions that have the effect of, directly or indirectly, requiring or encouraging the other Party or person to refuse to accept conformity assessment results from a conformity assessment body because the accreditation body that accredited the conformity assessment body:

    (a) operates in the territory of a Party where there is more than one accreditation body;

    (b) is a nongovernmental body;

    (c) is domiciled in the territory of a Party that does not maintain a procedure for recognizing accreditation bodies, provided that the accreditation body is recognized internationally, consistent with the provisions in Article 7.12;

    (d) does not operate an office in the Party's territory; or

    (e) is a for-profit entity.

15. Nothing in Article 7.14 prohibits a Party from refusing to accept conformity assessment results from a conformity assessment body on grounds other than those set out in Article 7.14 if that Party can substantiate those grounds for the refusal, and that refusal is not inconsistent with the TBT Agreement and this chapter.

16. Each Party shall issue guidance to encourage its authorities to rely on international accreditation agreements or arrangements to accredit, approve, license or otherwise recognize conformity assessment bodies where effective and appropriate to fulfill the Party's legitimate objectives, and shall ensure that the Party's authorities have the discretion to adopt procedures to do so.

17. A Party shall publish, preferably by electronic means, any procedures, criteria, and other conditions that it may use as the basis for determining whether conformity assessment bodies are competent to receive accreditation, approval, licensing, or other recognition, including accreditation, approval, licensing, or other recognition granted pursuant to a mutual recognition agreement.

18. If a Party:

    (a) accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a particular technical regulation or standard in its territory, and refuses to accredit, approve, license or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other party; or

    (b) declines to use a mutual recognition arrangement,it shall, on request of the other Party, explain the reasons for its decision.

19. Each Party shall ensure where it accredits, or entrusts, or directs a nongovernmental body to accredit a conformity assessment body located in its territory to conduct conformity assessment procedures in its territory, it recognizes that accreditation throughout the Party's territory.

20. The Parties recognize that the choice of conformity assessment procedures in relation to a specific product covered by a technical regulation or standard should include an evaluation of the risks involved, the need to adopt procedures to address those risks, relevant scientific and technical information, incidence of noncompliant products, and possible alternative approaches.

21. Further to Article 6.3 of the TBT Agreement, if a Party declines the request of the other party to enter into negotiations to conclude an agreement for mutual recognition of the results of each other's conformity assessment procedures, it shall, on request of that other Party, explain the reasons for its decision.

22. Further to Article 5.2.5 of the TBT Agreement any conformity assessment fees imposed by a Party shall be limited to the approximate cost of services rendered.

23. Upon the request of an applicant for conformity assessment, each Party shall explain how any fee it imposes for such conformity assessment is limited in amount to the approximate cost of services rendered.

24. Neither Party shall require consular transactions, including related fees and charges, in connection with conformity assessment,[26] nor as a condition of marketing, distribution, or sale of the product in the Party's territory.

25. Neither Party shall apply a new or modified conformity assessment fee until the fee and the method for assessing the fee are published. Both Parties shall provide an opportunity for interested persons to comment on the proposed introduction or modification of a conformity assessment fee.

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

Article 13.8: Transparency

1. Each Party shall allow persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures by its central government bodies[27] or covered bodies. Each Party shall permit persons of the other Party to participate in the development of these measures on terms no less favorable than those that it accords to its own persons.[28]

2. Both Parties are encouraged to consider methods to provide additional transparency in the development of technical regulations, standards, and conformity assessment procedures, including through the use of electronic tools and public outreach or consultations.

3. If appropriate, each Party shall encourage nongovernmental bodies in its territory to observe the obligations in Articles 8.1 and 8.2 in developing standards and voluntary conformity assessment procedures.

4. Each Party shall publish all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity

assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies.

5. For purposes of implementing Articles 2.9 and 5.6 of the TBT Agreement and Article 13 of this chapter, each Party shall do as follows:

   (a) comply with the obligation in Articles 2.9.2 and 5.6.2 to notify proposed technical regulations and conformity assessment procedures at an early appropriate stage, when amendments can still be introduced and comments taken into account, by ensuring that it notifies the measure when the body responsible for proposing the measure has sufficient time to review any comments received and is able to revise the measure to take into account such comments;

   (b) include with its notifications an explanation of the objectives of the proposed technical regulation or conformity assessment procedure and how the measure would address those objectives; and

   (c) include with its notifications a copy of the proposed technical regulation or conformity assessment procedure or an internet address where the proposed measure may be viewed.

6. A Party may determine the form of proposals for technical regulations and conformity assessment procedures, which may take the form of (a) policy proposals, (b) discussion documents, (c) summaries of proposed technical regulations and conformity assessment procedures, or (d) the draft text of proposed technical regulations and conformity assessment procedures. Each Party shall ensure that its proposals contain sufficient detail about the likely content of the proposed technical regulations and conformity assessment procedures to adequately inform interested persons and the other Party about whether and how their trade interests might be affected.

7. Where a Party prepares or proposes to adopt a technical regulation or conformity assessment procedure, it shall do as follows:

   (a) publish, in print or electronically, the proposed technical regulation or conformity assessment procedure;

(b) allow any person to comment in writing on the proposed technical regulation or conformity assessment procedure;

(c) publish and allow for comment on the proposed technical regulation or conformity assessment procedure in accordance with Articles 8.7(a) and 8.7(b) when the body proposing the measure has had sufficient time to review any comments received from the other Party or any person of a Party and is able to revise the measure to take into account such comments;

(d) review and consider comments it receives on the proposed technical regulation or conformity assessment procedure and do so on no less favorable terms with respect to persons of the other Party than it accords its own persons; and

(e) publish, in print or electronically, any written comments it receives on the proposed technical regulation or conformity assessment procedure.[29]

8. Each Party shall take such reasonable measures as may be available to it to ensure that all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of regional or local governments, as the case may be, on the level directly below that of the central level of government, are published.

9. No later than the date of publication of a final technical regulation or conformity assessment procedure, both Parties shall make publicly available, preferably by electronic means, the following:

(a) an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;

(b) a description of alternative approaches that the Party considered in developing the final technical regulation or conformity assessment procedure, if any, and the merits of the approach that the Party selected;

(c) the Party's evaluation of significant issues raised in comments it received from persons of the other Party, or evaluation of the substantive issues presented in those comments; and

(d) an explanation of any significant revisions that the Party made to the proposal for a technical regulation or conformity assessment procedure, including those made in response to comments.

10. Articles 8.6 and 8.8 and the footnote to Article 8.1 do not apply, for the United States, to any measure of the U.S. Congress or, for the United Kingdom, any measure initiated within Parliament.

11. Both Parties shall notify proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides, or recommendations, if any, and that may have a significant effect on trade, according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

12. Notwithstanding Article 8.10, if urgent problems of safety, health, environmental protection, or national security arise or threaten to arise for a Party, that Party may notify a new technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides, or recommendations, if any, upon the adoption of that regulation or procedure, according to the procedures established under Article 2.10 or 5.7 of the TBT Agreement.

13. Both Parties shall endeavor to notify proposals for new technical regulations and conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central level of government that are in accordance with the technical content of relevant international standards, guides, and recommendations, if any, and that may have a significant effect on trade according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

14. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and should be notified in accordance with Article 2.9, 2.10, 3.2, 5.6, 5.7, or 7.2 of the TBT Agreement or this chapter, a Party shall consider, among other things, the relevant Decisions and

Recommendations adopted by the WTO Committee on Technical Barriers to Trade since January 1, 1995 (G/TBT/1/Rev. 12), as may be revised.

15. A Party that publishes a notice and that files a notification in accordance with Article 2.9, 3.2, 5.6, or 7.2 of the TBT Agreement or this chapter shall do as follows:

    (a) include in the notification an explanation of the objectives of the proposal and how it would address those objectives; and

    (b) transmit the notification and the proposal electronically to the other Party through their inquiry points established in accordance with Article 10 of the TBT Agreement, at the same time as it notifies WTO members.

16. Both Parties shall normally allow 60 days from the date it transmits a proposal under Article 8.13 for the other Party or an interested person of the other Party to provide comments in writing on the proposal. A Party shall consider any reasonable request from the other Party or an interested person of the other Party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, is encouraged to do so.

17. Each Party is encouraged to provide sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure, for its consideration of, and preparation of responses to, the comments received.

18. Both Parties shall endeavor to notify the final text of a technical regulation or conformity assessment procedure at the time the text is adopted or published, as an addendum to the original notification of the proposed measure filed under Article 2.9, 3.2, 5.6, or 7.2 of the TBT Agreement or this chapter.

19. A Party that files a notification in accordance with Article 2.10 or 5.7 of the TBT Agreement and this chapter shall, at the same time, transmit the notification and text of the technical regulation or conformity assessment procedure electronically to the other Party through the inquiry points referred to in Article 8.15(b).

20. No later than the date of publication of a final technical regulation or conformity assessment procedure that may have a significant effect on trade, both Parties shall, preferably electronically, do as follows:

    (a) make publicly available an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;

    (b) provide as soon as possible, but no later than 60 days after receiving a request from the other Party, a description of alternative approaches, if any, that the Party considered in developing the final technical regulation or conformity assessment procedure and the merits of the approach that the Party selected;

    (c) make publicly available the Party's responses to significant or substantive issues presented in comments received on the proposal for the technical regulation or conformity assessment procedure; and

    (d) provide as soon as possible, but no later than 60 days after receiving a request from the other Party, a description of significant revisions, if any, that the Party made to the proposal for the technical regulation or conformity assessment procedure, including those made in response to comments.

21. Further to paragraph J of Annex 3 of the TBT Agreement, each Party shall ensure that its central government standardizing body's work program, containing the standards it is currently preparing and the standards it has adopted, is available through the central government standardizing body's website or the website referred to in Article 8.6.

Article 13.9: Compliance Period for Technical Regulations and Conformity Assessment Procedures

1. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement, the term "reasonable interval" means normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or by the requirements concerning the conformity assessment procedure.[30]

2. If feasible and appropriate, both Parties shall endeavor to provide an interval of more than 6 months between the publication of final technical regulations and conformity assessment procedures and their entry into force.

3. In addition to Articles 9.1 and 9.2, in setting a "reasonable interval" for a specific technical regulation or conformity assessment procedure, both Parties shall ensure that it provides suppliers with a reasonable period of time, under the circumstances, to be able to demonstrate the conformity of their goods with the relevant requirements of the technical regulation or standard by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, both Parties shall endeavor to take into account the resources available to suppliers.

Article 13.10: Cooperation and Trade Facilitation

1. Further to Articles 5, 6, and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results. In this regard, a Party may do as follows:

   (a) implement mutual recognition of the results of conformity assessment procedures performed by bodies located in its territory and the other Party's territory with respect to specific technical regulations;

   (b) recognize existing regional and international mutual recognition arrangements between or among accreditation bodies or conformity assessment bodies;

   (c) use accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;

   (d) designate conformity assessment bodies or recognize the other Party's designation of conformity assessment bodies;

   (e) unilaterally recognize the results of conformity assessment procedures performed in the other Party's territory; and

   (f) accept a supplier's declaration of conformity.

2. The Parties recognize that a broad range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region, including:

   (a) regulatory dialogue and cooperation to, among other things:

      i. exchange information on regulatory approaches and practices;

      ii. promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards, and conformity assessment procedures;

      iii. provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation, and review of technical regulations, standards, conformity assessment procedures, and metrology; or

      iv. provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this chapter;

   (b) greater alignment of national standards with relevant international standards, except where inappropriate or ineffective;

   (c) facilitation of the greater use of relevant international standards, guides, and recommendations as the basis for technical regulations and conformity assessment procedures; and

   (d) promotion of the acceptance of technical regulations of another Party as equivalent.

3. The Parties shall cooperate in the field of standards, technical regulations, and conformity assessment procedures to reduce and eliminate unnecessary technical barriers to trade, including costs associated with unnecessary regulatory differences, while achieving the levels of health, safety, and environmental protection that each side deems appropriate and otherwise meeting legitimate regulatory objectives. To this end, the Parties shall seek to identify, develop, and promote trade-facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that address particular cross-cutting or sector-specific issues. These initiatives may include cooperation on regulatory issues, such as

promoting the adoption of good regulatory practices, establishing procedures to recognize as equivalent standards used as a basis for or in support of compliance with regulations, and instituting mechanisms to facilitate the acceptance of conformity assessment results.

4. With respect to the mechanisms listed in Articles 11.1 and 11.2, the Parties recognize that the choice of the appropriate mechanism in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties' respective regulators, the legitimate objectives pursued, and the risks of nonfulfillment of those objectives.

5. The Parties shall strengthen their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment, and to eliminate unnecessary technical barriers to trade in the region.

6. A Party shall, on request of the other Party, give due consideration to any sector-specific proposal for cooperation under this chapter.

7. Further to Article 2.7 of the TBT Agreement, a Party shall, on request of the other Party, explain the reasons why it has not accepted a technical regulation of that Party as equivalent.

8. The Parties shall encourage cooperation between their respective organizations responsible for standardization, conformity assessment, accreditation, and metrology, whether they be public or private to address matters arising under this chapter.

9. The Parties shall strengthen opportunities for public input into their cooperation activities, including by making information regarding cooperation activities publicly available and by soliciting public comments and taking such comments into account with respect to cooperation activities.

Article 13.11: Technical Discussions and Resolution of Trade Concerns

1. A Party may request the other Party to provide information on any matter arising under this chapter. A Party receiving a request shall provide that information within a reasonable period of time, and if possible, by electronic means.

2. Each Party may request technical discussions to discuss any standard, technical regulation, or conformity assessment procedure of the other Party that it considers might adversely affect trade or have an anti-competitive effect. The request shall be made in writing and identify the following:

   (a) the measure at issue;

   (b) the provisions of the chapter or the WTO TBT Agreement to which the concerns relate;

   (c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure; and

   (d) any evidence of potential trade impact or anti-competitive effect.

3. A Party shall deliver its request to the chapter coordinator of the other Party designated pursuant to Article 13.12.8.

4. For greater certainty, with respect to technical regulations or conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central government that may have a significant effect on trade, a Party may request technical discussions with the other Party regarding those matters.

5. The Party to which the request is made shall promptly reply to the request in writing. The Parties shall discuss the matter raised in the request, in person or via video or teleconference, within 60 days of the date of the request and shall endeavor to resolve the matter as expeditiously as possible. The Parties may convene the Committee as appropriate for this purpose. If a requesting Party considers that the matter is urgent, it may request that any discussions take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

6. The Parties shall endeavor to resolve the matter as expeditiously as possible, recognizing that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.

7. Unless the Parties that participate in the technical discussions otherwise agree, the discussions and any nonpublicly available information exchanged in the course of the

discussions shall be confidential and, for greater certainty, without prejudice to the rights and obligations of the participating Parties under this Agreement, the WTO Agreement, or any other agreement to which both Parties are party.

8. Requests for information or technical discussions and communications shall be conveyed through the respective contact points designated pursuant to Article 13.13 (Contact Points).

Article 13.12: Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on TBT (the Committee), comprising representatives of both Parties.

2. Through the Committee, the Parties shall strengthen their joint work in the fields of technical regulations, standards, and conformity assessment procedures with a view to facilitating trade between the Parties.

3. The Committee's functions shall include the following:

   (a) seeking to resolve concerns regarding any matter arising under this chapter;

   (b) monitoring the implementation and operation of this chapter, including any other commitments agreed under this chapter, and identifying any potential amendments to or interpretations of those commitments pursuant to Chapter 18 (Institutional and Final Provisions);

   (c) monitoring and identifying ways to strengthen implementation of this chapter;

   (d) identifying any potential amendments to, or issues of interpretation regarding, the chapter for referral to the Joint Committee/free trade agreement (FTA) institutional body;

   (e) any technical discussions on matters that arise under this chapter requested pursuant to Article 12.2 (Objectives);

(f) deciding on priority areas of mutual interest for future work under this chapter and considering proposals for new sector-specific initiatives or other initiatives;

(g) encouraging cooperation between the Parties in matters that pertain to this chapter, including the development, review, or modification of technical regulations, standards, and conformity assessment procedures;

(h) enhancing cooperation between the Parties regarding standards, technical regulations, and conformity assessment procedures, including by the following:

i. facilitating improved understanding between the Parties related to the implementation of the WTO TBT Agreement and promoting cooperation between the Parties on TBT issues under discussion in multilateral forums, including the WTO TBT Committee and bodies that develop standards in accordance with the WTO TBT Committee Decision principles for the development of international standards, as appropriate;

ii. identifying, developing, and promoting trade-facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures addressing particular cross-cutting or sector-specific issues such as those specified in Article 13.7 as well as identifying opportunities for greater bilateral engagement that may include technical exchanges;

(i) discussing at an early stage changes to, or proposed changes to, standards, technical regulations, or conformity assessment procedures of either Party;

(j) encouraging cooperation between nongovernmental bodies in the Parties' territories, as well as cooperation between governmental and nongovernmental bodies in the Parties' territories in matters that pertain to this chapter;

(k) exchanging information on developments in nongovernmental, regional, and multilateral forums engaged in activities related to standards, technical regulations, and conformity assessment procedures;

(l) facilitating the identification of technical capacity needs;

(m) encouraging the exchange of information between the Parties and their relevant nongovernmental bodies, if appropriate, to develop common approaches regarding matters under discussion in nongovernmental, regional, plurilateral, and multilateral bodies or systems that develop standards, guides, recommendations, policies, or other procedures relevant to this chapter;

(n) exchanging information, at a Party's request, on the Parties' respective views regarding third-country issues concerning standards, technical regulations, and conformity assessment procedures so as to foster a common approach to their resolution;

(o) encouraging, on request of a Party, the exchange of information between the Parties regarding specific technical regulations, standards, and conformity assessment procedures of non-Parties as well as systemic issues, with a view to fostering a common approach;

(p) providing a regular forum for exchanging information relating to both Parties' standards, technical regulations, and conformity assessment procedures and related policies;

(q) providing opportunities for the public to participate in the work of the Committee, such as soliciting and taking into account comments on matters related to the implementation of this chapter;

(r) taking any other steps the Parties consider will assist them in implementing this chapter (and the TBT Agreement);

(s) reviewing this chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this chapter in light of those developments; and

(t) reporting to the Joint Committee on the implementation and operation of this chapter as appropriate.

4. The Committee may establish working groups to carry out its functions.

5. To determine what activities the Committee will undertake, the Committee shall consider work that is being undertaken in other forums, with a view to ensuring that any activities undertaken by the Committee do not unnecessarily duplicate that work.

6. The Committee shall meet within one year of the date of entry into force of this Agreement and thereafter at least once a year unless the Parties otherwise decide.

7. The Committee may, as it considers appropriate, establish and determine the scope and mandate of working groups, including ad hoc working groups, comprising representatives of both Parties. Subject to decision of the Committee and as the Parties may decide, each working group, including an ad hoc working group, may do as follows:

   (a) as it considers necessary and appropriate, include or consult with nongovernmental experts and stakeholders; and

   (b) determine its work program, taking into account relevant international activities.

8. Each Party shall designate a chapter coordinator, and shall provide the other Party with the name of its designated chapter coordinator, along with the contact details of the relevant officials in that organization, including telephone, email, and other relevant details.

9. A Party shall notify the other Party promptly of any change of its chapter coordinator or any amendments to the details of the relevant officials.

10. The responsibilities of each chapter coordinator shall include:

    (a) communicating with the other Party's chapter coordinator, including facilitating discussions, requests, and the timely exchange of information on matters arising under this chapter;

    (b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this chapter;

    (c) consulting and, where appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this chapter; and

    (d) additional responsibilities as the Committee may specify.

Article 13.13: Contact Points

1. Both Parties shall designate and notify a contact point for matters arising under this chapter.

2. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials.

3. The responsibilities of each contact point shall include the following:

   (a) communicating with the other Party's contact point, including facilitating discussions, requests, and the timely exchange of information on matters arising under this chapter;

   (b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this chapter;

   (c) consulting and, if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this chapter; and

   (d) carrying out any additional responsibilities specified by the Committee.

Annex 13A: Product-Specific Annexes

[. . .]

CHAPTER 14
Competition Policy

Article 14.1: Definitions

For the purposes of this chapter:

(a) **Arrangement** means the Arrangement on Officially Supported Export Credits, developed within the framework of the OECD, or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original members to the Arrangement that were members as of January 1, 1979;

(b) **commercial activities** means activities the end result of which is the production of a good or supply of a service that will be sold to a consumer, including a state enterprise, state-owned enterprise, or designated monopoly, in the relevant market in quantities and at prices determined by the enterprise and that are undertaken with an expectation of gain or profit;[31]

(c) **commercial considerations** means factors such as price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that influence the commercial decisions of an enterprise in the relevant business or industry;

(d) **designate** means, whether formally or in effect, to establish, name, or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(e) **designated monopoly** means a monopoly that a Party designates or has designated;

(f) **government monopoly** means a monopoly that is owned or controlled by a Party or by another government monopoly;

(g) **injury** means material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of a domestic industry;

(h) **market** means the geographical and commercial market for a good or service;

(i) **monopoly** means an entity or a group of entities that, in any relevant market in the territory of a Party, is the exclusive provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

(j) **national competition laws** shall mean the laws concerning the regulation of cartels and anti-competitive agreements or abuse of dominance/monopolization;

(k) **noncommercial assistance**[32] means the provision of the following:

i. grant or debt forgiveness; or

ii. a loan, equity infusion, loan guarantee, or other type of financing or loan satisfaction on terms more favorable than those commercially available to that enterprise; or

iii. a subsidy within the meaning of Article 1 of the WTO Agreement on Subsidies and Countervailing Measures; or

iv. a good or service, other than general infrastructure, on terms more favorable than those commercially available to that enterprise;

(l) **state enterprise** means an enterprise that is owned, or controlled through ownership interests, by a Party; and

(m) **state-owned enterprise** means an enterprise that is engaged in economic activities and meets the following criteria:

i. is owned, or controlled, by a Party's government; or

ii. in which a Party's government appoints or has the power to appoint the majority of members of the board of directors or equivalent governing body; or

iii. is controlled by a Party's government through a control person or control persons.

Article 14.2: Competition Law and Anti-Competitive Practices

1. Each Party shall adopt or maintain national competition laws with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to that conduct. These laws should take into account the OECD Competition Assessment Toolkit (2007) (as revised from time to time), OECD Regulatory Toolkit, and the APEC Principles to Enhance Competition and Regulatory Reform, done at Auckland, September 13, 1999.

2. Each Party shall endeavor to apply its national competition laws to all commercial activities in its territory,[33] including the activities of state-owned enterprises both in their commercial sales and their procurement activities. However, each Party may provide for certain exemptions from the application of its national competition laws provided that those exemptions are transparent and are based on public policy grounds or public interest grounds.

3. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws (national competition authorities). Each Party shall provide that it is the enforcement policy of that authority or authorities to act in accordance with the objectives set out in Article 14.2.1 and not to discriminate on the basis of nationality.

4. In modifying, enforcing, applying, amending, reviewing, or issuing new national competition law, regulations, or procedures, Parties shall conduct themselves consistently with the provisions of Article 6 (Legitimate Regulatory Objectives) of Chapter 6 (Regulatory Coherence).

Article 14.3: Procedural Fairness in Competition Law Enforcement

1. Each Party shall ensure that before it imposes a sanction or remedy against any person for violating its national competition laws, it shall afford such person the following:

   (a) information about the national competition authority's competition concerns;

   (b) a reasonable opportunity to be represented by counsel; and

   (c) a reasonable opportunity to be heard and present evidence in its defense, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy.

2. In particular, each Party shall afford that person a reasonable opportunity to offer evidence or testimony in its defense, including, if applicable, to offer the analysis of a properly qualified expert, to cross-examine any witness (if testifying before a court); and to review and rebut the evidence introduced in the enforcement proceeding,[34] subject to the confidentiality provisions of this chapter. Parties' competition authorities shall normally afford persons under investigation for possible violation of their competition laws reasonable opportunities to consult with such competition authorities with respect to significant legal, factual, or procedural issues that arise during the course of investigation.

3. Parties shall adopt or maintain written procedures pursuant to which their national competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavor to conduct their investigations within a reasonable time frame.

4. Each Party shall publish or otherwise make publicly available written rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its national competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence where applicable.

5. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its national competition laws with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that Party's laws.

6. Each Party shall authorize its national competition authorities to resolve alleged violations voluntarily by consent of the authority and the person subject to the enforcement action. A Party may provide for such voluntary resolution to be subject to judicial (or independent tribunal) approval or a public comment period before becoming final.

7. If a Party's national competition authority issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall avoid implying in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the Party's national competition laws.

8. If a national competition authority of a Party alleges a violation of its national competition laws, that authority shall be responsible for establishing the legal and factual basis for the alleged violation in an enforcement proceeding.[35]

9. Each Party shall provide for the protection of confidential information and business secrets, and other information treated as confidential under its law, obtained by its national competition authorities during the investigative process. If a Party's national competition authority uses or intends to use that information in an enforcement proceeding, the Party shall, if it is permissible under its law and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate defense to the national competition authority's allegations.

10. Each Party shall ensure that its national competition authorities afford a person under investigation for possible violation of the national competition laws of that Party reasonable opportunity to consult with those competition authorities with respect to significant legal, factual, or procedural issues that arise during the investigation.

Article 14.4: Private Rights of Action

1. For the purposes of this Article, "private right of action" means the right of a legal or natural person to seek redress, including injunctive, monetary, or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of national competition laws, either independently or following a finding of violation by a national competition authority.

2. Recognizing that a private right of action is an important supplement to the public enforcement of national competition laws, each Party should adopt or maintain laws or other measures that provide an independent private right of action.

3. If a Party does not adopt or maintain laws or other measures that provide an independent private right of action, the Party shall adopt or maintain laws or other measures that provide a right that allows a person:

   (a) to request that the national competition authority initiate an investigation into an alleged violation of national competition laws; and

(b) to seek redress from a court or other independent tribunal following a finding of violation by the national competition authority.

4. Each Party shall ensure that a right provided pursuant to Articles 14.4.2 or 14.4. is available to persons of the other Party on terms that are no less favorable than those available to its own persons.

5. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

Article 14.5: Cooperation

1. The Parties recognize the importance of cooperation and coordination between their respective national competition authorities to foster effective competition law enforcement in the free trade area. Accordingly, both Parties shall do as follows:

   (a) cooperate in the area of competition policy by exchanging information on the development of competition policy; and

   (b) cooperate, as appropriate, on issues of competition law enforcement, including through notification, consultation, and the exchange of information, including confidential information and business secrets.

2. A Party's national competition authorities may consider entering into a cooperation arrangement or agreement with the competition authorities of the other Party that sets out mutually agreed terms of cooperation.

3. The Parties agree to cooperate in a manner compatible with their respective laws, regulations, and important interests, and within their reasonably available resources.

4. The Parties commit to maintaining a high level of international cooperation and coordination. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organizations in this area, including the International Competition Network and the Competition Committee of the OECD, as well as the Agreement between the European Communities (as it then was) and the Government

of the United States of America regarding the application of their competition laws, September 23, 1991.

Article 14.6: Consumer Protection

1. The Parties recognize the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refer to those fraudulent and deceptive commercial practices that cause actual harm to consumers or that pose an imminent threat of such harm if not prevented, for example, the following:

   (a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the interests of misled consumers;

   (b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or

   (c) a practice of charging or debiting consumers' financial, telephone, or other accounts without authorization.

3. Both Parties shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities.[36]

4. The Parties recognize that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties are desirable to effectively address these activities.

5. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

6. The Parties shall endeavor to cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer

protection policy, laws, or enforcement, as determined by each Party and compatible with their respective laws, regulations, and important interests and within their reasonably available resources.

Article 14.7: Transparency of Policies and Practices

1. The Parties recognize the value of making their competition enforcement policies as transparent as possible.

2. On request of the other Party, a Party shall make available to the requesting Party public information concerning the following:

   (a) its competition law enforcement policies and practices; and

   (b) exemptions and immunities to its national competition laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.

3. Each Party shall ensure that a final decision finding a violation of its national competition laws is made in writing and sets out, in noncriminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based. Both Parties shall further ensure that any such decisions and any orders implementing them are published, or where publication is not practicable, otherwise made available to the public in such a manner as to enable interested persons to become acquainted with them. The version of the decisions or orders that the Party makes available to the public shall omit confidential business information, as well as information that is treated as confidential under its laws.

Article 14.8: Consultations

To foster understanding between the Parties, or to address specific matters that arise under Chapter 14, on request of another Party, a Party shall enter into consultations with the

requesting Party within a reasonable period of time regarding any matter arising under this chapter. In its request, the requesting Party shall specify the matter on which it seeks to consult and indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

Article 14.9: State-Owned Enterprises, State Enterprises, and Designated Monopolies

1. Chapter 14 applies with respect to the activities of state-owned enterprises, state enterprises, and designated monopolies that affect trade or investment between the Parties.

2. Notwithstanding Article 14.9.1, this chapter does not apply to the following:

   (a) a central bank or monetary authority of a Party;

   (b) a financial regulatory body or a resolution authority[37] of a Party;

   (c) a financial institution or other entity owned or controlled by a Party that is established or operated temporarily solely for resolution purposes;[38]

   (d) government procurement;

   (e) regulatory or supervisory activities of any nongovernmental entity, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, pursuant to direction or delegated authority of the Party;

   (f) where the Party is exercising public power in its capacity as a public authority;

   (g) where the Party is exercising powers of social solidarity, characteristics of schemes pursuing social solidarity include a compulsory scheme, which pursues an exclusively social purpose, is nonprofit-making, where the benefits can be independent of the contribution made.

3. For greater certainty, nothing in this chapter shall be construed to prevent a Party from doing the following:

   (a) establishing or maintaining a state enterprise or state-owned enterprise, or

   (b) designating a monopoly.

4. Each Party shall ensure that when its state-owned enterprises, state enterprises, and designated monopolies exercise any regulatory, administrative, or other governmental authority[39] that the Party has directed or delegated to such an entity to carry out, such entity shall act in a manner that is not inconsistent with that Party's obligations under this Agreement.

5. Each Party shall ensure that its state-owned enterprises and designated monopolies, when engaging in economic activities, do the following:

   (a) act in accordance with commercial considerations in their purchases or sales of goods or services, except, in the case of a designated monopoly, to fulfill any terms of its designation that are not inconsistent with Article 14.9.5(b) and Article 14.9.7; and

   (b) accord to enterprises that are covered investments, goods of the other Party, and services suppliers of the other Party, treatment no less favorable than it accord to, respectively, like enterprises that are investments of the Party's investors, like goods of the Party, and like services suppliers of the Party, with respect to their purchases or sales of goods or services.

6. Article 14.9.5 does not preclude a state-owned enterprise or designated monopoly from the following:

   (a) purchasing or supplying goods or services on different terms or conditions, including those relating to price; or

   (b) refusing to purchase or supply goods or services, provided that such different terms or conditions or refusal are undertaken in accordance with commercial considerations and Article 14.9.5(b).

7. Each Party shall ensure that any designated monopoly that it establishes or maintains does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other entities that the Party or the designated monopoly owns or controls, anti-competitive practices in a nonmonopolized market in its territory that adversely affect covered investments or trade between the Parties.

Article 14.10: Commercial Considerations

Except to fulfill the purpose[40] for which special or exclusive rights or privileges have been granted, or in the case of a state enterprise to fulfill its public mandate, and provided that the enterprise's conduct in fulfilling that purpose or mandate is consistent with the provisions of this chapter both Parties shall ensure that any such enterprise acts in accordance with commercial considerations in the relevant territory in its purchases and sales of goods, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, as well as in its purchases or supply of services, including when these goods or services are supplied to or by an investment of an investor of the other Party.

Article 14.11: Courts and Administrative Bodies

1. Each Party shall provide its courts with jurisdiction over civil claims against a foreign state-owned enterprise based on a commercial activity carried on its territory, except where a Party does not provide jurisdiction over similar claims against enterprises that are not state-owned enterprises.

2. Each Party shall ensure that any body that it establishes or maintains, and that regulates a state-owned enterprise or designated monopoly, acts impartially with respect to all enterprises that it regulates, including enterprises that are not state-owned enterprises.

Article 14.12: Adverse Effects

1. Neither Party shall cause adverse effects to the interests of the other Party through the use of noncommercial assistance to enterprises active in markets open to trade.

2. Each Party shall ensure that no state enterprise or state-owned enterprise that it establishes or maintains causes adverse effects to the interests of the other Party through the use of noncommercial assistance that the state enterprise or state-owned enterprise provides to any of its state-owned enterprises, where the Party explicitly limits access to the non-commercial assistance provided by the state enterprise or state-owned enterprise to its state-owned enterprises, or where the state enterprise or state-owned enterprise provides noncommercial assistance that is predominately used by the Party's state-owned enterprises, provides a disproportionately large amount of the noncommercial assistance to the Party's state-owned enterprises, or otherwise favors the Party's state-owned enterprises in the provision of noncommercial assistance.

3. Adverse effects cannot be established on the basis of any act, omission, or factual situation, to the extent that act, omission, or factual situation took place before the date of entry into force of this Agreement.

4. For the purpose of Articles 14.1 to 14.3, adverse effects are effects that arise from the provision of a good or service by a Party's state-owned enterprise that has benefited from noncommercial assistance and that do the following:

   (a) displace or impede from the Party's market imports of a like product or service[41] that is an originating good of the other Party, or sales of a like product that is a good produced by an enterprise that is a covered investment;

   (b) consist of a significant price undercutting by a product of the Party's state-owned enterprise compared with the price in the same market of a like product that is an originating good of the other Party or a like product that is a good produced by an enterprise that is a covered investment, or significant price suppression, price depression, or lost sales in the same market;

   (c) displace or impede from the Party's market a like service supplied by a service supplier of the other Party, or a like service supplied by an enterprise that is a covered investment; or

   (d) consist of a significant price undercutting by a service supplied by the Party's state-owned enterprise as compared with the price in the same market of a like service

supplied by a service supplier of the other Party, or by an enterprise that is a covered investment, or significant price suppression, price depression, or lost sales in the same market.

5. For the purposes of Articles 14.4(a) and 14.4(c), the displacing or impeding of a product or service includes any case in which there has been a significant change in relative share of the market to the disadvantage of the like product of the other Party or of a covered investment, or to the disadvantage of a like service supplied by a service supplier of the other Party or by a covered investment.

6. A significant change in relative shares of the market shall include any of the following situations:

   (a) there is an increase in the market share of the product or service of the Party's state-owned enterprise in the range of 5–10 percent;

   (b) the market share of the product or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the noncommercial assistance, it would have declined significantly; or

   (c) the market share of the product or service of the Party's state-owned enterprise declines, but by a significantly lower amount or at a significantly slower rate than would have been the case in the absence of the noncommercial assistance.

7. Where the change manifests itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the product or service, which shall be at least one year unless exceptional circumstances apply.

8. For purposes of Articles 14.4(b) and 14.4(d), significant price undercutting shall include demonstration through a comparison of prices at the same level of trade and at comparable times within the same market as follows:

   (a) the prices of a product of the Party's state-owned enterprise benefiting from noncommercial assistance with the prices of a like product of the other Party or an enterprise that is covered investment; or

(b) the prices of a service of the Party's state-owned enterprise benefiting from noncommercial assistance with the prices of a like service supplied by a service supplier of the other Party or an enterprise that is a covered investment.

9. Due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of the price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

Article 14.13: Injury

Neither Party shall cause injury to a domestic industry of the other Party through the use of noncommercial assistance that it provides, either directly or indirectly, to any enterprises in the territory of the other Party and where the following occurs:

(a) the enterprise produces and sells a good in the territory of the other Party; and

(b) a like good is produced and sold by a domestic industry of the other Party.

Article 14.14: Requirements for Transparency and Corporate Governance

1. The Parties shall ensure that enterprises referred to in Article 14.13 shall observe high standards of transparency and corporate governance in accordance with the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2. A Party that has reason to believe that its interests under this Agreement are being adversely affected by the operations of an enterprise or enterprises referred to in Article 14.13 of the other Party may request that Party to supply information about the operations of its enterprise related to the carrying out of the provisions of this Agreement.

3. Both Parties shall, at the request of the other Party, make available information concerning specific enterprises referred to in Article 14.13 and that do not qualify as small and medium-sized enterprises as defined in U.S. or U.K. law. Requests for such information shall indicate the enterprise, the products/services, and markets concerned, and shall

include indicators that the enterprise is engaging in practices that hinder trade or investment between the Parties.

4. The information may include the following:

   (a) the organizational structure of the enterprise, the composition of its board of directors, or of an equivalent structure of any other executive organ exercising direct or indirect influence through an affiliated or related entity in such an enterprise; and cross holdings and other links with different enterprises or groups of enterprises referred to in Article 14.13:

   (b) the ownership and the voting structure of the enterprise, indicating the percentage of shares and percentage of voting rights that a Party and/or an enterprise referred to in Article 14.13 cumulatively own;

   (c) a description of any special shares or special voting or other rights that a Party and/or an enterprise referred to in Articles 14.13(a) and 14.13(b) hold, where such rights differ from the rights attached to the general common shares of such entity;

   (d) the name and title(s) of any government official of a Party serving as an officer or member of the board of directors or of an equivalent structure or of any other executive organ exercising direct or indirect influence through an affiliated or related entity in the enterprise;

   (e) details of the government departments or public bodies that monitor the enterprise and any reporting requirements;

   (f) the role of the government or any public bodies in the appointment, dismissal, or remuneration of managers; and

   (g) annual revenue or total assets, or both; and

   (h) exemptions, nonconforming measures, immunities, and any other measures derogating from the application of a Party's laws or regulations or granting favorable treatment by a Party.

5. The provisions of Articles 14.2 and 14.3 shall not require any Party to disclose confidential information that would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

6. Both Parties shall ensure that any regulatory body responsible for regulating any of the enterprises referred to above are independent from, and not accountable to, any of the those enterprises.

7. Both Parties shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner at all levels of government, be it central or local, and their application to enterprises referred to in Articles 13(a) and 13(b). Exemptions must be limited and transparent.

8. The provisions of this Article 14.14 apply to enterprises operating in all sectors.

Article 14.15: Provision of Information

1. Each Party shall provide to the other Party a list of its state-owned enterprises within 180 days of the date of entry into force of this Agreement, and thereafter shall provide an updated list annually.

2. Where a Party designates a monopoly, or expands the scope of an existing designated monopoly, it shall promptly notify the other Party of the designation or expansion of scope and the conditions under which the monopoly shall operate.

3. On the written request of the other Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly:

   (a) the percentage of shares that the Party, its state-owned enterprises, state enterprises, or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold in the entity;

   (b) a description of any special shares, or special voting or other rights, that the Party, its state-owned enterprises, or designated monopolies hold, to the extent different from the rights attached to the general common shares of such entity;

(c) the government titles, or former government titles, and decisionmaking ability of any official serving as a board member, officer, director, manager, or other control person of such entity;

(d) the entity's annual revenue and total assets over the most recent 3-year period for which information is available;

(e) any exemptions and immunities from which the entity benefits under the Party's law; and

(f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

4. On the written request of the other Party, a Party shall promptly provide the following information concerning assistance received by any of its state-owned enterprises:

(a) any financing or refinancing that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, including the amount of such financing and the terms on which it was provided;

(b) any loan guarantee that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, including fees associated with the guarantee and any other conditions associated with the guarantee;

(c) any forgiveness of debt or other financial liability that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise;

(d) any goods or services that the Party, or another one of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, and the conditions associated with such provision; and

(e) any export credit that the Party, or one of the Party's state-owned enterprises, has provided in support of the export of a good or service from one of the Party's state-owned

enterprises, including the amount of such export credits, and the terms and conditions on which it was provided.

5. Both Parties shall include in any written request under Articles 14.15.3 and 14.15.4 an explanation of how the activities of the state-owned enterprise may be affecting trade or investment between the Parties.

Article 14.16: Committee on State-Owned Enterprises and Designated Monopolies

1. The Parties hereby establish a Committee on State-Owned Enterprises and Designated Monopolies, comprising officials from both Parties.

2. The Committee shall meet within one year of the date of entry into force of the Agreement, and at least annually thereafter, unless the Parties decide otherwise.

3. The Committee shall do as follows:

   (a) review and consider the operation and implementation of Chapter 14;

   (b) discuss, at a Party's request, the activities of any state-owned enterprise or designated monopoly of a Party specified in the request with a view to identifying any distortion of trade or investment between the Parties that may result from those activities;

   (c) consider, at a Party's request, notifications under Article 14.14 (Requirements for Transparency and Corporate Governance);

   (d) develop cooperative efforts, as appropriate, to promote the principles underlying the obligations contained in this chapter and to contribute to the development of similar obligations in regional and multilateral institutions in which the Parties participate; and

   (e) undertake such other activities as the Committee may decide.

4. Prior to each Committee meeting, both Parties shall invite, as appropriate, input from the public on matters related to state-owned enterprises or designated monopolies that may affect developing its meeting agenda.

Article 14.17: Anti-Competitive Market Distortions

1. The Parties agree that they will not, through laws, regulations, administrative practices, or other Covered Actions, distort their markets in trade restrictive or anti-competitive[42] ways (anti-competitive market distortions, or ACMDs), unless there is a clearly expressed regulatory goal that has been published in advance consistent with Chapter 6 of this Agreement (Regulatory Coherence).

2. The Parties agree that they will develop mechanisms to deal with ACMDs of the other Party, and that these measures may include imposing a duty that is correlated to the scale of the impact of the ACMD on competition in the market, and that the imposition of such a duty, provided that it is consistent with the factors set out below it, shall not be deemed to be a violation of this Agreement or of the rules of the World Trade Organization:

   (a) the complaining Party must prove that there is an ACMD;[43]

   (b) the complaining Party must prove that there is an adverse effect, or damage to its interests;

   (c) the complaining Party must adduce evidence of the scale of the adverse effect; and

   (d) the complaining Party must produce evidence of damage, and evidence that the ACMD has caused the damage.

3. The Parties agree that they will use these ACMD mechanisms with respect to ACMDs in other jurisdictions, and will mutually defend any claims brought that such mechanisms violate WTO rules.

Article 14.18: Exceptions

1. Nothing in Article 14.11 (Courts and Administrative Bodies), Article 14.12 (Adverse Effects), or Article 14.13 (Injury) shall be construed to do as follows:

   (a) prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency; or

(b) apply to a state-owned enterprise for which a Party has taken measures on a temporary basis in response to a national or global economic emergency.

2. Article 14.11 (Courts and Administrative Bodies), Article 14.12 (Adverse Effects), Article 14.13 (Injury), Article 14.14 (Requirements for Transparency and Corporate Governance), Article 14.16 (Committee on State-Owned Enterprises and Designated Monopolies), and Article 14.19 (Dispute Settlement) shall not apply where the state-owned enterprise is as follows:

   (a) established or maintained by a Party solely to provide essential services to the general public in its territory; or

   (b) subject to government mandates defining its public service function, such as universal service obligations, or requirements to provide services at below-market rates or on a cost-recovery basis that are not imposed on similarly situated private companies, except where that public services function is being fulfilled in a manner that unnecessarily damages competition or restricts trade.

3. Article 14.11 (Courts and Administrative Bodies), Article 14.12 (Adverse Effects), and Article 14.13 (Injury) shall not apply to a state-owned enterprise or designated monopoly that finances housing, including insurance or guarantees of residential loans or mortgage securities, except where such a state-owned enterprise or designated monopoly shall accord treatment to covered investments no less favorable than the treatment it accords to like enterprises that are investments of the Party's investors, and provided that these activities do not unnecessarily damage competition or restrict trade.

4. With respect to a state-owned enterprise of a Party that provides export credits, Article 14.11 (Courts and Administrative Bodies), Article 14.12 (Adverse Effects), and Article 14.13 (Injury) shall not apply to the following:

   (a) the provision of export credits that fall within the scope of the Arrangement and are offered on terms consistent with the Arrangement, regardless of whether the Party is a participant to the Arrangement; and

   (b) the provision of short-term insurance, guarantee, or other financing with a repayment term of less than 2 years, provided that the state-owned enterprise charges premium

rates or interest rates that are adequate to cover the long-term operating costs and losses of the program, determined on a net present value basis, under which the insurance, guarantee, or other financing is provided.

Article 14.19: Dispute Settlement

Any recourse to dispute settlement pursuant to Chapter 16 (Dispute Settlement) for any matter arising under Chapter 14 shall be subject to Annex 14 of this chapter.

Annex 14: Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies

1. Where a panel has been established pursuant to Chapter 16 (Dispute Settlement) to examine a matter arising under Chapter 14, the panel shall administer the process set out in paragraphs 2 through 4 aimed at developing information relevant to the claim, including data regarding the volume and value of relevant purchases or sales by the state-owned enterprise or designated monopoly in question, and information about that entity's relevant purchasing, sales, and contracting procedures.[44] The process shall include procedures aimed at protecting information that is by nature confidential or that a disputing Party provides on a confidential basis.

2. The complaining Party may present written questions to the other Party within 60 days of the date on which the panel is established. The responding Party shall provide its responses to the questions to the complaining Party and the panel within 60 days from the date it receives the questions.

3. The complaining Party shall have 60 days from the date it receives the responses to its questions to review them and provide any additional questions related to the responses to the responding Party. The responding Party shall have 45 days from the date it receives the additional questions to provide its responses to the additional questions to the complaining Party and the panel.

4. If the complaining Party considers that the responding Party has failed to cooperate in the process, the complaining Party shall inform the panel and the responding Party in writing no later than 30 days from the date responses to the complaining Party are due and shall

provide the basis for this view. The panel shall afford the responding Party an opportunity to reply to this view in writing.

5. The panel may seek additional information from a disputing Party that was not provided to the panel through the information development process carried out under this annex, where the panel considers the information necessary to resolve the dispute. However, the panel shall not request additional information to complete the record where the information would support a Party's position and the absence of that information in the record is the result of that Party's noncooperation in the information-gathering process.

CHAPTER 15
Defense Trade Cooperation

Article 15.1: Definition and Integration of National Defense Industrial Bases

1. If either Party chooses to define its national defense industrial base in legislation or policy, the other Party shall be included in that definition.

2. Each Party shall reduce the barriers to the seamless integration of the persons and organizations that compose their national defense industrial base and shall consult regularly with the other Party to achieve this end.

Article 15.2: Removing Barriers to Defense Trade

In order to give effect to the U.S.-U.K. Defense Trade Cooperation Treaty (2007), and with the exception of technologies controlled by multilateral agreement or not designated for export, each Party shall adapt its system of defense trade controls to allow all defense-related exports to the other Party to do as follows:

(a) Proceed absent an explicit decision to refuse within a specified and limited time;

(b) Be licensed at the system level within the approved community as defined by the 2007 Treaty, and automatically include all follow-on parts, components, servicing, and technical plans; and

(c) Be obtained directly from commercial suppliers.

Article 15.3: Defense Procurement

Purchases made by one Party for the purposes of national defense from the other Party shall be deemed to meet all domestic content provisions of the first Party.

Article 15.4: Defense Trade Relations with Allied Partners

1. Each Party shall, with the agreement of and in cooperation with the other Party, seek to expand the provisions of Articles 15.2 and 15.3 to other close and traditional allies.

2. Neither Party shall, without the agreement of the other Party, enter into research, development, or procurement relationships with third parties that are closed to the other Party.

CHAPTER 16
Dispute Settlement

Section A: Dispute Settlement

Article 16.1: Definitions

For the purposes of this chapter, the following applies:

(a) **complaining Party** means a Party that requests the establishment of a panel under Article 16.7 (Establishment of a Panel);

(b) **consulting Party** means a Party that requests consultations under Article 16.5 (Consultations) or the Party to which the request for consultations is made;

(c) **disputing Party** means a complaining Party or a responding Party;

(d) **panel** means a panel established under Article 16.7 (Establishment of a Panel);

(e) **perishable goods** means perishable agricultural and fish goods classified in Chapters 1 through 24 of the Harmonized Tariff Schedule;

(f) **responding Party** means a Party that has been complained against under Article 16.7 (Establishment of a Panel); and

(g) **Rules of Procedure** means the rules referred to in Article 16.13 (Rules of Procedure for Panels).

Article 16.2: Cooperation

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

Article 16.3: Scope

1. Unless otherwise provided in this Agreement, the dispute settlement provisions of this chapter shall apply as follows:

   (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; or

   (b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation under this Agreement.

2. An instrument entered into by the Parties in connection with the conclusion of this Agreement

   (a) does not constitute an instrument related to this Agreement within the meaning of paragraph 2(b) of Article 31 of the Vienna Convention on the Law of Treaties, done at Vienna on May 23, 1969, and shall not affect the rights and obligations under this Agreement of Parties that are not party to the instrument; and

   (b) may be subject to the dispute settlement procedures under Chapter 16 for any matter arising under the instrument if that instrument so provides.

Article 16.4: Choice of Forum

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel or other tribunal under an agreement referred to in paragraph 16.4.1, the forum selected shall be used to the exclusion of other forums.

Article 16.5: Consultations

1. Any Party may request consultations with respect to any matter described in Article 16.3 (Scope). The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure[45] or other matter at issue and an indication of the legal basis for the complaint.

2. The Party to which a request for consultations is made shall, unless the consulting Parties agree otherwise, reply in writing to the request no later than 7 days after the date of its receipt of the request.[46] That Party shall enter into consultations in good faith.

3. Unless the consulting Parties agree otherwise, they shall enter into consultations no later than as follows:

   (a) 15 days after the date of receipt of the request for matters concerning perishable goods; or

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

4. Consultations may be held in person or by any technological means available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties agree otherwise.

5. The consulting Parties shall make every attempt to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end, the following applies:

   (a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure might affect the operation or application of this Agreement; and

(b) a Party that participates in the consultations shall treat any information exchanged in the course of the consultations that is designated as confidential on the same basis as the Party providing the information.

6. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

7. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

Article 16.6: Good Offices, Conciliation, and Mediation

1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation.

2. Proceedings that involve good offices, conciliation, or mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

3. Parties participating in proceedings under this Article may suspend or terminate those proceedings at any time.

4. If the disputing Parties agree, good offices, conciliation, or mediation may continue while the dispute proceeds for resolution before a panel established under Article 16.7 (Establishment of a Panel).

Article 16.7: Establishment of a Panel

1. A Party that requested consultations under Article 16.5 (Consultations) may request, by means of a written notice addressed to the responding Party, the establishment of a panel if the consulting Parties fail to resolve the matter within the following periods:

(a) a period of 60 days after the date of receipt of the request for consultations under Article 16.5 (Consultations);

(b) a period of 30 days after the date of receipt of the request for consultations under Article 16.5 (Consultations) in a matter regarding perishable goods; or

(c) any other period as the consulting Parties may agree.

2. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. A panel shall be established upon delivery of the request.

4. Unless the disputing Parties agree otherwise, the panel shall be composed in a manner consistent with this chapter and the Rules of Procedure.

5. A panel shall not be established to review a proposed measure.

Article 16.8: Terms of Reference

Unless the disputing Parties agree otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:

(a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 16.7 (Establishment of a Panel); and

(b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 16.16 (Panel Report).

Article 16.9: Composition of Panels

1. A panel shall be composed of three members.

2. Unless the disputing Parties agree otherwise, they shall apply the following procedures to compose a panel:

   (a) Within a period of 20 days after the date of delivery of the request for the establishment of a panel under Article 16.7 (Establishment of a Panel), the complaining Party, on the one hand, and the responding Party, on the other, shall each appoint a panelist from the roster of panelists, and notify each other of those appointments.

   (b) If the complaining Party fails to appoint a panelist within the period specified in subparagraph (a), the dispute settlement proceedings shall lapse at the end of that period.

   (c) If the responding Party fails to appoint a panelist within the period specified in subparagraph (a), the complaining Party shall select the panelist not yet appointed from the roster, no later than 35 days after the date of delivery of the request for the establishment of a panel under Article 16.7 (Establishment of a Panel).

   (d) The appointment of the third panelist, who shall serve as chair, will be done as follows:

      i. the disputing Parties shall endeavor to agree on the appointment of a chair;

      ii. if the disputing Parties fail to appoint a chair under subparagraph (d)(i) within a period of 35 days after the date of delivery of the request for the establishment of a panel under Article 16.7 (Establishment of a Panel), the third panelist shall be chosen by lot from the nonnationals on the roster established under Article 16.11;

      iii. the process of choosing by lot is to be administered by the Secretariat.

3. Each disputing Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute.

4. If a panelist selected under paragraph 2 is unable to serve on the panel, the complaining Party, the responding Party, or the disputing Parties, as the case may be, shall, no later than 7 days after learning that the panelist is unavailable, select another panelist in accordance with the same method of selection that was used to select the panelist who is unable to serve, unless the disputing Parties agree otherwise.

5. If the process for selecting the new panelist under paragraph 4 is not completed within the time frame set out in that paragraph, then the Secretariat shall select the panelist by random selection from the roster no later than 15 days after learning that the original panelist is no longer able to serve.

6. If a panelist appointed under this Article resigns or becomes unable to serve on the panel, either during the course of the proceeding or when the panel is reconvened under Article 16.18 (Nonimplementation—Compensation and Suspension of Benefits) or Article 16.19 (Compliance Review), a replacement panelist shall be appointed within 15 days in accordance with paragraphs 6, 7, and 8. The replacement shall have all the powers and duties of the original panelist. The work of the panel shall be suspended pending the appointment of the replacement panelist, and all time frames set out in this chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended.

7. If a disputing Party believes that a panelist is in violation of the code of conduct referred to in Article 16.10.1(d) (Qualifications of Panelists), the disputing Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 16.10: Qualifications of Panelists

1. All panelists shall meet the following qualifications:

   (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

   (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

   (c) be independent of, and not affiliated with or take instructions from, any Party; and

   (d) comply with the code of conduct in the Rules of Procedure.

2. An individual shall not serve as a panelist for a dispute in which that person has participated under Article 16.6 (Good Offices, Conciliation, and Mediation).

Article 16.11: Roster of Panelists

1. No later than 120 days after the date of entry into force of this Agreement, the Parties shall establish a roster of 30 individuals to be used for the selection of panelists. At least 10 of these individuals must be nonnationals of either Party.

2. If the Parties are unable to agree on the establishment of a roster within the time period specified in paragraph 1, each Party may select 15 individuals for the roster, taking into account the qualifications set out in Article 16.10. At least five of these individuals must be nonnationals of either Party.

3. The Parties may appoint a replacement at any time if a roster member is no longer willing or available to serve. This appointment shall follow the same procedures as were used to appoint the individual being replaced on the roster.

Article 16.12: Functioning of Panels

1. A panel's function is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Agreement, and to make the findings, determinations, and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the disputing Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this chapter and the Rules of Procedure.

3. The panel shall consider this Agreement in accordance with the rules of interpretation under international law as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (1969). With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body.

4. The findings, determinations, and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

5. A panel shall take its decisions by consensus, except that, if a panel is unable to reach consensus, it may take its decisions by majority vote.

6. A panel shall receive legal support from assistants hired to work on a particular dispute.

Article 16.13: Rules of Procedure for Panels

The Rules of Procedure, established under this Agreement:

(a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;

(b) subject to subparagraph (f), any hearing before the panel shall be open to the public, unless the disputing Parties agree otherwise;

(c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;

(d) subject to subparagraph (f), each disputing Party shall:

i. make its best efforts to release to the public its written submissions, written version of an oral statement, and written response to a request or question from the panel, if any, as soon as possible after those documents are filed; and

ii. if not already released, release all these documents by the time the final report of the panel is issued;

(e) the panel shall consider requests from nongovernmental entities located in the territory of a disputing Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;

(f) confidential information is protected;

(g) unless the disputing Parties agree otherwise, hearings shall be held in the capital of the responding Party.

Article 16.14: Role of Experts

At the request of a disputing Party, or on its own initiative, a panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions agreed by the disputing Parties. The disputing Parties shall have an opportunity to comment on any information or advice obtained under this Article.

Article 16.15: Suspension or Termination of Proceedings

1. The panel may suspend its work at any time at the request of the complaining Party for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in Chapter 16 and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties agree otherwise.

2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

Article 16.16: Panel Report

1. The panel shall draft its report without the presence of any Party.

2. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information or advice put before it under Article 16.14 (Role of Experts). At the joint request of the disputing Parties, the panel may make recommendations for the resolution of the dispute.

3. The panel shall present its report to the disputing Parties no later than 150 days after the date of the appointment of the last panelist. In cases of urgency, including those related to perishable goods, the panel shall endeavor to present its report to the disputing Parties no later than 120 days after the date of the appointment of the last panelist.

4. The report shall contain the following:

   (a) findings of fact;

   (b) the determination of the panel as to whether:

      i. the measure at issue is inconsistent with obligations in this Agreement;

      ii. a Party has otherwise failed to carry out its obligations in this Agreement; or

   (c) any other determination requested in the terms of reference;

   (d) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and

   (e) the reasons for the findings and determinations.

5. In exceptional cases, if the panel considers that it cannot release its report within the time period specified in paragraph 3, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties agree otherwise.

6. Panelists may present separate opinions on matters not unanimously agreed.

7. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the report to the parties, the Secretariat shall release the report to the public.

Article 16.17: Implementation of Report

1. The Parties recognize the importance of prompt compliance with determinations made by panels under Article 16.16 (Panel Report) in achieving the aim of the dispute settlement procedures in this chapter, which is to secure a positive solution to disputes.

2. If in its final report the panel determines that:

   (a) the measure at issue is inconsistent with a Party's obligations in this Agreement;

(b) a Party has otherwise failed to carry out its obligations in this Agreement; or the responding Party shall, whenever possible, eliminate the nonconformity.

3. Unless the disputing Parties agree otherwise, the responding Party shall have a reasonable period of time in which to eliminate the nonconformity if it is not practicable to do so immediately.

4. The disputing Parties shall endeavor to agree on the reasonable period of time. If the disputing Parties fail to agree on the reasonable period of time within a period of 45 days after the presentation of the report under Article 16.16 (Panel Report), any disputing Party may, no later than 60 days after the presentation of the report under Article 16.16 (Panel Report), refer the matter to the chair to determine the reasonable period of time through arbitration.

5. The chair shall take into consideration as a guideline that the reasonable period of time should not exceed 12 months from the presentation of the final report under Article 16.16 (Panel Report). However, that time may be shorter or longer, depending upon the particular circumstances.

6. The chair shall determine the reasonable period of time no later than 90 days after the date of referral to the chair under paragraph 4.

7. The disputing Parties may agree to vary the procedures set out in paragraphs 4 through 6 for the determination of the reasonable period of time.

Article 16.18: Nonimplementation—Compensation and Suspension of Benefits

1. The responding Party shall, if requested by the complaining Party, enter into negotiations with the complaining Party no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:

(a) the responding Party has notified the complaining Party that it does not intend to eliminate the nonconformity or the nullification or impairment; or

(b) following the expiry of the reasonable period of time established in accordance with Article 16.17 (Implementation of Report), there is disagreement between the disputing

Parties as to whether the responding Party has eliminated the nonconformity or the nullification or impairment.

2. A complaining Party may suspend benefits in accordance with paragraph 3 if that complaining Party and the responding Party have done as follows:

   (a) been unable to agree on compensation within a period of 30 days after the period for developing compensation has begun; or

   (b) agreed on compensation but the relevant complaining Party considers that the responding Party has failed to observe the terms of the agreement.

3. A complaining Party may, at any time after the conditions set out in paragraph 2 are met in relation to that complaining Party, provide written notice to the responding Party that it intends to suspend benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend.[47] The complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the date that the panel issues its determination under paragraph 5, as the case may be.

4. In considering what benefits to suspend under paragraph 3, the complaining Party shall apply the following principles and procedures:

   (a) it should first seek to suspend benefits in the same subject matter as that in which the panel has determined nonconformity or the nullification or impairment to exist;

   (b) if it considers that it is not practicable or effective to suspend benefits in the same subject matter, and that the circumstances are serious enough, it may suspend benefits in a different subject matter. In the written notice referred to in paragraph 3, the complaining Party shall indicate the reasons on which its decision to suspend benefits in a different subject matter is based; and

   (c) in applying the principles set out in subparagraphs (a) and (b), it shall take into account the following:

      i. the trade in the good, the supply of the service or other subject matter in which the panel has found the nonconformity or the nullification or impairment, and the importance of that trade to the complaining Party;

ii. that goods, all financial services covered under Annex I (Financial Services), services other than such financial services, and each section in Chapter 11 (Intellectual Property), are each distinct subject matters; and

iii. the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of benefits.

5. If the responding Party considers that:

(a) the level of benefits proposed to be suspended is manifestly excessive or the complaining Party has failed to follow the principles and procedures set out in paragraph 4; or

(b) it has eliminated the nonconformity or the nullification or impairment that the panel has determined to exist,

it may, within 30 days of the date of delivery of the written notice provided by the complaining Party under paragraph 3, request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

6. Unless the panel has determined that the responding Party has eliminated the nonconformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 3. If the panel determines that the complaining Party has not followed the principles and procedures set out in paragraph 4, the panel shall set out in its determination the extent to which the complaining Party may suspend benefits in which subject matter in order to ensure full compliance with the principles and procedures set out in paragraph 4. The complaining Party may suspend benefits only in a manner consistent with the panel's determination.

7. The complaining Party shall not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 5, within 20 days after the panel provides its determination, the responding Party provides written notice to the complaining Party that it will pay a monetary assessment. The disputing Parties shall begin consultations no later than 10 days after the date on which the responding Party has given notice that it intends to pay a monetary assessment, with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin and are not engaged in discussions regarding the use of a fund under paragraph 8, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 5 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 3.

8. If a monetary assessment is to be paid to the complaining Party, then it shall be paid in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties in equal, quarterly installments beginning 60 days after the date on which the responding Party gives notice that it intends to pay an assessment. If the circumstances warrant, the disputing Parties may decide that the responding Party shall pay an assessment into a fund designated by the disputing Parties for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting the responding Party to carry out its obligations under this Agreement.

9. At the same time as the payment of its first quarterly installment is due, the responding Party shall provide to the complaining Party a plan of the steps it intends to take to eliminate the nonconformity or the nullification or impairment.

10. A responding Party may pay a monetary assessment in lieu of suspension of benefits by the complaining Party for a maximum of 12 months from the date on which the responding Party has provided written notice under paragraph 7 unless the complaining Party agrees to an extension.

11. A responding Party that seeks an extension of the period for the payment under paragraph 10 shall make a written request for that extension no later than 30 days before the

expiration of the 12-month period. The disputing Parties shall determine the length and terms of any extension, including the amount of the assessment.

12. The complaining Party may suspend the application to the responding Party of benefits in accordance with paragraphs 3, 4, and 6, if the following occurs:

    (a) the responding Party fails to make a payment under paragraph 8 or fails to make the payment under paragraph 13 after electing to do so;

    (b) the responding Party fails to provide the plan as required under paragraph 9; or

    (c) the monetary assessment period, including any extension, has lapsed and the responding Party has not yet eliminated the nonconformity or the nullification or impairment.

13. If the responding Party notified the complaining Party that it wished to discuss the possible use of a fund and the disputing Parties do not agree on the use of a fund within 3 months of the date of the responding Party's notice under paragraph 7, and this time period has not been extended by agreement of the disputing Parties, the responding Party may elect to make the monetary assessment payment equal to 50 percent of the amount determined under paragraph 5 or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5. If this election is made, the payment must be made within nine months of the responding Party's notice under paragraph 7 in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties. If the election is not made, the complaining Party may suspend the application of benefits in the amount determined under paragraph 5, or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5, at the end of the election period.

14. The complaining Party shall accord sympathetic consideration to the notice provided by the responding Party regarding the possible use of the fund referred to in paragraphs 8 and 13.

15. Compensation, suspension of benefits, and the payment of a monetary assessment shall be temporary measures. None of these measures is preferred to full implementation through elimination of the nonconformity or the nullification or impairment. Compensation, suspension of benefits, and the payment of a monetary assessment shall only be applied

until the responding Party has eliminated the nonconformity or the nullification or impairment, or until a mutually satisfactory solution is reached.

Article 16.19: Compliance Review

1. Without prejudice to the procedures in Article 16.18 (Nonimplementation—Compensation and Suspension of Benefits), if a responding Party considers that it has eliminated the nonconformity or the nullification or impairment found by the panel, it may refer the matter to the panel by providing a written notice to the complaining Party or Parties. The panel shall issue its report on the matter no later than 90 days after the responding Party provides written notice.

2. If the panel determines that the responding Party has eliminated the nonconformity, the complaining Party shall promptly reinstate any benefits suspended under Article 16.18 (Nonimplementation—Compensation and Suspension of Benefits).

Section B: Domestic Proceedings and Private Commercial Dispute Settlement

Article 16.20: Private Rights of Action

No Party shall provide for a right of action under its law against any other Party on the ground that a measure of that other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 16.21: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to, and is in compliance with, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on June 10, 1958.

CHAPTER 17
Exceptions

Article 17.1: General Exceptions

Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to fulfill a legitimate objective, taking account of available scientific and technical information. Such measures include the following:

(a) measures necessary to protect public morals;

(b) measures necessary to protect human, animal, or plant life or health;

(c) measures necessary to protect the environment;

(d) measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement; and

(e) measures necessary as a response to the products of prison labor.

Article 17.2: Security Exceptions

The Parties to this Agreement do not believe there will be situations where trade between them will have an impact on national security. Should an emergency situation related to national security arise, the Party taking the action shall provide a written explanation in advance of the action taking effect, and the Parties agree to consult before the action takes effect. Subject to these requirements, nothing in this Agreement shall be construed to do as follows:

(a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) preclude a Party from applying measures necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests. A Party's essential security interests are the continuous preservation of territorial integrity from any outside threat; and the ability to maintain and employ a military force consistent with the needs of the Party.

(c) When the Party invoking this provision does not declare some form of state of emergency pertaining to and occurring during the period of implementation of a measure to protect security, directly affected entities from the other Party may request reasonable compensation.

CHAPTER 18
Institutional and Final Provisions

Article 18.1: Contact Points

1. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Agreement. Each Party shall appoint one national as an official of the Secretariat. The Parties shall jointly agree on the appointment of the administration of the Secretariat. The administrator shall be a nonnational of either Party.

2. On request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

Article 18.2: Joint Committee

1. The Parties hereby establish a Joint Committee comprising officials of each Party.

2. The Joint Committee shall do as follows:

   (a) supervise the implementation of this Agreement;

   (b) supervise the work of all committees, working groups, and other bodies established under this Agreement;

   (c) consider ways to further enhance trade relations between the Parties;

   (d) establish the amount of remuneration and expenses that will be paid to panelists; and

   (e) consider any other matter that may affect the operation of this Agreement.

3. The Joint Committee may do the following:

   (a) establish and delegate responsibilities to ad hoc and standing committees, working groups, or other bodies;

   (b) seek the advice of nongovernmental persons or groups;

   (c) consider amendments to this Agreement or make modifications to the commitments therein;

   (d) issue interpretations of the provisions of this Agreement;

   (e) adopt its own rules of procedure; and

   (f) take such other action in the exercise of its functions as the Parties may agree.

4. Unless the Parties otherwise agree, the Joint Committee shall convene as follows:

   (a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and

   (b) in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as the Parties may agree.

5. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee or any body created under paragraph 3(a) on the same basis as the Party providing the information.

6. Recognizing the importance of transparency and openness, the Parties affirm their respective practices of considering the views of members of the public in order to draw on a broad range of perspectives in the implementation of this Agreement.

7. All decisions of the Joint Committee and all committees, working groups, and other bodies established under this Agreement shall be taken by consensus of the Parties.

Article 18.3: The Secretariat

1. The Joint Committee shall establish and oversee an independent Secretariat to assist with the administration of this Agreement.

2. The Secretariat shall do as follows:

   (a) provide assistance to the Joint Committee with its responsibilities as set out above;

   (b) administer the dispute procedures, including facilitation of the hiring of research assistants for dispute settlement panels; and

   (c) support the work of other committees and groups established under this Agreement, and otherwise facilitate the operation of this Agreement.

Article 18.4: Annexes and Footnotes

The annexes, appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 18.5: Amendments

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, on such date as the Parties may agree.

Article 18.6: Amendment of the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult to consider amending the relevant provision of this Agreement, as appropriate.

Article 18.7: Accession

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between the country or group of countries and the Parties and following approval in accordance with the applicable legal requirements and procedures of each Party and acceding country.

2. This Agreement shall not apply as between any Party and any acceding country or group of countries if, at the time of the Agreement described in paragraph 1, one of them does not consent to such application.

Article 18.8: Entry into Force and Termination

1. This Agreement shall enter into force 60 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or on such other date as the Parties may agree.

2. This Agreement shall terminate 180 days after the date either Party notifies the other Party in writing that it wishes to terminate the Agreement.

3. Within 30 days after a Party provides notice under paragraph 2, either Party may request the other Party in writing to enter into consultations regarding whether any provision of this Agreement should terminate on a date later than that provided under paragraph 2. The consultations shall begin no later than 30 days after the Party delivers its request.

Annexes

Annex I:
Financial Services[48]

Article 1: Definitions[49]

(a) **agreed equivalence recognitions** means the recognitions that have been agreed in Article 4 and as further detailed in Schedule 1, whereby each Party confirms the sector of the financial services regulatory regime of the other Party that is agreed to be equivalent and the national legal effect that is intended to result from the relevant equivalence recognition;

(b) **DSU** means the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 to the WTO Agreement;

(c) **equivalence change** means a request to amend the legal effect of an agreed equivalence recognition or a request to supplement the agreed equivalence recognitions with further provisions or a request to remove a recognition from the agreed list of equivalence recognitions in Schedule 1;

(d) **equivalent** means requirements or standards applicable within the jurisdiction of a Party that are materially similar to the corresponding requirements or standards that are applied in the jurisdiction of the other Party. Whether requirements or standards are equivalent shall be determined, primarily, upon whether the following outcomes are achieved, taking into account that alternative approaches achieving the same outcomes may legitimately be adopted and that legislation and regulation may address matters in different ways and still achieve the same outcome:

i. there is, in a retail context, adequate protection for consumers, investors, deposit holders, policyholders, clients, counterparties, and/or any other persons who may be owed a fiduciary or other similar duty;

ii. there is no significant risk of increased systemic risk in the financial markets either globally or within the jurisdiction of a Party.

(e) The fact that a specific standard or requirement is applicable in the jurisdiction of a Party shall not affect whether standards of the other Party are equivalent or not, unless the specific standard or requirement is also applied generally in relevant international standards, guidance, or conventions, or unless the outcomes listed in points (i) and (ii) are not satisfied;

(f) **financial services** means any service of a financial nature offered by a financial service supplier established in and/or authorized by a Party. Financial services include all insurance and insurance-related services, all banking and other financial services, and financial infrastructure. Financial services may include the following activities:

(g) Insurance and insurance-related services

A. direct insurance (including coinsurance):

i. life;

ii. nonlife;

B. reinsurance and retrocession;

C. insurance intermediation, such as brokerage and agency;

D. services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

(h) Banking and other financial services

A. acceptance of deposits and other repayable funds from the public;

B. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

C. financial leasing;

D. all payment and money transmission services, including credit, charge and debit cards, traveler's checks, and bankers drafts;

E. guarantees and commitments;

F. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

   i. money market instruments (including checks, bills, certificates of deposits);

   ii. foreign exchange;

   iii. derivative products, including, but not limited to, futures and options;

   iv. exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

   v. transferable securities;

   vi. other negotiable instruments and financial assets, including bullion;

G. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

H. money broking;

I. asset management, such as cash or portfolio management, all forms of collective investment or fund management, pension fund management, custodial, depository, and trust services;

J. settlement and clearing services for financial assets, including receiving and transmitting orders or trades, securities, derivative products, and other negotiable instruments;

K. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

L. advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (E) through (O), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

M. market infrastructure as follows:

i. clearing;

ii. exchange/platform trading; and

iii. central securities depositories, depositories and settlement systems.

N. marketing of financial services; and

O. agreements concerning any of the products and services mentioned in subparagraphs (A) to (N) above.

(i) **GATS** means the General Agreement on Trade in Services and the GATS Annex on Financial Services;

(j) **material** and **materially** shall be interpreted primarily with reference to relevant international standards, guidance, conventions and agreements, any relevant technical guidance issued by international bodies or financial services markets associations;

(k) **New York Convention** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

(l) **recognition conditions** has the meaning specified in Article 4.4;

(m) **recognition principles** has the meaning specified in Article 3.1;

(n) **Regulatory Committee** has the meaning specified in Article 6.1;

(o) **relevant private party** means any natural person or legal entity (whether or not incorporated or otherwise established under the jurisdiction of either Party) that is entitled to the benefit of an agreed equivalence recognition as described in Schedule 1;

(p) **relevant regulatory development** means (a) a proposed or new legislative development in either Parties' jurisdiction that if proposed could, or if already effective does, alter the previously agreed legal effect in either Parties' jurisdiction of an agreed equivalence recognition or (b) a proposed or new legislative development in either Parties' jurisdiction that if proposed could be, or if already effective is, relevant to determining whether the recognition conditions applicable to an agreed equivalence recognition remain satisfied;

(q) **Tribunal** means the tribunal established under Article 9;

(r) **U.S. recognition body** means the [description of representative body] that will represent the United States in all matters relating to this Agreement;

(s) **U.K. recognition body** means the [description of representative body] that will represent the United Kingdom in all matters relating to this Agreement;

(t) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law;

(u) **UNCITRAL Transparency Rules** means the UNCITRAL Rules on Transparency in Treaty-Based Investor–State Arbitration;

(v) **Vienna Convention on the Law of Treaties** means the Vienna Convention on the Law of Treaties, concluded on May 23, 1969;

(w) **WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organization, concluded on April 15, 1994.

[…]

Article 2: Overseas Persons Exclusion

2.1. The Parties agree to, in the case of the United States, establish and maintain and, in the case of the United Kingdom, maintain an overseas persons exclusion under the law of their respective jurisdictions to facilitate the provision of financial services between the jurisdictions of each of the Parties.

2.2. For the purposes of this Article 2, an "overseas persons exclusion" means, in respect of a Party, an exclusion under law from the requirement to be authorized to conduct [any financial services activities] / [specified financial services activities][50] for or on behalf of clients in that Party's jurisdiction for persons with no permanent place of business in that Party's jurisdiction from which financial services activities are conducted or offers to conduct financial services activities are made, subject to certain [specifications and] conditions.

2.3. The [specifications and] conditions referred to in Article 2.2 are as follows:

(a) [no direct marketing efforts;

(b) no clients who are individuals;

(c) no retail clients.][51]

2.4. For financial services activities that fall outside the scope of the overseas persons exclusions established and maintained under this Article 2, the Parties may adopt equivalence recognitions in accordance with the remainder of this Agreement.

Article 3: Equivalence Recognition Principles

3.1. The following principles in this Article 3 are designated as "recognition principles" for the purposes of governing the mutual recognition relationship established between the Parties under this Agreement and in accordance with the principles established in Article VII of the GATS.

3.2. The recognition principles set out in this Article 3 shall apply to all matters relating to this Agreement in addition to the other principles and standards on regulatory coherence set out in Chapter 6 of this Agreement.

3.3. The Parties' recognition of equivalence is intended to foster the expansion of trade in financial services by promoting regulatory convergence with international norms, reducing supervisory and prudential burdens, and increasing the choices of financial services and products available to customers and undertakings located in the Parties' jurisdictions.

Good faith

3.4. The Parties commit to acting in good faith in all matters relating to this Agreement and in making further legislative or regulatory developments within their respective jurisdictions that may have an effect on the agreed equivalence recognitions contained in this Agreement. This may include consulting and cooperating with the other Party in extending agreed equivalence recognitions to further sectors or areas of financial services where equivalence recognitions have not yet been agreed between the Parties.

Transparency, objectivity, and impartiality

3.5. The Parties commit to applying the agreed equivalence recognitions that have been included pursuant to the terms of this Agreement in a reasonable, objective, and impartial manner.

3.6. Each Party commits to ensuring that its laws, regulations, procedures, supervision, enforcement, and judicial rulings that apply generally to the financial services businesses that are designated in Schedule 1 as being entitled to the agreed equivalence recognitions as follows:

(a) are applied in a reasonable, objective and impartial manner;

(b) in the event of a proposed law, regulation, or procedure, are published in advance with a reasonable opportunity for interested persons and the other Party to provide comment to the extent possible.

Legal effect and inconsistent acts

3.7. The agreed equivalence recognitions are based on the Parties' giving legal effect to the agreed equivalence recognitions (subject to any specific terms and conditions contained in Schedule 1) and on a reciprocal basis (unless otherwise specified in Schedule 1 or in any other written agreement between the Parties that refers to this provision).

3.8. The Parties shall ensure that measures are not adopted in their respective jurisdictions that are inconsistent with the legal effect that the agreed equivalence recognitions are intended to have, as described in Article 4 and Schedule 1, unless the relevant change procedures contained in Article 10 have been complied with.

Nondiscrimination

3.9. Each of the Parties shall ensure that its laws, regulations, procedures, supervision, enforcement, and judicial rulings do not subject financial services suppliers authorized by and/or established in the other Party's jurisdiction to less favorable treatment than the following:

(a) like financial services suppliers authorized by and/or established in its own jurisdiction; or

(b) like financial services suppliers authorized by and/or established in any other country that the other Party permits to carry out financial services business in the other Party's jurisdiction.

3.10. In particular, the Parties shall ensure that there is no discrimination between natural or legal persons based on the official currency that is used in either Party's jurisdiction, or the currency that has legal tender in either Party's jurisdiction, where that natural or legal person is established.[52]

Equivalence

3.11. The agreed equivalence recognitions are premised on the Parties' achieving the same key regulatory outcomes, but not necessarily adopting the same approach or legal wording.

Alternative approaches from those taken by one Party in reducing prudential risk or achieving other regulatory outcomes may legitimately be adopted within the framework of continuing equivalence, so long as the Party remains equivalent by achieving the same key regulatory outcomes. The effect of an equivalence recognition shall be that, immediately on entry into force of such recognition, relevant legal persons in one Party's jurisdiction may access the other Party's country, and consumers, investors, deposit holders, policyholders, clients, counterparties, and/or any other persons who may be owed a fiduciary or other similar duty without further local licensing requirements or reporting obligations in the other Party's jurisdiction, based on the first Party's regulatory supervisor. The effects of the agreed equivalence recognitions are further detailed in Schedule 2.[53]

Assessments of equivalence

3.12. Any assessments of the equivalence of the whole, or any aspect of a Party's legal and/or supervisory financial services regime shall only consider material factors based primarily on relevant international standards.

3.13. Assessments of equivalence should only consider material factors based on relevant technical advice, including advice that the Parties may request from any relevant specialist national bodies (and any previously issued guidance from such bodies) and in a manner that is proportionate to the level and nature of access that is agreed under the agreed equivalence recognitions.

3.14. In making assessments of equivalence, the Parties may also request and take into account the views of, or any technical data or market evidence provided by representative bodies or market associations of financial services and market participants, and financial services and market participants, including but not limited to, representative bodies and market participants established in the jurisdiction of the relevant Party, and relevant international bodies such as the Basel Committee on Banking Supervision, the Financial Action Task Force, the Financial Stability Board, the International Association of Insurance Supervisors, the International Accounting Standards Board, the International Monetary Fund, the Organization for Economic Cooperation and Development, the Financial Action Task Force, and the International Organization of Securities Commissions.

Private law remedies

3.15. Unless specifically provided for in this Agreement, including in particular under Article 10 of this annex, nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties pursuant to the terms of this Agreement (this does not affect any rights that persons other than the Parties may otherwise be entitled to under the national legal system of either Party on the grounds that a Party has adopted a measure or otherwise conducted itself in a manner that is inconsistent with this Agreement).

Compliance with Article VII of GATS

3.16. In compliance with Article VII:3 of GATS, equivalence recognitions shall not be granted in a manner that would constitute a means of discrimination between any Party to this Agreement and any other WTO member in the application of such Party's standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

3.17. In accordance with Article VII:2 of GATS, the Parties shall afford adequate opportunity for other interested WTO members to negotiate and accede to this Agreement in accordance with the provisions set out in Chapter 18 for the accession of additional parties to this Agreement or to negotiate agreements comparable to this Agreement.

3.18. In accordance with Article VII:4(b) of GATS, each Party shall promptly inform the Council for Trade in Services when new agreed equivalence recognitions are adopted or existing ones under this Agreement are significantly modified.

Article 4: Agreed Equivalence Recognitions

4.1. The Parties have agreed that the agreed equivalence recognitions shall consist of the equivalence recognitions, their corresponding legal effect in each Party's respective jurisdictions, and shall be subject to the recognition conditions, as detailed in Schedule 1 of this Agreement. [It is intended that all Financial Services areas will be subject to equivalence

determinations immediately, and on a continuous basis, across wholesale and retail sectors, without further restrictions.]

4.2. The Parties shall ensure that agreed equivalence recognitions are fully and immediately implemented with legal effect within their respective legal systems for the benefit of the entities that have been designated as entitled to the relevant agreed equivalence recognitions in Schedule 1.

4.3. The agreed equivalence recognitions are intended to have the legal effect that is described in full detail in Schedule 1 and the Parties shall ensure that each provision shall have that legal effect subject to the terms and conditions (if any) specified in relation to a particular agreed equivalence recognition.

4.4. The "recognition conditions" applicable to the agreed equivalence recognitions are set out in Schedule 2.

4.5. In assessing whether the recognition conditions have been met, the Parties must consider the views of, or any technical data or market evidence provided by representative bodies or market associations of financial services and market participants, including but not limited to representative bodies and market participants established in the jurisdiction of the relevant Party, and where relevant, international bodies such as the Basel Committee on Banking Supervision, the Financial Action Task Force, the Financial Stability Board, the International Association of Insurance Supervisors, the International Accounting Standards Board, the International Monetary Fund, and International Organization of Securities Commissions.

4.6. For the avoidance of doubt, the Parties are required to observe principles of nondiscrimination as established by the equivalence recognitions, which include but are not limited to the following grants of nondiscriminatory market access:

(a) Each Party must permit the supply of a financial service from the territory of a Party into the territory of the other Party, as well as in the territory of one Party to a service consumer of the other Party;

(b) A Party shall not adopt or maintain, with respect to a financial services supplier of the other Party supplying services through commercial presence, on the basis of a regional subdivision or on the basis of its entire territory, a measure that does the following:

i. imposes limitations on

a. the number of financial services suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

b. the total value of financial service transactions or assets in the form of numerical quota or the requirement of an economic needs test;

c. the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

d. the participation of foreign capital in terms of maximum percentage limit on foreign shareholding in financial institutions or the total value of individual or aggregate foreign investment in financial institutions; or

e. the total number of natural persons that may be employed in a particular financial services sector or that a financial institution may employ and who are necessary for, and directly related to, the performance of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

ii. restricts or requires specific types of legal entity or joint venture through which a financial institution may perform an economic activity.

4.7. Provided it does not circumvent Article 4.6 above and is consistent with the other provisions of this Agreement, either Party may do as follows:

(a) impose terms, conditions, and procedures for the authorization of the establishment and expansion of a financial institution's commercial presence to provide financial services; and/or

(b) require a financial institution to supply certain financial services through separate legal entities if, under the law of the Party, the range of financial services supplied by the financial institution may not be supplied through a single entity.

Article 5: Cooperation Agreements

The Parties shall ensure that the terms of the cooperation agreements are implemented within their legal and regulatory regimes and/or shall otherwise ensure that the commitments made in those cooperation agreements are complied with.[54]

Article 6: Regulatory Committee

6.1. The Parties have agreed to establish a regulatory committee for the purposes of assisting and monitoring the mutual recognition relationship established under this Agreement (the Regulatory Committee).

6.2. The Regulatory Committee's roles shall consist of the following:

(a) [reviewing international developments, or developments within the Parties' respective financial services regimes];

(b) [initiating the consultation process specified in Article 7 and issuing recommendations to the U.S. recognition body and U.K. recognition body regarding the implementation of the terms of the Agreement, and coordinating developments and reforms in the legal regimes of the Parties];

(c) [at its own initiative, or] where requested by the U.S. recognition body or the U.K. recognition body, considering whether the terms of the Agreement are not satisfied or complied with, and issuing recommendations [or initiating the consultation process under Article 7 where the Regulatory Committee deems necessary];

(d) [[at its own initiative, or] where requested by the U.S. recognition body or the U.K. recognition body, considering whether proposed changes or reforms ought to be made to the respective legal regimes of either Party in accordance with developments

in international standards or developments in the legal regime of either Party and issuing recommendations [where it deems necessary]];

(e) [[monitoring developments in the legal systems of either Party, and [where requested] making recommendations to the U.S. recognition body or the U.K. recognition body, or initiating the consultation process under Article 7 or the mediation process under Article 8 where the Regulatory Committee believes there is a risk of breach of the terms of the Agreement and in particular the recognition conditions]]; and

(f) [participating in the consultation, mediation, or dispute resolution processes of this Agreement in accordance with any relevant procedures established under, and the provisions of, this Agreement].[55]

6.3. The Regulatory Committee shall consist of [3] permanent members appointed by the United Kingdom and [3] permanent members appointed by the United States.

6.4. The Regulatory Committee's permanent members shall elect a seventh member to carry out the functions of the chair of the Regulatory Committee, at its first meeting by mutual consent of the permanent members, and thereafter in accordance with any relevant internal procedures established by the Regulatory Committee.

6.5. The Regulatory Committee shall conduct itself by majority vote, and in the event of a tied vote, the chair shall cast the final binding vote.

6.6. The Regulatory Committee shall adopt its internal procedures initially by mutual consent of the permanent members, and subsequently in accordance with Article 6.5.

6.7. The Regulatory Committee's chair, permanent members, and any other ancillary staff members shall be chosen on the basis of appropriate experience in financial services law, regulation, practice, or other relevant experience.

6.8. The Regulatory Committee shall meet in accordance with its established procedures, as necessary to carry out its duties.

6.9. The Regulatory Committee shall be able to request specialist technical, legal, or other advice and employ any ancillary staff members if it considers necessary.

6.10. The costs of the Regulatory Committee shall be shared equally by the Parties.

6.11. [...][56]

Article 7: Consultation and Coordination[57]

7.1. The U.K. recognition body shall notify the U.S. recognition body [and the Regulatory Committee] promptly upon becoming aware of a relevant regulatory development.

7.2. The U.S. recognition body shall notify the U.K. recognition body [and the Regulatory Committee] promptly upon becoming aware of a relevant regulatory development.

7.3. A Party may submit a written request for consultations with the other Party regarding a relevant regulatory development, any dispute concerning the interpretation or application of the provisions of this Agreement, or for the purposes of the change mechanisms set out in Article 11.

7.4. The requesting Party shall transmit the request for consultation to the responding Party and shall set out the reasons for the request for consultation, including, if relevant, the identification of the specific measure [or Party's conduct] at issue, the legal basis for the request, any complaint or any proposal relating to a request for consultation pursuant to the change mechanisms under Article 11.

7.5. Subject to Article 7.6, the Parties shall enter into consultations within [30] days of the date of receipt of the request by the responding Party.

7.6. In cases of urgency, including events of significant systemic risk to the financial services sectors of either of the Parties, consultations shall commence within [15] days of the date of receipt of the request by the responding Party.

7.7. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations. To this end, each Party shall do the following:

(a) provide sufficient information to enable a full examination of the matter at issue;

(b) protect any confidential or proprietary information exchanged in the course of consultations as requested by the Party providing the information; and

(c) make available the personnel of its government agencies or other regulatory bodies who have expertise in, and the relevant authority to implement solutions that address, the matter that is the subject of the consultations.

7.8. Consultations are confidential and without prejudice to the rights of the Parties in proceedings under Article 9 or under the dispute resolution procedures under Chapter 16 of this Agreement.

7.9. Consultations shall take place in the territory of the responding Party unless the Parties agree otherwise. Consultations may be conducted in person or by any other means agreed between the Parties.

7.10. [For the avoidance of doubt, matters that may be consulted upon under paragraphs 7.1 to 7.9 are excluded from Chapter 6 (Regulatory Coherence).]

Implementation of mutually agreed solutions

7.11. Where the Parties have concluded a mutually agreed solution, each Party shall take the measures necessary to implement the mutually agreed solution within any relevant agreed time frame.

7.12. [A Party's request for consultation and the mutually agreed solution that arises in relation to a relevant regulatory development or an equivalence change may be the subject of consultations under this Article 7 but may not be the subject of mediation under Article 8 or the dispute settlement procedures under Article 9.][58]

Role of the Regulatory Committee

7.13. The Regulatory Committee may, if it decides necessary and in accordance with any internal procedures it prescribes for the purposes of this provision, submit a written request for consultations with the Parties.

7.14. The Regulatory Committee may prescribe detailed procedures for the purposes of this Article 7, including provisions regarding its involvement, if relevant, in initiating and assisting or otherwise participating in the consultation and coordination process.

7.15. In accordance with Article VII:4(c) of GATS, the Regulatory Committee shall (on behalf of the Parties) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones.

Article 8: Mediation

8.1. A Party may initiate the mediation process with the other Party regarding any matter arising under this Agreement.

8.2. The Parties shall conduct one another in good faith throughout the mediation process and afford reasonable consideration to any issues that have been raised by the initiating Party.

8.3. A Party may initiate the mediation process by providing a written notice for requesting mediation to the other Party and the Regulatory Committee with details of a proposed date, location, and other administrative terms for the mediation process. The written notice must do the following:

(a) identify the specific issue triggering the request for mediation;

(b) provide a statement of alleged consequences arising from the specified issue;

(c) include sufficient information and all relevant documents; and

(d) if relevant, propose a desired remedy or agreement that may be considered by the Parties at the conclusion of the mediation process.

8.4. The responding Party may agree to the dates, location, and other administrative details for the mediation that have been proposed by the initiating Party or may respond with alternative proposals. The responding Party shall also inform the Regulatory Committee of its response.

8.5. The Party that wishes to initiate the mediation process shall confirm in writing to the other Party and the Regulatory Committee whether or not it has agreed to any alternative proposals submitted by the responding Party under Article 8.4.

8.6. The Parties shall make all reasonable efforts to agree on the date, location, and other administrative details of the mediation. If this is not possible within [5] days of the written request to initiate the mediation process being sent, the Regulatory Committee shall confirm the date, venue, and other administrative terms of the mediation, which the Parties shall comply with.

8.7. The mediation process shall continue for an initial period of [30] days from the commencement date agreed by the Parties under Article 8.4 or 8.5 or confirmed by the Regulatory Committee under Article 8.6.

8.8. The Parties may by mutual agreement extend the mediation process [for a maximum duration of 30 days from the initial commencement date agreed by the Parties under Article 8.4 or 8.5 or confirmed by the Regulatory Committee under Article 8.6].

8.9. At or before the end of the initial period (or any agreed extension pursuant to Article 8.8) of the mediation process, the Parties shall reach a mutually agreed solution. If a mutually agreed solution has not been reached by the date that the mediation process terminates, either Party may choose to initiate the dispute resolution process contained in Article 9.

8.10. The Regulatory Committee may initiate the mediation process and shall throughout the mediation process assist and make recommendations to assist the Parties in reaching a mutually agreed solution.

8.11. A mutually agreed solution may be reached by the Parties describing the relevant terms and any commitments that have been agreed by the Parties in a document that refers to this Article 8.

8.12. [For the avoidance of doubt, matters that may be the subject of mediation under paragraphs 8.1 to 8.11 are excluded from Chapter 6 (Regulatory Coherence).

Implementation of mutually agreed solutions

8.13. Where the Parties have concluded a mutually agreed solution, each Party shall take the measures necessary to implement the mutually agreed solution within any relevant agreed time frame.

8.14. Failure to implement the mutually agreed solution within any relevant agreed time frames in accordance with the terms of the mutually agreed solution entitles either Party to initiate the dispute resolution process under Article 9 notwithstanding any other provision of this Agreement that might require the Party to undergo the consultation process under Article 7 or the mediation process under this Article 8 before initiating the dispute resolution process under Article 9.

Article 9: Private Law Remedies[59]

9.1. Without prejudice to the other rights and obligations of the Parties under Article 9, a relevant private party may submit to the Tribunal constituted under this Article 9 a claim that a Party has breached its obligations under this Agreement by acting inconsistently with [the recognition principles or Article 4, Article 8, or Article 9] where the relevant private party claims to have suffered loss or damage as a result of the alleged breach.

9.2. Claims under Article 9.1 may be submitted only to the extent that the action or inaction complained of relates to the existing business operations of the relevant private party.

9.3. The panel shall not decide claims that fall outside the scope of Articles 9.1 and 9.2.

Consultations

9.4. A dispute should as far as possible be settled amicably. Such a settlement may be agreed at any time, including after the claim has been submitted pursuant to Article 9.22. Unless the disputing Parties agree to a longer period, consultations shall be held within [60] days of the submission of the request for consultations pursuant to Article 9.7.

9.5. Unless the disputing Parties agree otherwise, the place of consultation shall be as follows:

(a) London, if the measures challenged are measures of the United Kingdom; and

(b) New York, if the measures challenged are measures of the United States.

9.6. The disputing Parties may hold the consultations through videoconference or other means where appropriate.

9.7. The relevant private party shall submit to the other Party a request for consultations setting out the following:

(a) the name and address of the relevant private party;

(b) if there is more than one relevant private party, the name and address of each relevant private party;

(c) the provisions of this Agreement alleged to have been breached;

(d) the legal and the factual basis for the claim, including the measures at issue; and

(e) the relief sought and the estimated amount of damages claimed.

The request for consultations shall contain evidence establishing that, if applicable, the relevant private party owns or controls any undertakings on whose behalf the request is submitted.

9.8. The requirements of the request for consultations set out in Article 9.7 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defense.

9.9. A request for consultations must be submitted within the following:

(a) [one] year after the date on which the relevant private party first acquired or should have first acquired, knowledge of the alleged breach and knowledge that the relevant private party has incurred loss or damage thereby; or

(b) [one] year after a relevant private party ceases to pursue claims or proceedings before a tribunal or court under the law of a Party, or when such proceedings have otherwise ended and, in any event, no later than [10] years after the date on which the relevant private party first acquired or should have first acquired knowledge of the alleged breach and knowledge that the relevant private party has incurred loss or damage thereby.

9.10. A request for consultations concerning an alleged breach by the United States shall be sent to the U.S. recognition body.

9.11. A request for consultations concerning an alleged breach by the United Kingdom shall be sent to the U.K. recognition body.

9.12. In the event that the relevant private party has not submitted a claim pursuant to Article 9.22 within [one] year of submitting the request for consultations, the relevant private party is deemed to have withdrawn its request for consultations and, if applicable, its notice requesting a determination of the respondent, and shall not submit a claim under this Article 9 with respect to the same measures. This period may be extended by agreement of the disputing Parties.

Mediation

9.13. The disputing Parties may at any time agree to have recourse to mediation.

9.14. Recourse to mediation is without prejudice to the legal position or rights of either disputing Party under this Article 9 and is governed by the rules agreed to by the disputing Parties.

9.15. The mediator is appointed by agreement of the disputing Parties. The disputing Parties may also request that the Regulatory Committee appoint the mediator.

9.16. The disputing Parties shall endeavor to reach a resolution of the dispute within [60] days from the appointment of the mediator.

9.17. If the disputing Parties agree to have recourse to mediation, Articles 9.9 and 9.12 shall not apply from the date on which the disputing Parties agreed to have recourse to mediation

to the date on which either disputing Party decides to terminate the mediation. A decision by a disputing Party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing Party.

Procedural and other requirements for the submission of a claim to the Tribunal

9.18. A relevant private party may only submit a claim pursuant to Article 9.22 if the relevant private party does as follows:

(a) delivers to the respondent, with the submission of a claim, its consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Article 9;

(b) allows at least [180] days to elapse from the submission of the request for consultations and, if applicable, at least [90] days to elapse from the submission of the notice requesting a determination of the respondent;

(c) has fulfilled the requirements related to the request for consultations;

(d) does not identify a measure in its claim that was not identified in its request for consultations;

(e) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and

(f) waives its right to initiate any claim or proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim.

9.19. If the claim submitted pursuant to Article 9.22 is for loss or damage to an undertaking that the relevant private party owns or controls directly or indirectly, the requirements in Articles 9.18(e) and 9.18(f) apply both to the relevant private party and the relevant undertaking.

9.20. Upon request of the respondent, the Tribunal shall decline jurisdiction if the relevant private party or, as applicable, the relevant undertaking owned or controlled directly or indirectly by a relevant private party fails to fulfill any of the requirements of Articles 9.18 and 9.19.

9.21. The waiver provided pursuant to Article 9.18(f) or Article 9.19 as applicable shall cease to apply if

(a) the Tribunal rejects the claim on the basis of a failure to meet the requirements of Article 9.18 or Article 9.19 on any other procedural or jurisdictional grounds;

(b) the Tribunal dismisses the claim pursuant to Article 9.46 or Article 9.48; or

(c) the relevant private party withdraws its claim, in conformity with the applicable rules under Article 9.23, within 12 months of the constitution of the division of the Tribunal.

Submission of a claim to the Tribunal

9.22. If a dispute has not been resolved through consultations, a claim may be submitted under this Article 9 by the following:

(a) a relevant private party of a Party on its own behalf; or

(b) a relevant private party of a Party, on behalf of an undertaking that it owns or controls directly or indirectly.

9.23. Subject to the provisions of this Article 9 or as otherwise agreed by the disputing Parties, the arbitration shall be conducted under the UNCITRAL Arbitration Rules.

9.24. The rules applicable under Article 9.23 are those that are in effect on the date that the claim or claims are submitted to the Tribunal under this Article 9, subject to the specific rules set out in this Article 9.

9.25. The place of arbitration shall be determined in accordance with the same principles as the place of consultation under Article 9.5.

9.26. A claim is submitted for dispute settlement under this Article 9 when the notice under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent.

9.27. Each Party shall notify the other Party of the place of delivery of notices and other documents by the relevant private parties pursuant to this Article 9. Each Party shall ensure that this information is made publicly available.

Proceedings under another international agreement

9.28. Where a claim is brought pursuant to this Article 9 and another international agreement

(a) there is a potential for overlapping compensation; or

(b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Article 9:

(c) the Tribunal shall, as soon as possible after hearing the disputing Parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision, order, or award.

Consent to the settlement of the dispute by the Tribunal

9.29. The respondent consents to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Article 9.

9.30. The consent under Article 9.29 and the submission of a claim to the Tribunal under this Article 9 shall satisfy the requirements of Article II of the New York Convention for an agreement in writing.

Third-party funding

9.31. Where there is third-party funding, the disputing Party benefiting from it shall disclose to the other disputing Party and to the Tribunal the name and address of the third-party funder.

9.32. The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

Constitution of the Tribunal

9.33. The dispute shall be decided by a Sole Arbitrator, unless either of the disputing Parties requests dispute resolution by a three-person Tribunal.

9.34. The Sole Arbitrator, if any, shall be appointed by agreement of the disputing Parties. In the case of a three-person Tribunal, each disputing Party shall nominate one arbitrator and the so nominated two arbitrators shall then jointly nominate the third and presiding arbitrator, who shall not be a national of either Party to this Agreement. In the event the disputing Parties are unable to agree within [45 days] of submission of a claim in accordance with Section 9.28 on the Sole Arbitrator, or in the case of a three-person Tribunal the Party-nominated arbitrators fail to jointly nominate the presiding arbitrator or if either disputing Party fails to nominate its Party-nominated arbitrator, each disputing Party may request the chair of the Regulatory Committee, or the chair's delegate, to make the relevant appointment. In the case of the Sole Arbitrator and the chair of a three-person Tribunal, the arbitrator shall be drawn from the sublist of chairpersons. Articles 9.13 to 9.16 apply, mutatis mutandis, to this section.

Ethics

9.35. The members of the Tribunal shall be independent. They shall not be affiliated with any government. They shall not take instructions from any organization, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration. In addition, upon appointment, they shall refrain from acting as counsel or as Party-appointed expert or witness in any pending or new dispute under this or any other international agreement.

9.36. If a disputing Party considers that a member of the Tribunal has a conflict of interest, it may invite the president of the International Court of Justice to issue a decision on the challenge to the appointment of such member. Any notice of challenge shall be sent to the president of the International Court of Justice within [15] days of the date on which the composition of the division of the Tribunal has been communicated to the disputing Party, or within [15] days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

9.37. If, within [15] days from the date of the notice of challenge, the challenged member of the Tribunal has elected not to resign from the division, the president of the International Court of Justice may, after receiving submissions from the disputing Parties and after providing the member of the Tribunal an opportunity to submit any observations, issue a decision on the challenge. The president of the International Court of Justice shall endeavor to issue the decision and to notify the disputing Parties and the other members of the Tribunal within [45] days of receipt of the notice of challenge. A vacancy resulting from the disqualification or resignation of a member of the Tribunal shall be filled promptly.

9.38. Upon a reasoned recommendation from the president of the Tribunal, or on their joint initiative, the Parties, by decision of the Regulatory Committee, may remove a member from the Tribunal where his or her behavior is inconsistent with the obligations set out in Article 9.35 and incompatible with his or her continued membership of the Tribunal.

Applicable law and interpretation

9.39. When rendering its decision, the Tribunal established under this Article 9 shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.

9.40. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or

authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

9.41. An interpretation of this Agreement adopted by the Regulatory Committee shall be binding on the Tribunal established under this Article 9. The Regulatory Committee may decide that an interpretation shall have binding effect from a specific date.

Claims manifestly without legal merit

9.42. The respondent may, no later than [30] days after the constitution of the division of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.

9.43. An objection shall not be submitted under Article 9.42 if the respondent has filed an objection pursuant to Article 9.48.

9.44. The respondent shall specify as precisely as possible the basis for the objection.

9.45. On receipt of an objection pursuant to Article 9.42, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.

9.46. The Tribunal, after giving the disputing Parties an opportunity to present their observations, shall at its first session or promptly thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.

9.47. Articles 9.42, 9.45, and 9.46 shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

Claims unfounded as a matter of law

9.48. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the

respondent that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 9.22 is not a claim for which an award in favor of the claimant may be made under this Article 9, even if the facts alleged were assumed to be true.

9.49. An objection under Article 9.48 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial.

9.50. If an objection has been submitted pursuant to Article 9.42, the Tribunal may, taking into account the circumstances of that objection, decline to address an objection submitted pursuant to Article 9.48.

9.51. On receipt of an objection under Article 9.48, and, if appropriate, after rendering a decision pursuant to Article 9.50, the Tribunal shall (a) suspend any proceedings on the merits, (b) establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and (c) issue a decision or award on the objection stating the grounds therefor.

Interim measures of protection

9.52. The Tribunal may order an interim measure of protection to preserve the rights of a disputing Party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing Party or to protect the Tribunal's jurisdiction. The Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 9.22. For the purposes of this Article, an order includes a recommendation.

Discontinuance

9.53. If, following the submission of a claim under this Article 9, the relevant private party fails to take any steps in the proceeding during [180] consecutive days or such period as the disputing Parties may agree, the relevant private party is deemed to have withdrawn its claim and to have discontinued the proceeding. The Tribunal shall, at the request of the respondent, and after notice to the disputing Parties, in an order take note of the discontinuance. After the order has been rendered, the authority of the Tribunal shall lapse.

Transparency of proceedings

9.54. The UNCITRAL Transparency Rules, as modified by this Agreement, shall apply in connection with proceedings under this Article 9.

9.55. The request for consultations, the agreement to mediate, the notice of intent to challenge a member of the Tribunal, the decision on challenge to a member of the Tribunal, and the request for consolidation shall be included in the list of documents to be made available to the public under Article 3(1) of the UNCITRAL Transparency Rules.

9.56. Exhibits shall be included in the list of documents to be made available to the public under Article 3(2) of the UNCITRAL Transparency Rules.

9.57. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, the United Kingdom or the United States as the case may be shall make publicly available in a timely manner relevant documents pursuant to Article 9.55, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository.

9.58. Hearings shall be open to the public. The Tribunal shall determine, in consultation with the disputing Parties, the appropriate logistical arrangements to facilitate public access to such hearings. If the Tribunal determines that there is a need to protect confidential or protected information, it shall make the appropriate arrangements to hold in private that part of the hearing requiring such protection.

9.59. Nothing in this Article 9 requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should apply those laws in a manner sensitive to protecting from disclosure information that has been designated as confidential or protected information.

Information sharing

9.60. A disputing Party may disclose to other persons in connection with the proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Article 9. However, the disputing Party shall ensure

that those persons protect the confidential or protected information contained in those documents.

9.61. This Agreement does not prevent a respondent from disclosing to officials of the United Kingdom or the United States such unredacted documents as it considers necessary in the course of proceedings under this Article 9. However, the respondent shall ensure that those officials protect the confidential or protected information contained in those documents.

Nondisputing Party

9.62. The respondent shall, within [30] days after receipt or promptly after any dispute concerning confidential or protected information has been resolved, deliver to the nondisputing Party the following:

(a) a request for consultations, a notice requesting a determination of the respondent, a notice of determination of the respondent, a claim submitted pursuant to Article 9.22, a request for consolidation, and any other documents that are appended to such documents;

(b) on request, as follows:

i. pleadings, memorials, briefs, requests, and other submissions made to the Tribunal by a disputing Party;

ii. written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;

iii. minutes or transcripts of hearings of the Tribunal, if available; and

iv. orders, awards, and decisions of the Tribunal; and

(c) on request and at the cost of the nondisputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.

9.63. The Tribunal shall accept or, after consultation with the disputing Parties, may invite oral or written submissions from the nondisputing Party regarding the interpretation of this Agreement. The nondisputing Party may attend a hearing held under this Article 9.

9.64. The Tribunal shall not draw any inference from the absence of a submission pursuant to Article 9.63.

9.65. The Tribunal shall ensure that the disputing Parties are given a reasonable opportunity to present their observations on a submission by the nondisputing Party to this Agreement.

Final award

9.66. If the Tribunal makes a final award against the respondent, the Tribunal may only award monetary damages and any applicable interest.

9.67. Subject to Articles 9.66 and 9.70, if a claim is made under Article 9.22(b):

(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the undertaking that a relevant private party owns or controls directly or indirectly;

(b) an award of costs in favor of the relevant private party shall provide that it is to be made to the relevant private party; and

(c) the award may provide that it is made without prejudice to a right that a person, other than a person who has provided a waiver pursuant to Article 9.18, may have in monetary damages or property awarded under a Party's law.

9.68. Monetary damages shall not be greater than the loss suffered by the relevant private party or, as applicable, the undertaking that a relevant private party owns or controls directly or indirectly, reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any repeal or modification of the measure.

9.69. The Tribunal shall not award punitive damages.

9.70. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing Party. In exceptional circumstances, the Tribunal may apportion costs between the disputing Parties if it determines that apportionment is appropriate in the circumstances of the claim. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing Party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim. If only parts of the claims have been successful, the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

9.71. The Regulatory Committee shall consider supplemental rules aimed at reducing the financial burden on claimants who are natural persons or small and medium-sized enterprises. Such supplemental rules may, in particular, take into account the financial resources of such claimants and the amount of compensation sought.

9.72. The Tribunal, the Regulatory Committee, and the disputing Parties shall make every effort to ensure that the dispute settlement process is carried out in a timely manner. The Tribunal shall issue its final award within [12] months of the date the claim is submitted pursuant to Article 9.22. If the Tribunal requires additional time to issue its final award, it shall provide the disputing Parties the reasons for the delay.

Indemnification or other compensation

9.73. A respondent shall not assert, and the Tribunal shall not accept a defense, counterclaim, right of setoff, or similar assertion, that a relevant private party or, as applicable, a locally established enterprise, has received or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Article 9.

Enforcement of awards

9.74. An award issued pursuant to this Article 9 shall be binding between the disputing Parties and in respect of that particular case.

9.75. Subject to Article 9.76, a disputing Party shall recognize and comply with an award without delay.

9.76. A disputing Party shall not seek enforcement of a final award until:

(a) [90] days have elapsed from the date the award was rendered and no disputing Party has commenced a proceeding to revise, set aside, or annul the award; or

(b) enforcement of the award has been stayed and a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

9.77. Execution of the award shall be governed by the laws concerning the execution of judgment or awards in force where the execution is sought.

9.78. A final award issued pursuant to this Article 9 is an arbitral award that is deemed to relate to claims arising out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

Role of the Parties

9.79. A Party shall not bring an international claim, in respect of a claim submitted pursuant to Article 9.22, unless the other Party has failed to abide by and comply with the award rendered in that dispute.

9.80. Article 9.79 shall not exclude the possibility of dispute settlement under Article 9 in respect of a measure of general application even if that measure is alleged to have breached this Agreement in respect of which a claim has been submitted pursuant to Article 9.22 and is without prejudice to Article 9.62.

9.81. Article 9.79 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Consolidation

9.82. In the interest of facilitating the comprehensive resolution of related disputes and ensuring the consistency of awards, and upon request of either disputing Party, the Tribunal may consolidate the proceedings with any other proceedings initiated pursuant to Article 9.22 in relation to a claim or claims under this Agreement. The Tribunal shall not consolidate

such proceedings, unless (a) it determines that there are issues of fact or law common to the two proceedings so that a consolidated proceeding would be more efficient than separate proceedings, and (b) no party would be prejudiced as a result of such consolidation through undue delay or otherwise. In the case of conflicting rulings on this question by the Tribunals constituted in the proceedings subject to a request for consolidation, the ruling of the Tribunal in the first-filed of the proceedings subject to a request for consolidation shall control.

9.83. In the case of a consolidated proceeding, the arbitrator(s) in the consolidated proceeding shall be appointed by the Regulatory Committee on the request of any of the disputing Parties.

9.84. A relevant private party may withdraw a claim under this Article 9 that is subject to consolidation and such claim shall not be resubmitted pursuant to Article 9.22. If it does so no later than [15] days after receipt of the notice of consolidation, its earlier submission of the claim shall not prevent the relevant private party's recourse to dispute settlement other than under this Article 9.

9.85. At the request of a relevant private party, the Tribunal may take such measures as it sees fit in order to preserve the confidential or protected information of that relevant private party in relation to other relevant private parties. Those measures may include the submission of redacted versions of documents containing confidential or protected information to the other relevant private parties or arrangements to hold parts of the hearing in private.

Article 10: Change Mechanisms

Amended and repealed legislation

10.1. Where the underlying national legislation relating to the agreed legal effect of an agreed equivalence recognition as detailed in Schedule 1 is, or is proposed to be, amended or repealed and replaced, either Party may submit a written request initiating the consultation process under Article 7 to implement necessary changes to any affected parts of Schedule 1 to reflect the amended or repealed and replaced underlying national legislation. Such amendments will be promptly notified to the GATS Council on Trade in Services in accordance with Article VII:4(c) of GATS.

10.2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the consultation request through the consultation process under Article 7.

10.3. The change process described in Articles 10.1 to this Article 10.3 is intended to be used where the relevant underlying national legislation of either Party is amended or repealed and replaced and the proposed changes to any affected parts of Schedule 1 do not materially affect the original intended legal effect of an agreed equivalence recognition in the relevant jurisdiction.

Amending, supplementing, and removing equivalence recognitions

10.4. Where a Party wishes to initiate discussions relating to an equivalence change, it may submit a written request initiating the consultation process under Article 7 for the purposes of negotiating an equivalence change with the responding Party.

10.5. [...] [60]

Article 11: Suspensions

11.1. The Parties may not suspend or alter the agreed legal effect of any agreed equivalence recognition as detailed and contained in Schedule 1 unless the suspension or alteration of the national legal effect of any agreed equivalence recognition is as follows:

(a) pursuant to the mutual written agreement of the Parties (and such agreement refers to this Article);

(b) in accordance with the change mechanisms specified in Article 10;

(c) in accordance with a mutually agreed solution that has been reached between the Parties in accordance with the consultation process specified in Article 7;

(d) in accordance with a mutually agreed solution that has been reached between the Parties in accordance with the mediation process specified in Article 8;

(e) in accordance with the dispute resolution process specified in Article 9; or

(f) in accordance with this Agreement's dispute resolution process as specified in Chapter 16.

11.2. For legal certainty and stability, the Parties shall ensure that any national measures taken to suspend or alter the agreed legal effect of any agreed equivalence recognition as detailed and contained in Schedule 1 shall only take effect at the earliest [one year] after publication of the relevant national legal instrument (subject to mutual agreement of the Parties or if required to comply with any panel ruling or report that is issued to the Parties pursuant to Article 9).

Schedule 1: Agreed Equivalence Recognitions

Agreed equivalence recognition relating to [•]	
Relevant United States legislation	Relevant United Kingdom legislation
[•]	[•]
Description of legal effect in the United States	Description of legal effect in the United Kingdom
[•]	[•]
Conditions applicable to United States legal effect of agreed equivalence recognition	Conditions applicable to United Kingdom legal effect of agreed equivalence recognition
[•]	[•]
Description of category of United Kingdom undertakings entitled to the agreed equivalence recognition	Description of category of United States undertakings entitled to the agreed equivalence recognition
[•]	[•]
Agreed equivalence recognition relating to [•]	
Relevant United States Legislation	Relevant United Kingdom Legislation
[•]	[•]
Description of legal effect in the United States	Description of legal effect in the United Kingdom
[•]	[•]
Conditions applicable to United States legal effect of agreed equivalence recognition	Conditions applicable to United Kingdom legal effect of agreed equivalence recognition
[•]	[•]
Description of category of United Kingdom undertakings entitled to the agreed equivalence recognition	Description of category of United States undertakings entitled to the agreed equivalence recognition
[•]	[•]

Schedule 2: Recognition Conditions

A Party (the **Adopting Party**) may adopt and maintain an equivalence recognition in favor of the other Party (the **Recognized Party**) by an implementing act or by including it in a mutual recognition agreement if:

(a) the Recognized Party applies requirements that are materially equivalent in terms of outcome to the legally binding requirements applicable in the Adopting Party that correspond to a particular agreed equivalence recognition set out in the table in Schedule 1, as determined by the Adopting Party;

(b) the Recognized Party applies materially equivalent ongoing and effective supervision and enforcement to entities that are authorized and supervised in its jurisdiction;

(c) equivalent standards of professional secrecy and data protection are in place and enforced in the Recognized Party's jurisdiction;

(d) equivalent standards or requirements relating to anti-money-laundering and anti-terrorist-financing are in place and enforced in the Recognized Party's jurisdiction;

(e) appropriate cooperation agreements (including regulatory enforcement, information sharing and tax information exchange, and regulatory cooperation) are or have been entered into between the financial services regulators of the Adopting Party and the Recognized Party in respect of each relevant sector that include, at the least, provisions relating to the following:

i. notifications between regulators;

ii. the establishment of public registers of the entities in the Recognized Party's jurisdiction that carry out financial services business in the Adopting Party's jurisdiction pursuant to any agreed equivalence recognition; and

iii. prompt notifications to the Adopting Party's financial services regulators by the Recognized Party's financial services regulators where entities authorized or supervised in the Recognized Party's jurisdiction that carry out financial services business in the Adopting Party's jurisdiction pursuant to arrangements established

pursuant to this Agreement are subject to disciplinary or infringement proceedings in the Recognized Party's jurisdiction, are subject to a variation, termination, or suspension of authorization to carry out any particular financial service under the Recognized Party's legal and supervisory regime, or enter into any insolvency, administration, receivership, resolution, or any other similar event or process; and

(f) the Recognized Party provides reciprocal recognitions that are, or will be, effective in the Recognized Party's legal system specifically corresponding to each agreed equivalence recognition. This condition (f) is subject to the Adopting Party's electing not to require a reciprocal recognition be provided by the Recognized Party.

Annex II:
Professional Services

1. Each Party shall consult with relevant bodies in its territory to seek to identify professional services when the Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing, or registration.

2. Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognizing professional qualifications, and facilitating licensing or registration procedures.

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

Postscript

Contingency Provisions: Ideal Meets Political Reality

It is important to recall that the "ideal" agreement may not be the most politically acceptable agreement to the polities of the United States and United Kingdom. For example, although provisions guaranteeing protections of labor rights and the environment have no place in an agreement committed to simple, straightforward, free market–based rules (even more so when the parties aren't regarded as significant transgressors in these areas), they have become standard features in free trade agreements. To even consider supporting these agreements, some political parties demand that they include—at a minimum—provisions ensuring certain standards of labor conditions or environmental practices.

In the United States, as a condition for agreeing to grant the president the authority to negotiate trade agreements with foreign governments and bring them back for expedited (fast-track) legislative consideration (no amendments, no extended debate, just an up-or-down vote), Congress requires an agreement to meet a variety of negotiating objectives. Ignoring Congress's demand that the trade remedies laws "not be weakened" by proposing a trade agreement that prohibits the use of those laws might not be the best approach politically. Many of the congressional objectives in the trade promotion authority law make for bad economics. Some reflect political compromises; others, plain ignorance.

Moreover, one of the characteristics of the ideal free trade agreement (FTA) is that it is a "living agreement." If the United States and United Kingdom are to obtain "first-mover advantages" by authoring the rules of the model 21st-century agreement, they will want its potential benefits to be perceived as significant enough to attract new member countries—including developing countries—to join. For that to happen, the terms of the agreement cannot be so stringent as to preclude the majority of countries from meeting the requirements. That would seem to counsel in favor of including terms that have more to do with pure

liberalization than governance. But by the same token, the prospect of extending membership to countries that have—or are perceived to have—weaker commitments to labor rights, environmental protections, competition rules, or intellectual property standards will undoubtedly prompt louder calls in the United States and the United Kingdom for strict provisions in these areas.

With that in mind, what might a realistic U.S.-U.K. FTA look like? First of all, full and fast trade liberalization should be the goal, with exceptions limited to the most sensitive products. Tariffs on all U.S.-U.K. trade should be zero or close to it soon after the agreement enters into force.

On services, there are opportunities for innovations, but also some sensitivities. Both sides have strong financial services sectors, which could thrive when subjected to greater competition. It is proposed that mutual recognition exist across all financial sectors (including banking, investment banking, dealing, broking, fund management, custody, derivatives dealing, clearing, financial infrastructure, and, where possible insurance and reinsurance) from day one. Given the experiences after the 2007–2008 financial crisis, we believe the two regimes are generally already synchronized and seek to achieve the same outcomes.

As for other services areas, health services are an area where both sides would benefit from openness to foreign competition, although we recognize any changes to existing regulations will be extremely controversial. Perhaps, then, for other areas the initial focus should be on other fields such as education or legal services, where negotiators can test the waters and see what is possible. That said, we would envisage a swift, time-tabled implementation of recognition across all areas within 5 years.

On government procurement, support for Buy America provisions is strong in the United States. But such policies are clearly bad for those adopting them. The United Kingdom should push as hard as possible for the United States to allow U.K. goods and services providers to have access to U.S. procurement markets, and open its procurement to U.S. companies, as well.

As for governance, some basic rules on intellectual property, labor, and the environment are inevitable. But there is no need to push the boundaries here, with provisions that go beyond existing U.S. FTAs. On the other hand, the United States and the United Kingdom may want

to develop advanced rules on e-commerce. Other possible areas where governance rules may be helpful are with state-owned enterprises and transparency/anti-corruption rules.

Even constrained by political realities, the United States and United Kingdom—traditionally two of the world's leading supporters of free trade—may be able to craft a free trade agreement that reshapes the model by pushing it in the direction of more trade liberalization and less governance, and that is appealing enough to others that they want to join.

The U.S.-U.K. FTA should be a living agreement—one that is open to new members who are willing and able to comply with its terms. Accession provisions are common in trade agreements, and the U.S.-U.K. FTA should accommodate other countries that wish to join, as long as they are willing to take on significant, liberalizing commitments. The greater the number of countries operating under the same set of rules, the greater the potential gains, the lower global transaction costs, and the lower the likelihood of trade diversion.

Notes

1 The terms of this agreement shall apply to all entities (workers, consumers, businesses) in the Isle of Man and the Channel Islands.

2 [. . .] indicates additional details to be added as negotiated by the Parties.

3 The scope of this obligation is to be considered, especially its application to first-degree legislation promulgated by the legislatures of the Parties.

4 Consider the extent of Regulation this is intended to apply to. For example, whether it is intended that primary legislation promulgated by the legislature also be covered by the best standards of regulatory coherence here.

5 The Parties should agree to certain "red lines" that enable a regulatory agency to take unilateral action without fear of breaching the provisions of this chapter. Such red lines may include actions relating to bank bail-in/insolvency, central counterparties default management, and depositor protection.

6 To avoid doubt, the Parties will agree to a list of permitted regulatory goals.

7 The term "investment" does not include an order or judgment entered in a judicial or administrative action.

8 Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, whereas other forms of debt are less likely to have such characteristics.

9 Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

10 For greater certainty, market share, market access, expected gains, and opportunities for profit making are not, by themselves, investments.

11 Interpreted in accordance with Annex 8.

12 For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for purposes of paragraph 1.

13 For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided that such activity is consistent with paragraph 1(f).

14 The Parties recognize that a patent does not necessarily confer market power.

15 For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of government regulation in the relevant sector. For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

16 For greater certainty, the Parties recognize that import checks are one of many tools available to assess compliance with an importing Party's sanitary and phytosanitary measures.

17 No Party shall have recourse to dispute settlement under Chapter 16 (Dispute Settlement) for this Article.

18 For greater certainty, nothing in this Article prevents an importing Party from performing an inspection of a facility for the purposes of determining if the facility conforms with the importing Party's sanitary or phytosanitary requirements or conforms with sanitary or phytosanitary requirements that the importing Party has determined to be equivalent to its sanitary or phytosanitary requirements.

19 For greater certainty, nothing in this Article prohibits a Party from performing import checks to obtain information to assess risk or to determine the need for developing or periodically reviewing a risk-based import program.

20 For the purposes of this Article, the term "days" does not include national holidays of the importing Party.

21 For greater certainty, nothing in this Article prevents an importing Party from disposing of goods that are found to have an infectious pathogen or pest that, if urgent action is not taken, can spread and cause damage to human, animal, or plant life or health in the Party's territory.

22 Specific exceptional circumstances to be discussed.

23 Specific exceptional circumstances to be discussed.

24 A nongovernmental entity that a Party has requested or directed to prepare, adopt, or apply standards, technical regulations, or conformity assessment procedures on its behalf or for use in connection with compliance with the Party's domestic requirements, shall be considered a body subject to the control of a covered body for purposes of this chapter in respect of such activity.

25 The committee shall be responsible for developing and maintaining a list of such arrangements

26 For greater certainty, this paragraph shall not apply to a Party verifying conformity assessment documents during a marketing authorization or reauthorization process.

27 A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and taking those comments into account in the development of the measure.

28 A Party shall comply with this obligation with respect to technical regulations and conformity assessment procedures by complying with the obligations contained in paragraph 6 of this Article. A Party may satisfy this obligation with respect to standards, by, for example, providing persons of the other Party with an opportunity to submit comments on the standard to the body preparing the standard at a point when that body may still revise the measure, and by ensuring that the body takes those comments into account in revising the measure or deciding not to revise the measure.

29 Nothing in this Agreement requires a Party to disclose confidential business information.

30 For greater certainty, neither Party shall be required to provide a description of alternative approaches or significant revisions under subparagraph (b) or (d) prior to the date of publication of the final technical regulation or conformity assessment procedure.

31 For greater certainty, this excludes activities undertaken by an enterprise that operates on (a) a not-for-profit basis or (b) a cost-recovery basis.

32 For greater certainty, noncommercial assistance does not include intragroup transactions within a corporate group including state-owned enterprises, for example, between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal accounting standards or business practices would require that the corporate entity prepare consolidated net financial statements of these intragroup transactions.

33 For greater certainty, nothing in Article 14.2.2 shall be construed to preclude a Party from applying its competition laws to commercial activities outside its borders that have anti-competitive effects within its jurisdiction.

34 For the purposes of Article 14.3.2, "enforcement proceedings" means judicial or administrative proceedings following an investigation into alleged violation of the competition laws.

35 Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defense of the allegation.

36 For greater certainty, the laws or regulations a Party adopts or maintains to proscribe these activities can be civil or criminal in nature.

37 "Resolution authority" shall have the meaning given to it in Section 2.1 of the Financial Stability Board's (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions, as published by the FSB in October 2011.

38 "Resolution purposes" shall be construed in accordance with the meaning given to the term "resolution" in paragraph 21 of the Basel Committee on Banking Supervision's (BCBS) Report and Recommendations of the Cross-Border Bank Resolution Group, as published by the BCBS in March 2010.

39 Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

40 Such as a Public Service Obligation. The Public Service Obligation shall be constructed in such a way as to be the most pro-competitive and least trade restrictive consistent with regulatory goals. Violation of the principles shall be grounds for violation of this Agreement.

41 For greater certainty, for the purpose of this chapter, the term "product" does not include financial instruments, including money.

42 The term "anti-competitive" is judged by reference to its ordinary meaning in competition policy.

43 Any measure can give rise to an ACMD, including laws, regulations, government actions or inactions, statements by regulators, made publicly and privately.

44 The presentation of written questions and responses pursuant to paragraphs 2 and 3 may commence prior to the date a panel is composed. Upon its composition, the complaining Party shall provide any questions it presented to the responding Party, and the responding Party shall provide any responses it provided to the complaining Party, to the panel.

45 The Parties shall, in the case of a proposed measure, make every effort to make the request for consultation under this provision within 60 days of the date of publication of the proposed measure, without prejudice to the right to make such request at any time.

46 For greater certainty, if the Party to which a request for consultations is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request 7 days after the date on which the Party making the request for consultations transmitted that request.

47 For greater certainty, the phrase "the level of benefits that the Party proposes to suspend" refers to the level of concessions under this Agreement, the suspension of which a complaining Party considers will have an effect equivalent to that of the nonconformity or the nullification or impairment in the sense of Article 16.3.1(c) (Scope), determined to exist by the panel in its final report issued under Article 16.16 (Panel Report).

48 The Financial Services Annex is the product and culmination of research and analysis performed by Barnabas Reynolds of Shearman & Sterling LLP on behalf of, and published by, Politeia over the past two years.

49 These definitions, as with the other provisions, are partial sketches of the structure of a U.S.-U.K. bilateral mutual recognition agreement and are not intended to be exhaustive or conclusive. Appropriate definitions from GATS may be included by reference.

50 Adapt as required and state any specified activities in the conditions in Article 2.3.

51 Consider reflecting current conditions (i.e., dealing or arranging with or through an authorized person or entering into a deal as a result of a "legitimate approach") that apply under the United Kingdom's overseas persons exclusion contained in Article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544). Consider restricting to professional clients/corporates only (precise definitions will need to be drafted).

52 This provision may be more relevant to an agreement between the United Kingdom and the EU. To be considered if an anti-currency-discrimination provision is needed between the United Kingdom and the United States.

53 Precise details of the scope/effect of each agreed equivalence recognition would be described in full detail in Schedule 2. For example, it would be expected that Schedule 2 states incoming firms would be subjected to minimal registration requirements to benefit from an agreed equivalence recognition to provide services or establish a local branch or, if retail access is enabled, registration with a local financial services compensation scheme.

54 A comprehensive range of detailed cooperation agreements will have to be negotiated among U.S. and U.K. regulators. These can be drafted from the outset or agreed separately in other documents that refer to this provision of the Agreement. One key benefit of the enhanced equivalence structure is that extensive regulatory input, discussion, and data sharing can be facilitated (if this is politically viable). Both Parties will benefit from early visibility and coordination of regulatory developments.

55 Indicative possible roles for the Regulatory Committee.

56 Additional details to be added as negotiated between the Parties.

57 The consultation provisions are based on the EU-Canada Comprehensive and Economic Trade Agreement (CETA).

58 The consultation provisions (and mutually agreed solutions arising out of the consultation process) are intended to be an informal venue for the Parties to reach an agreement on general matters relating to the administration of the recognition relationship prior to initiation of the formal dispute resolution phases (mediation and dispute resolution).

59 The extent to which private law remedies are available under this Agreement should be considered by the Parties. This action may prove controversial, however. The following provisions set out a private law remedies procedure, available to private parties that are affected by breach of the recognition principles or the mediation and dispute resolution provisions, for example, by unilateral suspension of an agreed equivalence recognition in breach of the Agreement. Private law remedies are included for investor–state disputes in CETA, which has been used in part as a basis for these provisions. However, in contrast to CETA, this provision sets forth a classical arbitration system, rather than the standing tribunal system adopted under CETA.

60 If a stronger commitment from either Party to consider supplementing agreed equivalence recognitions is desired, additional provisions may be included here.