UK-EU FREE TRADE AGREEMENT

Shanker Singham with contributions from Victoria Hewson, Hans Maessen (customs and trade facilitation) and Barnabas Reynolds (Financial Services)

COMPETERE

TABLE OF CONTENTS

Preamble

Chapter 1: General Provisions and Objectives

Chapter 2: Market Access for Goods

Chapter 3: Customs and Trade Facilitation

Chapter 4: Rules of Origin and Origin Procedures

Chapter 5: Cross-Border Trade in Services

Chapter 6: Capital Movements, Payments and Transfers and Temporary Safeguard Measures

Chapter 7: Movement of Labour

Chapter 8: Investment

Chapter 9: E-Commerce

Chapter 10: Government Procurement

Chapter 11: Intellectual Property

Chapter 12: Sanitary and Phytosanitary Measures

Chapter 13: Technical Barriers to Trade

Chapter 14: Regulatory Coherence

Chapter 15: Competition Policy

Chapter 16: Subsidies, State Aids and Market Distortions

Chapter 17: Trade Remedies

Chapter 18: Trade and Sustainable Development

Chapter 19: Dispute Settlement

Chapter 20: Institutional Provisions

Chapter 21: National Security, Public Morals, Plant, Human and Animal Health Exceptions

Chapter 22: Final Provisions

Note: The text set out in this Free Trade Agreement is subject to negotiation with the European Union and bracketed text indicates text where a proposal is being made on our side to deal with specific technical points.

PREAMBLE

The European Union and its Member States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, hereinafter referred to as “the European Union” and the “United Kingdom” respectively, individually as “a Party” and jointly as “the Parties”,

HAVING regard to the departure of the United Kingdom from the European Union;

INTENDING to implement the Political Declaration setting out the Framework for the Future Relationship Between the Parties agreed on [25th November 2018];[1]

RECONFIRMING the close economic, commercial and customs integration and cooperation achieved during the past period of the United Kingdom’s membership of the European Union and the high level of harmonisation with the *acquis communautaire* achieved during that period;

RECOGNISING that the Parties have a particularly important trading and investment relationship, reflecting more than 45 years of economic integration during the United Kingdom's membership of the Union, the sizes of the two economies and their geographic proximity, which have led to complex and integrated supply chains;

DETERMINED in their intention to develop an ambitious, wide-ranging and balanced economic partnership that is comprehensive and encompassing a free trade area as well as wider sectoral cooperation where it is in the mutual interest of both Parties.

ACKNOWLEDGING the objective of implementing an ambitious Free Trade Agreement facilitating trade and investment between the Parties to the extent possible, while respecting the integrity of the European Union's Single Market and the Customs Union as well as the United Kingdom's internal market, and recognising the development of an independent trade policy by the United Kingdom beyond this economic partnership;

SEEKING to establish clear and mutually advantageous rules governing trade and investment between the Parties and to eliminate barriers thereto;

NOTING that existing level of integration and cooperation between the Parties constitutes a unique opportunity for the introduction and operation of highly simplified and reliable clearance procedures for cross-border trade in goods;

CONSIDERING their desire to achieve, to the maximum extent possible, the highest levels of simplification of customs procedures and formalities relating to cross-border trade in goods and to promote trade facilitation for goods while ensuring effective customs controls, taking into account the evolution of trade practices;

---

[1] If we succeed in getting a new Withdrawal Agreement agreed, the Political Declaration would have to be conformed and so a new date applied.

DESIRING that such simplification should be progressively developed to achieve as frictionless trade as possible for industrial products to ensure minimum disruption to supply chain management, logistics and timely delivery of parts, components and raw materials for specific industries;

REAFFIRMING the objective of seeking an enhanced level of cooperation between their customs agencies and intending to enhance cooperation between the Parties in the field of customs matters and trade facilitation;

RESTATING the importance of predictable, consistent and non-discriminatory application by each Party of its customs legislation and other trade-related laws and regulations;

CONFIRMING that both Parties will retain their autonomy and the ability to regulate economic activity according to the levels of protection each deems appropriate in order to achieve legitimate public policy objectives such as public health, animal health and welfare, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, privacy and data protection, and promotion and protection of cultural diversity;

ACKNOWLEDGING that this partnership will also provide for appropriate general exceptions, including in relation to security;

NOTING the need to underpin the objectives and aims of this Agreement by ensuring a level playing field for open and fair competition;

INTENDING to ensure transparency of each Party's legislation and other trade-related laws and regulations and consistency thereof with applicable international standards;

RECALLING that the United Kingdom's withdrawal from the Union presents a significant and unique challenge to the people of the Republic of Ireland and those of Northern Ireland, and reaffirming that the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation;

BUILDING on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral agreements to which both Parties are party;

CONFIRMING their joint political will to work together in any field that is of mutual interest in the development of the aims and objectives of this Agreement;

CONSIDERING that the Parties have adequate levels of personal data protection to ensure the implementation of this Agreement; and

DETERMINED to establish a legal framework for strengthening their economic partnership,

HAVE AGREED AS FOLLOWS:

CHAPTER 1
GENERAL PROVISIONS AND OBJECTIVES

Article 1.1: Establishment of a Free Trade Area

Consistent with Article XXIV of GATT 1994 and Article V of GATS, the Parties hereby establish a Free Trade Area in accordance with the provisions of this Agreement to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties.

Article 1.2: General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) "**Agreement on Agriculture**" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(b) "**Agreement on Anti-Dumping**" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(c) "**Agreement on Import Licensing Procedures**" means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;

(d) "**Agreement on Safeguards**" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

(e) "**Agreement on Trade Facilitation**" means the Agreement on Trade Facilitation set out in the Annex to the Protocol Amending the Marrakesh Agreement establishing the WTO adopted by the WTO General Council by Decision of 27th December 2014.

(f) "**Customs authority**" means:

(i) for the European Union, the services of the European Commission responsible for customs matters and the customs administrations and any other authorities empowered in the Member States of the European Union to apply and enforce customs legislation; and

(ii) for the United Kingdom, Her Majesty's Revenue and Customs ("HMRC");

(g) "**customs legislation**" means any laws and regulations of the European Union or the United Kingdom , governing the import, export and transit of goods and placing of goods under any other customs procedures, including measures of prohibitions, restrictions and controls falling under the competence of the customs authorities;

(h) "**customs territory**" means:

(i) for the European Union, the customs territory as referred to in Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code; and

(ii) for the United Kingdom, the territory with respect to which the customs legislation of the United Kingdom is in force;

(i) "**Customs Valuation Agreement**" means the Agreement on Implementation of Article VII of the GATT 1994; in Annex 1A of the WTO Agreement;

(j) "**days**" means calendar days;

(k) "**DSU**" means the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement;

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

(m) "**GATT 1994**" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement; for the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(n) "**GPA**" means the Agreement on Government Procurement in Annex 4 to the WTO Agreement[2] ;

(o) "**Harmonized System**" or "**HS**" means the Harmonized Commodity Description and Coding System, including its General Rules for the Interpretation, Section Notes, Chapter Notes and Subheading Notes;

---

[2] For greater certainty, the "GPA" shall be understood to be the GPA as amended by the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012.

(p) "**measure**" means any measure, whether in form of a law, regulation, rule, procedure, decision, practice, administrative action, or any other form;

(q) "**natural person of a Party**" means, for the European Union, a national of a Member State of the European Union, and for the United Kingdom, a national of the United Kingdom, in accordance with their respective applicable laws and regulations;

(r) "**person**" means a natural person or a legal person;

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

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

(u) "**TBT Agreement**" means the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement;

(v) "**territory**" means the territorial area to which this Agreement applies in accordance with Article 1.3;

(w) "**TFEU**" means the Treaty on the Functioning of the European Union;

(x) "**TRIPS Agreement**" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;

(y) "**WIPO**" means the World Intellectual Property Organization;

(z) "**WTO**" means the World Trade Organization; and

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

Article 1.3: Territorial Application

1. This Agreement applies:

(a) for the European Union, to the territories in which the Treaty on European Union and the TFEU apply under the conditions laid down in those treaties; and

(b) for the United Kingdom, to its territory.

2. Each Party shall notify the other Party in the event that the respective scope of the territorial application of this Agreement as referred to in Paragraph 1 changes and promptly provide, on request of the other Party, supplementary information or clarification thereon.

Article 1.4: Relation to other Agreements and References to Such Agreements

1. The Parties affirm their rights and obligations under existing multilateral agreements to which they are party, including the 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 favourable treatment of goods, services, investments, or persons than that provided for under this Agreement.

3. When this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, those references include:

(a) Related annexes, protocols, footnotes, interpretative notes and explanatory notes; and

(b) Successor agreements to which Parties are party or amendments that are binding on the Parties except where the reference affirms existing rights.

4. Any reference to laws, either generally or by reference to a specific statute, regulation or directive, is to the laws, as they may be amended from time to time, unless otherwise specified.

Article 1.5: Extent and Scope of Obligations

1. Each Party is fully responsible for the observance of all provisions of this Agreement.

2. Each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance at all levels of government.

3. Unless otherwise specified in this Agreement, each Party shall ensure that a person that has been delegated regulatory, administrative or other governmental authority by a Party, at any level of Government, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

4. The obligations stated Paragraph 3 apply to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies at all levels of government.

Article 1.6: Tax Treatment

1. For the purposes of this Article:

   (a) "**residence**" means residence for taxation purposes;

   (b) "**tax agreement**" means an agreement for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which the European Union, its Member States or the United Kingdom is party; and

   (c) "**taxation measure**" means a measure in application of the tax legislation of the European Union, its Member States or of the United Kingdom.

2. This Agreement applies to taxation measures only in so far as is necessary to give effect to the provisions of this Agreement.

3. Nothing in this agreement shall affect the rights and obligations of the Parties[3] under any tax agreement. In the event of any inconsistency between this agreement and any such tax agreement, the tax agreement shall prevail to the extent of the inconsistency. With regard to a tax agreement between the Parties, the relevant competent authorities under this Agreement and that tax agreement shall jointly determine whether an inconsistency exists between this agreement and the tax agreement.

4. Any most-favoured nation obligation in this Agreement shall not be applicable with respect to an advantage accorded by the Parties pursuant to a tax agreement.

[3] For the purposes of this sub section, the Parties shall include the United Kingdom and its devolved administrations and for the EU, its member states.

5. The Joint Committee may decide on a different scope of the application of dispute settlement under Chapter 20 (Institutional Provisions) with respect to taxation measures.

6. Subject to the requirement that taxation measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by the Parties of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes such as measures:

   (a) distinguishing between taxpayers who are not in the same situation, in particular with regard to their place of residence or the place where there capital is invested; or

   (b) preventing the avoidance or evasion of taxes pursuant to the provisions of any tax agreement or domestic tax legislation.

Article 1.7: Confidential Information

1. Unless otherwise expressly provided for in this Agreement, nothing in this Agreement shall require a Party to provide confidential information the disclosure of which would impede the enforcement of its laws and regulations, or otherwise be contrary to the public interest, or which prejudice legitimate commercial interests of particular enterprises, public or private.

2. When, under this Agreement, a Party provides the other Party with information which is considered as confidential under its laws and regulations, the other Party shall maintain the confidentiality of the information provided, unless the Party providing the information agrees otherwise.

Comments

1. Provisions based on CETA, EU-Japan, and TTIP offers.

2. The special provisions contained in CETA, Article 1.9, relating to rights and obligations relating to water resources have deliberately not been included because: (i) the preservation of water resources is a Canada-specific policy objective; and (ii) trade in water is not an issue of concern to the United Kingdom.

3. The restrictions on duty drawback included in CETA, Article 2.5, have been excluded because they would prevent the UK using Inward Processing Relief. This would be a major loss for the UK and we should not include it here. It was not included in the Japan agreement. It would be necessary for inclusion in the package of benefits which would be applicable for various free ports proposals.

4. The provisions originally contained in this chapter for national treatment have been moved to Chapter 2 and more specifically added as Article 2.4.

CHAPTER 2
MARKET ACCESS FOR GOODS

Article 2.1: Scope and Definitions

1. Unless otherwise provided for in this Agreement, this Chapter applies to trade in goods between the Parties.

2. For the purposes of this Chapter:

   "**customs duty**" means any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation, but does not include any:

   (a) charge equivalent to an internal tax imposed in accordance with Article III of GATT 1994;

   (b) duty applied in accordance with Articles VI and XIX of GATT 1994, the Agreement on Anti-Dumping, the SCM Agreement, the Agreement on Safeguards and Article 22 of the DSU; and

   (c) fees or other charges imposed in accordance with Article 2.12.

   "**quantitative restriction**" means any measure restricting the total volume or total value of goods eligible to enter the customs territory of either Party.

Article 2.2: Elimination of Customs Duties and Quantitative Restrictions

1. Except as otherwise provided in this Agreement, neither Party may introduce any customs duty or quantitative restriction on any originating goods.

2. The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

3. Each Party shall ensure consistency in applying its laws and regulations on tariff classification of originating goods of the other Party.

Article 2.3: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994 which is incorporated into and made part of this Agreement.

2. The treatment to be accorded by a Party under Paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment 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.

Article 2.4: Agricultural Safeguards

1. Agricultural goods qualifying as originating goods of a Party shall not be subject to any duties or quantitative restrictions applied by the other Party pursuant to a special safeguard measure taken under the Agreement on Agriculture.

2. Unless otherwise expressly specified agricultural safeguard measures on the originating agricultural goods under this Agreement may only be applied in accordance with the provisions set out in Chapter 17 (Trade Remedies).

Article 2.5: Temporary Admission of Goods

1. 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;

   (d) goods admitted for sports purposes;

   (e) goods imported exclusively for scientific purposes;

(f) welfare materials for seafarers;

(g) personal effects imported by temporary, visiting travellers; and

(h) tourist publicity materials.

Article 2.6: Goods Re-Entered After Repair or Alteration

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters 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 2.7: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

1. 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 2.8: 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:

   (a) export and import price requirements;

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

   (c) voluntary export restraints.

3. 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 2.9: Import Licensing

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

2. Promptly after this Agreement enters into force, each Party shall notify the other of its existing import licensing procedures, if any. The notification shall include the information specified in Article 5 of the Agreement on Import Licensing Procedures 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 2.10: Customs Valuation

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

Article 2.11: Export Competition

1. For the purpose of this Article, "export subsidies" means subsidies referred to in Article 1(e) of the Agreement on Agriculture and other subsidies listed in Annex 1 to the SCM Agreement that may be applied to agricultural goods which are listed in Annex 1 to the Agreement on Agriculture.

2. Building on the Parties commitment, expressed in the Ministerial Decision of 19 December 2015 on Export Competition (WT/MIN (15)/45, WT/L/980) of the WTO, to exercise the utmost restraint with regard to export subsidies and export measures with equivalent effect the Parties agree to prohibit all export subsidies, except those set out in Annex 2.1.

3. The Parties commit to respecting the OECD Disciplines on export subsidies in Annex 2.2.

Article 2.12: 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 2.13: Export Duties, Taxes, or Other Charges

1. 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 2.14: Sub-Committee on Trade in Goods

1. The Parties hereby establish a Sub-Committee on Trade in Goods (the “Sub-Committee on Goods”), comprising representatives of each Party which will report to the overall Joint Committee set out in Articles 20.1 and 20.2 of this Agreement.

2. The Sub-Committee on Goods shall consider any matter arising under this Chapter, Chapter 3 (Customs and Trade Facilitation) and Chapter 4 (Rules of Origin and Origin Procedures).

3. The Sub-Committee on Goods’ functions in relation to this Chapter shall include:

   (a) promoting trade in goods among the Parties, including through consultations on ensuring customs duty and quantitative restrictions are eliminated under this Agreement and other issues as appropriate;

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

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

Article 2.15: Procedure of the Sub-Committee

1. The Sub-Committee shall meet as regularly as required by the Parties. Either Party may request that a meeting be convened.

2. The Sub-Committee shall act by mutual agreement and on the basis of rules of procedure which it shall adopt by way of a decision.

3. The Sub-Committee shall establish its own rules of procedure which shall contain, inter alia, provisions on the convening of meetings, the appointment of the chairperson and the chairperson's term of office.

Article 2.16: Representatives on the Sub-Committee

1. For matters covered by this Chapter, the Sub-Committee shall comprise representatives of the customs, trade, or other competent authorities as each Party deems appropriate.

2. Each Party shall ensure that its representatives in Sub-Committee meetings have expertise that corresponds to the agenda items.

3. The Sub-Committee may meet in a specific configuration of expertise to deal with issues arising from the application and implementation of this Chapter and any others falling within its remit as specified under Article 2.14.2.

Article 2.17: Powers of the Sub-Committee

1. It shall be the responsibility of the Sub-Committee to administer this Chapter and any other mentioned in Article 2.14.2 as appropriate and to ensure their proper implementation through the exercise of the powers conferred upon it.

2. The Sub-Committee may formulate and adopt resolutions, recommendations or opinions and take formal decisions that it considers necessary for the attainment of the common objectives and sound functioning of the mechanisms established in this Chapter and any other mentioned in Article 2.14.2 as appropriate.

3. Formal decisions will be adopted in writing and published accordingly in order to give guidance to economic operators established in the territories of both Parties.

4. The Sub-Committee will ensure that there is continued cooperation between the EU member states customs agencies and the customs agency of the United Kingdom so that future agreements on all aspects of this Chapter and other the Chapters of this Agreement falling within its remit can be developed.

5. The Sub-Committee may decide to set up any Working Group to facilitate its work, including a regulatory cooperation Working Group for market access and customs issues, for the purposes of this Chapter and others falling within its remit, including:

   (a) cooperating and consulting regularly to ensure the effective and uniform implementation and administration of this Chapter can be developed.

   (b) discussing any proposed modifications to any provision of this Chapter; and

   (c) considering any matters or problems arising in matters covered by this Chapter.

6. Decisions shall be implemented by the Parties in accordance with their own laws, regulations and rules.

7. For the purposes of the proper implementation of this Chapter, the Sub- Committee shall be informed at regular intervals by the Parties of experience gained in its implementation and those Parties shall, at the request of any one of them, consult one another within the Sub-Committee.

Annex 2.1: Permitted Export Measures

Section (i): Relevant Measures of the United Kingdom

[to be inserted]

Section (ii): Relevant Measures of the European Union

[to be inserted]

Annex 2.2: OECD Disciplines on Export Measures

[to be inserted]

Comments

1. Agricultural safeguards are drawn from the trade remedy section which allows safeguards to be used in cases of anti-competitive market distortion.

2. 2.11.2 uses "utmost restraint" language with respect to subsidies re export competition. We would seek to limit these as much as possible. There has to be a narrow exception for export credits and subsidies from UK Export Finance.

CHAPTER 3
CUSTOMS AND TRADE FACILITATION

Article 3.1: Definitions

(a) "**advance ruling**" means a written decision provided by a Party to an applicant prior to the importation of goods covered by the application that sets forth the treatment that the Party shall provide to the good at the time of import;

(b) "**Authorised Economic Operator**" or "**AEO**" means an economic operator established in the territory of the European Union or the United Kingdom meeting the criteria for the grant of Authorised Economic Status applied by the Parties;

(c) "**customs duty**" means a duty or charge of any kind imposed on or in connection with the importation of a good, including a form of surtax or surcharge imposed on or in connection with that importation;

(d) "**customs formalities**" means any formality to which the authorities of a Party subject a trader and which consists in the production or examination of documents, certificates accompanying the goods, or other particulars, irrespective of the method or medium employed, relating to the goods or the means of transport;

(e) "**customs office**" means the customs office of a Party competent for customs supervision at the place where the means of transport carrying the goods arrives in or departs the customs territory of one from the territory for the territory of the other Party;

(f) "**inspections**" means any operation whereby the customs authorities or any other inspection authority of a Party carries out the physical examination or visual inspection of the means of transport or of the goods themselves in order to ascertain that their nature, origin, condition, quantity and value are in conformity with the corresponding declarations;

(g) "**measure**" means any law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form of measure with legal effect adopted by a Party;

(h) "**release**" means the conclusion or extinction of a customs clearance or inspection procedure permitting the goods to enter the territory of a Party for distribution, sale, marketing or any other commercial or industrial use without further customs formalities being applied for those purposes;

(i) "**risk**" means the likelihood of an event occurring in connection with the entry, exit, transit, transfer and end-use of goods moving between the customs territories of the Parties which jeopardises the safety and security of the European Union, its Member States or the United Kingdom, public health, the environment or consumers;

(j) "**risk management**" means the systematic identification of risk and implementation of all measures necessary for limiting exposure to risk including activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regular monitoring and review of the process and its outcomes;

(k) "**SPS**" means sanitary and phytosanitary; and

(l) "**UCC**" means the Union Customs Code adopted by the European Union and any amending measures.

PART I: OBJECTIVES AND SCOPE

Article 3.2: Sovereignty

This Chapter is without prejudice to the recognition of both Parties' sovereignty to develop their own future trade policy and to regulate the conditions for placing goods in their respective internal markets.

Article 3.3

Import, export and transit requirements and procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve a legitimate objective and based on legislation that avoids unnecessary or discriminatory burdens on economic operators, that provides for further trade facilitation for economic operators with high levels of compliance, and that ensures safeguards against fraud and illicit or damageable activities.

Article 3.4

The Parties recognise that legitimate public policy objectives, justified on grounds of public morality, public policy or public security, the protection of the health and life of humans, animals, plants or the environment, the protection of national treasures possessing artistic, historical or archaeological value, or the protection of industrial or commercial property, shall not be compromised in any way by the application of the provisions of this Chapter.

Article 3.5

This Chapter shall apply to goods moving within the territory of the Free Trade Area as defined in Article 1.3 of this Agreement.

PART II: TRANSPARENCY

Article 3.6

Each Party shall:

(a) publish or otherwise make available, including through electronic means, its legislation, regulations, judicial decisions and administrative policies relating to requirements for the import or export of goods;

(b) notify the other Party of any modification or changes in its laws, regulations or procedures for import into, export from or transit through its customs territory, as soon as possible;

(c) publish or otherwise make available information on fees and charges imposed by the customs administration of that Party, including through electronic means. This information includes the applicable fees and charges, the specific reason for the fee or charge, the responsible authority, and when and how payment is to be made. A Party shall not impose new or amended fees and charges until it publishes or otherwise makes available this information; and

(d) designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters and make available on the internet information concerning the procedures for making such inquiries.

Article 3.7

Each Party shall use information technologies systems, software and solutions to:

(a) expedite its procedures for the release of goods in order to facilitate trade including risk assessment and post-clearance audit methods, in order to simplify and facilitate the entry and the release of goods;

(b) provide for accelerated release mechanisms and advance screening of formalities so that goods can be released quickly in the case of low-risk goods;

(c) use electronic risk management systems for assessing and targeting high-risk goods or transactions while facilitating the automatic or expeditious release of low-risk goods or transactions taking into consideration the status of the identity of the importer, consignor or consignee, the value, or any combination of data regarding the goods or transactions.

(d) promote the progressive development and use of such systems to facilitate the electronic exchange of data between their respective traders, customs authorities and other related agencies; and

(e) with the exception of risk assessment processes and procedures, permit such systems accessible to importers, exporters, shippers and persons engaged in the transit of goods or the designated representatives thereof, through its customs territory.

Article 3.8

Each Party shall ensure the following information is made available to the Public through the Internet, and shall update such information on a timely basis:

(a) a description of its requirements and procedures for import into, export from or transit through its customs territory that informs interested parties of the practical steps they need to follow for import into, export from and transit through its customs territory;

(b) the documentation and data it requires for import into, export from or transit through its customs territory;

(c) non-binding guidance concerning its laws, regulations and procedures for import into, export from or transit through its customs territory; and

(d) further trade related information, including relevant trade-related legislation regulations and procedures, such as those related to product standards and certification.

Article 3.9

Each Party shall develop to the extent possible and appropriate, bearing in mind the legislation of both Parties, fully interconnected single window systems to facilitate the electronic submission of information to enable importers, exporters, shippers and persons engaged in the transit of goods or designated representatives thereof to submit to all relevant government agencies such documentation and data required by that Party for the import into, export from or transit through its customs territory.

Article 3.10

Through their respective single windows system each Party shall:

(a) make available by electronic means any forms required for the import, export or transit through its customs territory of goods;

(b) allow documentation and data for the import, export or transit through its customs territory of goods to be submitted in electronic format;

(c) accept electronic copies of documents required for import into, export from or transit through its customs territory, unless the electronic copy does not provide the necessary information to ensure compliance with its law; and

(d) establish a means of providing for the electronic exchange of trade-related information between the Party and importers, exporters, shippers and persons engaged in the transit of goods or the designated representatives thereof, through its customs territory.

Article 3.11

Where a Party receives documentation or data for a shipment of goods or a transaction through its single window, that Party shall not otherwise request the same documentation or data for that good or shipment of goods, except in urgent circumstances or pursuant to other limited exceptions set out in its laws, regulations or procedures.

Article 3.12

Each Party shall adopt or maintain electronic payment systems for the purposes of settlement of administrative charges and costs, if any, on the cross-border movement of goods levied by their respective customs authorities.

PART III: CUSTOMS COOPERATION AND ORIGIN

Article 3.13

Both Parties will promote trade facilitation, cooperate regarding customs formalities and obligations and ensure effective customs controls based on the common legal principles and measures found in the UCC and equivalent UK legislation as each exists from time to time pertaining to cross-border trade and taxation.

Article 3.14

Unless otherwise agreed, the Parties agree that their respective customs provisions and procedures including the use of electronic information technology pursuant to Article 3.7 and the development of data requirements pursuant to Article 3.9, shall be based upon international instruments and standards applicable in the area of customs and trade, which the respective Parties have accepted, including the substantive elements of the Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, the WCO International Convention on the Harmonized Commodity Description and Coding System, and the Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as “SAFE Framework”), the WCO Data Model and related WCO recommendations, the Agreement on Trade Facilitation and the SPS Agreement.

Article 3.15

The Parties will continue to rely on and develop existing legal, IT and physical infrastructure including, but not limited to:

(a) Existing International Conventions relating to goods in transit including the Common Transit Convention;

(b) Le Touquet Agreement; and

(c) Security arrangements regarding persons and goods crossing the borders.

Article 3.16

1. The Parties agree that additional cooperation in customs clearance and control procedures will be based on both Parties' continued use of existing IT systems, in each instance as updated or replaced from time to time, such as:

   (a) VIES (Value Added Tax Exchange System);

   (b) EORI (Economic Operators Registration and Identification number system);

   (c) The Trade Control and Expert System (TRACES);

   (d) EMCS (Excise Movement and Control System);

   (e) REX (Registered Exporter System); and

   (f) NCTS (New Computerised Transit System).

2. In the event of these systems being changed by the European Union in a way which causes difficulty for the United Kingdom's continued operation of those systems or other unforeseen circumstances which cause difficulties to either Party, the Parties shall seek to agree appropriate revisions and modes of operation with the aim of maintaining or improving customs facilitation.

Article 3.17

To establish and prove the origin of goods originating from the territory of either Party, the Parties commit to invest in the further development of the REX system, to promote its use and implement this system before the commencement of this Agreement.

PART IV: CUSTOMS CLEARANCE PROCEDURES AND THE RELEASE OF GOODS

Article 3.18

Each Party shall establish, maintain and apply simplified import and export procedures for cross-border trade between the Parties that are transparent and efficient for the release of goods that are eligible for release upon completion of such procedures, in order to reduce costs and increase predictability for economic operators, including for small and medium sized enterprises.

Article 3.19

Each Party shall endeavour to adopt, and encourage greater use of, procedures that provide for:

(a) the electronic submission of documentation and data required for importation, including manifests and conveyance information, prior to the arrival of the goods; and

(b) beginning processing such submission prior to the arrival of the goods with a view to enabling the release of goods on their arrival.

Article 3.20

Each Party shall ensure that these simplified procedures:

(a) allow for the prompt release of goods within a period no greater than required to ensure compliance with its laws, regulations and procedures and to the extent possible, before or at the moment of the entry of the goods' arrival at the first customs office of point of arrival, provided that the goods are otherwise eligible for release;

(b) allow the importer of record, its agent or declarant to be promptly informed of the decision regarding the release of the goods, circumstances which justify the delay in the release of the goods and grounds for delaying the release of the goods; and

(c) permit an importer of record, its agent or declarant to remove goods from customs' control prior to the final determination and payment of customs duties, taxes, and fees. Before releasing the goods, a Party may require that an importer provide sufficient guarantees in the form of a surety, a deposit, or some other appropriate instrument.

Article 3.21

Each Party shall adopt or maintain special customs procedures for the expedited release of low risk shipments while maintaining appropriate customs control in accordance with the UCC and corresponding United Kingdom legislation.

Article 3.22

Both Parties shall ensure that:

(a) all fees and charges of whatever character imposed on or in connection with customs formalities shall be limited in amount to the approximate cost of services rendered, which shall not be calculated or applied on an ad valorem basis and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes;

(b) fees and charges for customs processing shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question and shall not be calculated or applied on an ad valorem basis, but are not required to be linked to a specific import or export operation, provided they are levied for services that are closely connected to the customs processing of goods and

(c) there is a periodical review of fees and charges imposed on or in connection with, importation to ensure compliance with this Article.

Article 3.23

Each Party shall:

(a) issue, upon written request, advance rulings on tariff classification and origin determination relating to the importation of goods in accordance with its law; and

(b) endeavour to agree on a means or system for the mutual recognition of customs classification and origin rulings of each other.

Article 3.24

Each Party shall ensure that:

(a) a written advance ruling to an applicant that has submitted a written request or application containing all necessary information within a reasonable period of time, will be issued by a Party after a reasonable period from the receipt of all necessary information;

(b) an advance ruling shall take effect on the date issued or on another date specified in the ruling and shall remain in effect until it is modified or revoked;

(c) an advance ruling issued by a Party shall be binding throughout its customs territory until such time it is modified, revoked, invalidated or annulled; and

(d) upon written request of an applicant, an administrative review of the advance ruling or of the decision to revoke, modify, invalidate or annul it shall be carried out.

Article 3.25

Each Party shall:

(a) use a risk management system for customs and other relevant border controls rather than requiring each shipment offered for entry or exit to be examined in a comprehensive manner for compliance with customs regulations and procedures;

(b) adopt and apply its import, export and transit requirements and procedures for goods on the basis of risk management to enable its customs authority to focus on transactions that merit attention and concentrate its controls, inspection and other enforcement activities on high-risk consignments while simplifying and facilitating the clearance and movement of low-risk consignments;

(c) design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination or disguised restrictions on international trade;

(d) use information technology systems, as appropriate, to apply its risk management system in order to facilitate trade while ensuring customs control; and

(e) select, on a random basis, consignments for such controls as part of its risk management.

Article 3.26

Based on data available to the Parties' customs agencies, the Parties agree to conduct risk assessment processes in such a way that low risk shipments are substantially less inspected thereby allowing the parties customs agencies to direct their fullest attention to the inspection of high-risk consignments. Risk assessment processes may be validated or improved by random checks to evaluate the profiles that have been generated as the result of the risk assessment processes.

Article 3.27

Both Parties acknowledge that administrative documentation in many cases provides sufficient information to assess a declaration, and should be used in preference to a physical inspection of goods. In addition, post-clearance audits procedures on compliance are an effective and efficient way of risk management. The Parties agree that they must be an integral part of customs' control operations. The Parties agree that audits shall be conducted in a transparent way.

Article 3.28

Where goods presented for import are rejected by the competent authority of a Party on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Party shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter. If these options are not exercised by the exporter, the goods may be destroyed by the competent authorities of the Parties.

Article 3.29

The Parties acknowledge that simplified procedures for these purposes are available within the UCC as set out in the illustrative list set out in Annex 3.1 (Existing Simplifications and Facilitations).

PART V: GOODS IN TRANSIT BETWEEN THE TERRITORIES OF THE PARTIES

Article 3.30

The Parties acknowledge that the individual Member States of the European Union, in their own right and capacity, and the United Kingdom, are contracting parties to Conventions relating to goods in transit and recognise that traffic in transit between their respective territories should be afforded special treatment and facilitation.

Article 3.31

Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

Article 3.32

The Parties agree that transit declarations can be opened and closed, and goods can be physically inspected at:

(a) inland customs offices;

(b) the premises of the exporter or importer being an authorised consignor or consignee; or

(c) the premises of a logistical service provider who is involved in the transport being an authorised consignor or consignee.

Article 3.33

The Parties agree that permissions to open a transit declaration for the responsible economic operator who holds the liability for taxes and other obligations, will be issued on the existing basis of providing a guarantee for the liabilities or based on the solvency and creditworthiness of the permit holder.

Article 3.34

The Parties shall ensure that permissions for a transit consignor or consignee will be granted preferential consideration to ensure that they are easily available for traders and their service providers so transit can be conducted in an efficient manner.

PART VI: INLAND CLEARANCE PROCEDURES

Article 3.35

Both Parties acknowledge that there will be a need from a perspective of legal, IT and physical infrastructure, to adapt the present customs clearance procedures and systems in relevant European Union Member States with intensive direct trade with the United Kingdom.

Article 3.36

Both Parties agree that customs formalities and inspections should, to the extent possible, be handled and processed away from border crossing points.

Article 3.37

Both Parties agree to facilitate customs offices at ferry ports for those shipments that cannot reasonably be declared inland.

Article 3.38

The United Kingdom and each European Union Member State with which it shares a land border or common ferry transportation services or the Channel Tunnel connection shall cooperate to facilitate inland clearance procedures to the fullest extent possible.

PART VII: CUSTOMS SIMPLIFICATION PROCEDURES

Article 3.39

Both Parties acknowledge that within their respective customs legislation, there are multiple existing simplifications to facilitate trade. Both Parties will use these simplifications to the fullest

extent possible to facilitate trade as set out in Annex 3.1 of this Chapter (Existing Simplifications and Facilitations).

Article 3.40

Simplifications already provided in the UCC have been mirrored in United Kingdom legislation and both Parties seek to achieve maximum trade facilitation based on mutual trust in each others' competent customs authorities.

Article 3.41

Both Parties will use customs simplification schemes on a system-based approach. Legitimate traders with repeat trade ("trusted traders') will be required to fulfil only a minimum of formalities whereby inspections and controls can be based on administrative systems.

Article 3.42

The Parties agree that customs procedure simplification authorisations will be made available directly through permissions granted to registered traders, or by intermediaries that can provide these simplifications to their clients based on a general authorisation by either Party.

Article 3.43

The Parties agree that customs procedure simplifications authorisations should be granted to trusted traders to the maximum extent possible but may only be issued when compliance with regulatory measures is not potentially compromised. Any trader or service provider who can assure the compliance requirements should be eligible for such simplifications.

Article 3.44

The Parties agree that the system-based approach, in which declarations are based on data available in administrations of actors, rather than on specific declarations, should be made available not only to large operators, but also through intermediaries and for Small and Medium Enterprises ("SMEs), if the same requirements and standards can be met.

Article 3.45

Both Parties commit to adapting existing IT-systems customs procedures to facilitate further simplifications for goods imported from the other.

PART VIII: SPECIFIC FACILITATIONS AND RELIEFS

Article 3.46

Both Parties may grant the status of Authorised Economic Operator (AEO) on the basis of the conditions and requirements to be established and agreed to any enterprise established in its customs territory able to meet the relevant conditions and requirements.

Article 3.47

The status of Authorised Economic Operator granted by one Party shall be recognised by the other Party without further additional conditions being imposed by the other Party.

Article 3.48

Authorised economic operators shall enjoy facilitations in respect of customs clearance procedures, inspections, checks and security-related customs controls in cross-border trade between the Parties without prejudice to random customs inspections, particularly with a view to implementing agreements with third countries providing for arrangements for the mutual recognition of the status of authorised economic operator.

Article 3.49

The Parties shall adopt or maintain trusted trader self-assessment programmes, where the trader is able to conduct its own trade compliance and self-report on an annual basis. The criteria for trusted traders under these programmes are to be developed and agreed by the Parties.

Article 3.50

Each Party shall provide for the release of perishable goods under normal circumstances within the shortest possible time and give appropriate priority to perishable goods when scheduling any examinations that may be required.

Article 3.51

In addition to the commitments undertaken in Article 3.39, each Party shall promote and encourage, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be reimported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations. Parties shall ensure that Inward Processing and Outward Processing Relief is made as easy as possible for users and provide special mechanisms to promote frictionless trade for certain industrial sectors.

Article 3.52

A Party shall not apply customs duty to goods, regardless of their origin, that re-enter its customs territory after those goods have been temporarily exported from its customs territory to the customs territory of the other Party for repair, regardless of whether the repair could be performed in the customs territory of the Party from which the goods were exported for repair.

PART IX: REGULATORY COHERENCE AND MUTUAL RECOGNITION

Article 3.53

The Parties will endeavour to agree recognition of regulations and standards on specific products as meeting the applicable requirements in their respective territories as further set out in Chapter 14 (Regulatory Coherence) of this Agreement.

PART X: CUSTOMS SECURITY MEASURES FOR GOODS FROM THIRD COUNTRIES

Article 3.54

The Parties:

(a) undertake to set up and apply to the import and export of goods to and from third countries the customs security measures set out in Annex 3.2 (Security Measures) and thus to ensure an equivalent level of security at their external borders;

(b) other than in exceptional circumstances, shall refrain from applying the customs security measures set out in this Chapter to the transit of such goods between their customs territories; and

(c) shall consult prior to the conclusion of any agreement with a third country in the areas covered by this Chapter in order to ensure consistency with this Chapter , particularly if the proposed agreement includes provisions that derogate from the customs security measures set out in Annex 3.2 (Security Measures).

Article 3.55

The Parties shall apply the following measures to declarations prior to the entry and exit of goods from third countries:

1. Goods brought into the customs territories of the Parties from third countries shall be covered by an entry declaration for the purposes of security with the exception of goods

carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory.

2. Goods exiting the customs territories of the Parties that are destined for third countries shall be covered by an exit declaration for the purposes of security with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within that territory.

3. The entry or exit summary declaration shall be lodged before the goods are brought into or leave the customs territory of the Party.

4. Each Party shall specify the persons who are required to lodge such entry or exit summary declarations and the authorities competent to receive them.

5. A customs declaration may be used as an entry or exit summary declaration as long as it meets the conditions laid down for that summary declaration.

Article 3.56

The Parties shall apply the following principles to Customs Security Controls and Security-Related Risk Management

1. Security-related controls other than random checks shall be based on computerised risk analysis.

2. Each Party shall establish for this purpose a risk management framework, risk criteria and priority areas for security-related customs controls.

3. The Parties shall recognise the equivalence of their security-related risk management systems.

Article 3.57

1. The Sub-Committee established under Chapter 2 of this Agreement shall determine how the Parties are to monitor the implementation of this Chapter and to verify compliance with its provisions.

2. The monitoring referred to in Paragraph 1 may take the form of:

   (a) regular assessments of the implementation of this Chapter, and in particular of the equivalence of customs security measures,

(b) a review to improve the way in which it is applied or to amend its provisions so that it better fulfils its objectives, and/or

(c) the organisation of thematic meetings between experts of both Parties and audits of administrative procedures, including on-the-spot visits.

3. The Joint Committee shall ensure that measures taken under this Article uphold the rights of economic operators.

Article 3.58: Rebalancing Measures

1. A Party may, after consultations within the Sub-Committee, take appropriate rebalancing measures, including suspension of the measures set out in Annex 3.2 if it determines that the other Party has not adhered to its conditions or if the equivalence of the other Party's customs security measures is no longer assured.

2. Where any delay could jeopardise the effectiveness of customs security measures, provisional protective measures may be taken, without prior consultation, provided that consultations are held immediately after their adoption.

3. The scope and duration of such measures shall be limited to what is necessary in order to remedy the situation and to secure a fair balance of rights and obligations under this Part.

4. A Party may ask the Sub-Committee to hold consultations about the proportionality of these measures and, where appropriate, decide to submit a dispute on the matter to arbitration in accordance with procedures to be agreed by the Sub-Committee.

Article 3.59

The Parties agree that agreements concluded by either of them with a third country in an area covered by this Part shall not create obligations for the other Party, unless the Sub- Committee decides otherwise.

PART XI: REVIEW, APPEAL AND PENALTIES

Article 3.60: Review and Appeals

1. Each Party shall ensure that an administrative action or official decision taken in respect of the import of goods is reviewable promptly by judicial, arbitral, or administrative tribunals or through administrative procedures.

2. The tribunal or official acting pursuant to those administrative procedures shall be independent of the official or office issuing the decision and shall have the competence to maintain, modify or reverse the determination in accordance with the Party's law.

3. Before requiring a person to seek redress at a more formal or judicial level, each Party shall provide for an administrative level of appeal or review that is independent of the official or the office responsible for the original action or decision.

Article 3.61

Both Parties shall ensure that its customs legislation and applicable penal or criminal laws provide that penalties imposed for breaches are proportionate and non-discriminatory and that the application of these penalties does not result in unwarranted delays to the customs clearance of the goods.

Article 3.62: Administrative Assistance

1. In order to ensure the smooth functioning of trade between the Parties and to facilitate the detection of any irregularity or infringement, the customs authorities of the countries concerned shall, upon request, or, where they consider that this would be in the interests of the other Party, on their own initiative, provide each other with all available information (including administrative findings and reports) of interest for the proper implementation of this Chapter.

2. Assistance may be withheld or denied, totally or partly, when the requested Party considers that the assistance would be prejudicial to its security, public policy or other essential interests, or would violate an industrial, commercial or professional secret.

3. If assistance is withheld or denied, the decision and the reasons therefor must be notified to the requesting country without delay.

Article 3.63

Both Parties agree that official decisions and determinations of the other Party will be mutually recognised for the purposes of carrying out reviews and appeals in this Chapter.

Article 3.64: Oversight by the Sub-Committee on Trade in Goods

1. The Sub-Committee on Trade in Goods established in Chapter 2 of this Agreement is authorised to work on:

   (a) Ensuring the uniform administration of this Chapter;

(b) technical, interpretative, or administrative matters relating to this Chapter; and

(c) the priorities in relation to the implementation of this Chapter.

Annex 3.1
Existing Simplifications and Facilitations

This Annex provides a number of currently existing and commonly used legal customs simplifications, which can be used to ensure almost frictionless movement of goods across customs borders. The list is not complete.

Most of these simplifications require combinations of various authorisations and possibly require specific (Union) IT systems. Not all simplifications are suitable for every situation or every case, although they can be accessible by using service providers. The choice for (combination) of options depends on (a combination of) aspects such as volume, complexity, risk, type of goods, transport mode.

1. All customs clearance-related declarations should be carried out and completed in digital format using IT platforms whenever possible.

2. Goods may be presented at private storage facilities once or permanently approved or designated by customs authorities for customs controls.

3. Service providers may have multiple loading and unloading locations approved.

4. Declarations may have a full or a simplified dataset.

5. Declarations should be submitted prior to arrival.

6. Enhancement of specific declaration data at later time.

7. Waivers for presentation of goods.

8. Full or partial automation of declarations for repetitive shipments.

9. Centralised management of clearances.

10. Notification of AEO certified companies of a selected control on imports prior to arrival.

11. Entry into The Declarant Record (EIDR), whereby a declaration per shipment is replaced by a fully automated monthly declaration.

12. Integration of declarations in supply chain IT-systems.

13. Where sealing is required to ensure the identification of goods, seals of special types can be used.

14. For rail, sea and air, Transit documents can be replaced by other transport documents that contain the same information as long as the relevant data are provided to the Transit system.

15. Temporary and permanent storage under customs control can be done in many ways.

16. Inward and outward processing relief to prevent paying unnecessary duties

17. Registered Exporter can declare the origin of goods with a simple declaration on the export invoice.

Annex 3.2
Security Measures

[Relevant measures to be inserted]

Annex 3.3
Irish Border Measures

Recognising that cooperation between Northern Ireland and Ireland is a central part of the 1998 Agreement and is essential for achieving reconciliation and the normalisation of relationships on the island of Ireland, and recalling the roles, functions and safeguards of the Northern Ireland Executive, the Northern Ireland Assembly, and the North-South Ministerial Council (including cross-community provisions), as set out in the 1998 Agreement;

Recognising that the land border between the EU and the UK which divides Northern Ireland from the Republic of Ireland (the "Irish Border") presents specific trade, legal and constitutional issues which have an impact on the peace process in Northern Ireland, as well as implicating the Belfast Agreement;

Recalling the commitment of Parties to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls, and bearing in mind that any future arrangements must be compatible with these overarching requirements,
Recognising the contribution to cross-border trade facilitation of carrying out technical and similar checks away from border posts and, to the maximum extent possible, through checks

conducted at consignor, consignee or logistic service providers' premises or through market surveillance techniques;

Noting that with best practice and existing techniques, the customs and regulatory border can be managed without physical infrastructure or routine interventions at the land border;

Acknowledging that information technology provides effective solutions to the simplification and facilitation of cross-border trade between the Parties;

Acknowledging that goods in transit between the Parties present a far reduced security and safety risk and should be facilitated to the maximum extent possible whenever justified;

Recognising that the Island of Ireland constitutes a common bio-security zone for the purposes of disease prevention and public health;

Considering that the United Kingdom and the Republic of Ireland wish to maintain a common, island-wide perimeter for such bio-security measures;

Acknowledging that agreement between the Parties has been achieved on the equivalence and formalised certification/inspection regimes for SPS regulation;

Desiring to ensure that other regulatory matters can be enforced away from the border and in the market;

Confirming such oversight should also be part of the close coordination between authorities north and south of the Irish Border;

Acknowledging that control, inspection and supervision of imports into the United Kingdom, and information sharing with the EU is desirable where EU quotas and trade remedies are in operation;

Confirming both the United Kingdom and the Republic of Ireland may continue to make arrangements between themselves as to the movement of people and associated entitlements and rights in each other's territories ("Common Travel Area") and that Ireland has no present intention to exercise its option under Article 8 of Protocol (No 21) on The Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice to indicate that it no longer wishes to be covered by that Protocol or otherwise to assume obligations which would be incompatible with the operation of the CTA between itself and the United Kingdom, and the United Kingdom has no present intention to require visas for visits and short stays by EEA nationals;

Acknowledging that goods in transit between the Parties present a reduced security and safety risk and should be facilitated to the maximum extent possible whenever justified;

Noting that intermediaries play a key role in facilitating cross-border trade and take the burden of compliance away from economic operators and that measures are needed to maximize their role in trade facilitation;

Recognising that assistance and support is required for Small-and-Medium Sized (SME) economic operators engaged in cross-border trade and that such trade is to be encouraged;

Noting that self-assessment and periodic declarations by economic operators can greatly contribute to the facilitation of cross-border trade and should be used whenever possible to unburden them from customs formalities;

HAVE AGREED AS FOLLOWS:

Article 1

This Annex shall apply to the cross-border movement of goods between the United Kingdom and the Republic of Ireland.

Article 2

The Parties agree that, in light of the commitments made in this Annex, as well as existing technology and systems, there is no requirement for erecting new frontier or customs control points or infrastructure at the border between the Parties.

Article 3

The Parties agree to develop and invest in IT systems that will improve cross-border trade without the need for establishing border control infrastructure.

Article 4

Customs clearance declarations may be done at the premises of the exporter and importer or logistic service provider using available IT systems. In such cases, customs obligations may be carried out via administrative processes and away from the border.

Article 5

Both Parties will apply and enhance the customs cross-border simplifications which are now already available within the UCC and corresponding legislation and measures adopted by the United Kingdom to mirror those provisions.

Article 6

Both Parties will ensure that technical checks for goods take place at a reasonable distance from the border, including in facilities on either side of their common land border.

Article 7

The United Kingdom commits to continue to participate in the systems developed by the European Union for customs facilitation purposes as updated or replaced from time to time. In the event of these systems being changed by the European Union in a way which causes difficulty or other similar unforeseen circumstances, the Parties shall seek to agree appropriate revisions and modes of operation with the aim of maintaining or improving customs facilitation.

Article 8

Inland clearance shall be made available to registered cross-border traders through electronic export and import declarations being made and, if required, inspections by HMRC or the Irish Revenue Commissioners as applicable or authorised intermediaries at the importer's premises.

Article 9

The Parties agree to invest in support and training for small and medium sized businesses who are involved in trade across the Irish Border and to take necessary steps to permit and encourage the establishment of intermediary service providers to provide customs services to small and medium sized businesses.

Article 10

For goods in transit between the Republic of Ireland and the United Kingdom the movement of goods between loading and unloading points will be regulated through the existing NCTS system.

Article 11

The Parties agree that all trade of goods to which veterinary or SPS rules apply between Great Britain and Northern Ireland and the Republic of Ireland, and between Northern Ireland and the Republic of Ireland will be required to use the TRACES system so all relevant transactions and regulations can be monitored.

Article 12

1. The United Kingdom shall ensure that the measures in force in respect of the entry of animals into Northern Ireland that facilitate the common bio-security zone for the purposes of disease prevention and protection of public health shall continue to operate.

2. In the event of proposed changes to either Party's regulations in this field, the Parties shall consult with the aim of adopting measures which continue to maintain the effectiveness of the common bio-security zone.

3. The European Union agrees to recognise such measures in Northern Ireland for the purposes of allowing animals to enter the territory of the Republic of Ireland without being required to undergo further veterinary inspection and the United Kingdom agrees to recognise the equivalent measures in the Republic of Ireland for the purposes of allowing animals to enter the territory of the United Kingdom.

Article 13

SPS measures included in Chapter 12 (Sanitary and Phytosanitary Measures) of this Agreement relating to import requirements are incorporated by reference into this Annex.

Article 14

Veterinary inspections can be done at the premises of the exporter and/or importer or at centralised inspection points by qualified inspectors.

Article 15

Control on trade in livestock can be done through traceability systems and supply chain integration and by enhancing measures in the existing bio-security zone regulations for the island of Ireland and enforced at the ports of the Irish Sea.

Article 16

The Parties may agree to increase the intensity of in-facility veterinary checks to be agreed in specific future veterinary agreements between them.

Article 17

The relevant authorities in Northern Ireland and the Republic of Ireland shall, if requested, share information to cooperate in accordance with Belfast Agreement.

Article 18

If this Agreement is terminated by either Party for any reason, this Annex shall continue in force, and the Parties shall agree separately such modifications, improvements and additions necessary for its provisions to continue to take effect.

Article 19

In the event of an inconsistency between this Annex and the rest of this Chapter as it affects Northern Ireland and the Irish land border, this Annex shall prevail.

Article 20

The Parties agree that they will not place physical infrastructure on the Irish land border unless there are fundamental changes to the facts and circumstances pursuant to the relevant provisions of the Vienna Convention on the Law of Treaties signed at Vienna, 23rd May 1969.

Comments

These measures are based on existing FTAs, in particular TPP, and also form the basis of alternate backstop text for the Irish border in the Malthouse Compromise.

CHAPTER 4
RULES OF ORIGIN AND ORIGIN PROCEDURES

PART I: RULES OF ORIGIN

Article 4.1: Definitions

For the purposes of this Chapter:

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

(b) “**classified**” means the classification of a product under a particular heading or subheading of the HS;

(c) ‘**cumulation**” means a system that allows products which originate in either Party, to be considered as materials originating in the other Party or a beneficiary country which either Party has a preferential agreement or arrangement when they are further processed or incorporated into a product in that Party or beneficiary country;

(d) “**customs value**” means the value as determined in accordance with the Customs Valuation Agreement;

(e) “**determination of origin**” means a determination as to whether a product qualifies as an originating product in accordance with this Protocol;

(f) “**exporter**” means an exporter located in the territory of a Party;

(g) “**identical originating products**” means products that are the same in all respects, including physical characteristics, quality, and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those products under this Protocol;

(h) “**importer**” means an importer located in the territory of a Party;

(i) “**material**” means any ingredient, component, part, or product that is used in the production of another product;

(j) “**net weight of non-originating material**” means the weight of the material as it is used in the production of the product, not including the weight of the material's packaging;

(k) "**net weight of the product**" means the weight of a product not including the weight of packaging. In addition, if the production includes a heating or drying operation, the net weight of the product may be the net weight of all materials used in its production, excluding water of heading 22.01 added during production of the product;

(l) "**producer**" means a person who engages in any kind of working or processing including such operations as growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, assembling, or disassembling a product;

(m) "**product**" means the result of production, even if it is intended for use as a material in the production of another product;

(n) "**production**" means any kind of working or processing, including such operations as growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, assembling, or disassembling a product;

(o) "**transaction value or ex-works price of the product**" means the price paid or payable to the producer of the product at the place where the last production was carried out, and must include the value of all materials. If there is no price paid or payable or if it does not include the value of all materials, the transaction value or ex-works price of the product:

(i) must include the value of all materials and the cost of production employed in producing the product, calculated in accordance with generally accepted accounting principles; and

(ii) may include amounts for general expenses and profit to the producer that can be reasonably allocated to the product.

Any internal taxes which are, or may be, repaid when the product obtained is exported are excluded. If the transaction value or ex-works price of the product includes costs incurred subsequent to the product leaving the place of production, such as transportation, loading, unloading, handling, or insurance, those costs are to be excluded; and

(p) "**value of non-originating materials**" means the customs value of the material at the time of its importation into a Party, as determined in accordance with the Customs Valuation Agreement. The value of the non-originating material must include any costs incurred in transporting the material to the place of importation, such as transportation, loading, unloading, handling, or insurance. If the customs value is not known or cannot be ascertained, the value of non-originating materials will be the first ascertainable price paid for the materials in the European Union or in the United Kingdom.

Article 4.2: Originating Goods

1. Except as otherwise provided in Annex 4.1, 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 of the Parties;

   (b) has been wholly obtained within the meaning of Article 4.3;

   (c) has been produced exclusively from materials originating in the territory of either Party; or

   (d) has undergone sufficient production within the meaning of Article 4.4.

2. Except as provided for in Article 4.14, the conditions sets out in this Chapter relating to the acquisition of originating status must be fulfilled without interruption in the territory of one or both of the Parties.

Article 4.3: Wholly Obtained Products

1. The following products shall be considered as wholly obtained in a Party:

   (a) Mineral products and other non-living natural resources extracted or taken from there;

   (b) Vegetables, plants and plant products harvested or gathered there;

   (c) Live animals born or raised there

   (d) Products obtained from live animals there;

   (e) Products obtained from slaughtered animals born and raised there;

   (f) Products obtained by hunting, trapping, or fishing conducted there, but not beyond the outer limits of the Party's territorial sea;

   (g) Products of aquaculture raised there;

(h) Fish, shellfish, and other marine life taken beyond the outer limits of any territorial sea by a vessel;

(i) Products made aboard factory ships exclusively from products referred to in (h).

(j) Mineral products and other non-living natural resources, taken or extracted from the seabed, subsoil, or ocean floor of:

i. the exclusive economic zone of the UK or the European Union's Member States, as determined by domestic law and consistent with Part V of the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982 ("UNCLOS");

ii. the continental shelf of the UK or the European Union's Member States, as determined by domestic law and consistent with Part VI of UNCLOS; or

iii. the Area as defined in Article 1(1) of UNCLOS,

by a Party or a person of a Party, provided that that Party or person of a Party has rights to exploit such seabed, subsoil, or ocean floor;

(k) raw materials recovered from used products collected there, provided that these products are fit only for such recovery;

(l) components recovered from used products collected there, provided that these products are fit only for such recovery, when the component is:

i. incorporated into another product; or

ii. further produced resulting in a product with a performance and life expectancy equivalent or similar to those of a new product of the same type;

(m) products, at any stage of production, produced there exclusively from products specified in subparagraphs (a) through (i).

2. For the purpose of subparagraphs 1(h) and (i), the following conditions apply to the vessel or factory ship:

(a) the vessel or factory ship must be:

i. registered in a Member State of the European Union or in the United Kingdom; or

ii. listed in the United Kingdom, if such vessel:

a. immediately prior to its listing in the United Kingdom, is entitled to fly the flag of a Member State of the European Union and must sail under that flag; and

b. fulfills the conditions of sub-subparagraphs 2(b)(i) or 2(b)(ii);

iii. entitled to fly the flag of a Member State of the European Union or of the United Kingdom and must sail under that flag; and

(b) with respect to the European Union, the vessel or factory ship must be:

i. at least 50 per cent owned by nationals of a Member State of the European Union; or

ii. owned by companies that have their head office and their main place of business in a Member State of the European Union, and that are at least 50 per cent owned by a Member State of the European Union, public entities or nationals of a Member State of the European Union; or

(c) with respect to the United Kingdom, the vessel or factory ship must take the fish, shellfish, or other marine life under the authority of a UK fishing licence. The holder of a UK fishing license must be:

i. a UK national;

ii. an enterprise that is no more than 49 per cent foreign owned and has a commercial presence in the UK; or

iii. a fishing vessel owned by a person referred to in sub-subparagraph (i) or (ii) that is registered in the UK, entitled to fly the flag of the UK and must sail under that flag;

Article 4.4: Sufficient Working

1. For the purpose of Article 4.3, products that are not wholly obtained are considered to have undergone sufficient working when the conditions set out in Annex 4.1 are fulfilled.

2. If a non-originating material undergoes sufficient working, the resulting product shall be considered as originating and no account shall be taken of the non-originating material contained therein when that product is used in the subsequent production of another product.

Article 4.5: Insufficient Working

1. Without prejudice to Article 4.4, the following operations are insufficient to confer origin on a product, whether or not the requirements of the preceding Articles in this chapter are satisfied:

   (a) operations exclusively intended to preserve products in good condition during storage and transport;[4]

   (b) breaking-up or assembly of packages;

   (c) washing, cleaning, or operations to remove dust, oxide, oil, paint, or other coverings from a product;

   (d) ironing or pressing of textiles or textile articles of Chapter 50 through 63 of the HS;

   (e) simple painting or polishing operations;

   (f) husking, partial or total bleaching, polishing, or glazing of cereals or rice of Chapter 10 that does not result in a change of chapter;

   (g) operations to colour or flavour sugar of heading 17.01 or 17.02; operations to form sugar lumps of heading 17.01; partial or total grinding of crystal sugar of heading 17.01;

[4] Preserving operations such as chilling, freezing, or ventilating are considered insufficient within the meaning of subparagraph (a), whereas operations such as pickling, drying, or smoking that are intended to give a product special or different characteristics are not considered insufficient.

(h) peeling, stoning, or shelling of vegetables of Chapter 7, fruits of Chapter 8, nuts of heading 08.01 or 08.02 or groundnuts of heading 12.02, if these vegetables, fruits, nuts, or groundnuts remain classified within the same chapter;

(i) sharpening, simple grinding, or simple cutting;

(j) simple sifting, screening, sorting, classifying, grading, or matching;

(k) simple packaging operations, such as placing in bottles, cans, flasks, bags, cases, boxes, or fixing on cards or boards;

(l) affixing or printing marks, labels, logos, and other like distinguishing signs on the products or their packaging;

(m) simple mixing of materials, whether or not of different kinds, unless this results in an operation that causes a chemical reaction;

(n) simple assembly of parts of articles to constitute a complete article of Chapter 61, 62, or 82 through 97 of the HS or disassembly of complete articles of Chapter 61, 62, or 82 through 97 into parts;

(o) a combination of two or more operations specified in subparagraphs (a) to (o); and

(p) slaughter of animals.

2. For the purpose of paragraph 1, an operation shall be considered simple when neither special skills, machines, apparatus, or tools especially produced or installed for those operations are required for their performance or when those skills, machines, apparatus, or tools do not contribute to the product's essential characteristics or properties.

Article 4.6: Cumulation of Origin

1. A product that qualifies as originating in a Party shall be considered as originating in the other Party if used as a material in the production of another product in the other Party.

2. Production carried out in a Party on a non-originating material may be taken into account for the purpose of determining whether a product is originating in the other Party.

3. Paragraphs 1 and 2 do not apply if the production carried out on a product does not go beyond the operations referred to in Article 4.5 and the object of this production, as demonstrated on the basis of a preponderance of evidence, is to circumvent financial or fiscal legislation of the Parties.

4. If an exporter has completed an origin declaration for a product referred to in Paragraph 1, the exporter must possess a completed and signed supplier's statement from the supplier of the non-originating materials used in the production of the product.

5. Subject to Paragraph 3, if, as permitted by the WTO Agreement and the GATT 1994, each Party has a free trade agreement with the same third country, a material of that third country may be taken into consideration by the exporter when determining whether a product is originating under this Agreement.

Article 4.7: Tolerance

1. Notwithstanding Article 4.4, and except as provided in paragraph 3, if the non-originating materials used in the production of a product do not fulfil the conditions set out in Annex 4.1, the product shall be considered an originating product provided that:

   (a) the total value of those non-originating materials does not exceed 25 per cent of the transaction value or ex-works price of the product;

   (b) any of the percentages given in Annex 4.1 for the maximum value or weight of non-originating materials are not exceeded through the application of this paragraph; and

   (c) the product satisfies all other applicable requirements of this Protocol.

2. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article 4. If the rule of origin specified in Annex 4.1 requires that the materials used in the production of a product be wholly obtained, the tolerance provided for in paragraph 1 applies to the sum of these materials.

3. Tolerance for textile and apparel products of Chapter 50 through 63 of the HS shall be determined in accordance with Annex 4.1.

Article 4.8: Unit of Classification

For the purpose of this Chapter:

(a) the tariff classification of a particular product or material shall be determined according to the HS;

(b) when a product composed of a group or assembly of articles or components is classified pursuant to the terms of the HS under a single heading or subheading, the whole shall constitute the particular product; and

(c) when a shipment consists of a number of identical products classified under the same heading or subheading of the HS, each product shall be considered separately.

Article 4.9: Packaging and Packing Materials and Containers

(a) If, under General Rule 5 of the HS, packaging is included with the product for classification purposes, it is considered in determining whether all the non-originating materials used in the production of the product satisfy the requirements set out in Annex 4.1.

(b) Packing materials and containers in which a product is packed for shipment shall be disregarded in determining the origin of that product.

Article 4.10: Accounting Segregation of Fungible Materials or Products

1(a) If originating and non-originating fungible materials are used in the production of a product, the determination of the origin of the fungible materials does not need to be made through physical separation and identification of any specific fungible material, but may be determined on the basis of an inventory management system; or

1(b) if originating and non-originating fungible products of Chapter 10, 15, 27, 28, 29, heading 32.01 through 32.07, or heading 39.01 through 39.14 of the HS are physically combined or mixed in inventory in a Party before exportation to the other Party, the determination of the origin of the fungible products does not need to be made through physical separation and identification of any specific fungible product, but may be determined on the basis of an inventory management system.

2. The inventory management system must:

(a) ensure that, at any time, no more products receive originating status than would have been the case if the fungible materials or fungible products had been physically segregated;

(b) specify the quantity of originating and non-originating materials or products, including the dates on which those materials or products were placed in inventory and, if required by the applicable rule of origin, the value of those materials or products;

(c) specify the quantity of products produced using fungible materials, or the quantity of fungible products, that are supplied to customers who require evidence of origin in a Party for the purpose of obtaining preferential treatment under this Agreement, as well as to customers who do not require such evidence; and

(d) indicate whether an inventory of originating products was available in sufficient quantity to support the declaration of originating status.

3. A Party may require that an exporter or producer within its territory that is seeking to use an inventory management system pursuant to this Article obtain prior authorisation from that Party in order to use that system. The Party may withdraw authorisation to use an inventory management system if the exporter or producer makes improper use of it.

4. For the purpose of Paragraph 1, "fungible materials" or "fungible products" means materials or products that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes.

Article 4.11: Accessories, Spare Parts and Tools

Accessories, spare parts, and tools delivered with a product that form part of its standard accessories, spare parts, or tools, that are not invoiced separately from the product and which quantities and value are customary for the product, shall be:

(a) taken into account in calculating the value of the relevant non-originating materials when the rule of origin of Annex 4.1 applicable to the product contains a percentage for the maximum value of non-originating materials; and

(b) disregarded in determining whether all the non-originating materials used in the production of the product undergo the applicable change in tariff classification or other requirements set out in Annex 4.1.

Article 4.12: Sets

1. A set, as referred to in General Rule 3 of the HS, is considered originating provided that:

   (a) all of the set's component products are originating; or

   (b) when the set contains a non-originating component product, at least one of the component products or all of the packaging material and containers for the set is originating; and

      i. the value of the non-originating component products of Chapter 1 through 24 of the Harmonized System does not exceed 25 per cent of the transaction value or ex-works price of the set;

      ii. the value of the non-originating component products of Chapter 25 through 97 of the Harmonized System does not exceed 25 per cent of the transaction value or ex-works price of the set; and

      iii. the value of all of the set's non-originating component products does not exceed 25 per cent of the transaction value or ex-works price of the set.

2. The value of non-originating component products is calculated in the same manner as the value of non-originating materials.

3. The transaction value or ex-works price of the set shall be calculated in the same manner as the transaction value or ex-works price of the product.

Article 4.13: Neutral elements

For the purpose of determining whether a product is originating, it is not necessary to determine the origin of the following which might be used in its production:

(a) energy and fuel;

(b) plant and equipment;

(c) machines and tools; or

(d) materials which do not enter and which are not intended to enter into the final composition of the product.

Article 4:14: Transport through a third country

1. A product that has undergone production that satisfies the requirements of Article 4.4shall be considered originating only if, subsequent to that production, the product:

   (a) does not undergo further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the product to the territory of a Party; and

   (b) remains under customs control while outside the territories of the Parties.

2. The storage of products and shipments or the splitting of shipments may take place where carried out under the responsibility of the exporter or of a subsequent holder of the products and the products remain under customs control in the country or countries of transit.

Article 4.15: Returned originating products

If an originating product exported from a Party to a third country returns, it shall be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that the returning product:

(a) is the same as that exported; and

(b) has not undergone any operation beyond that necessary to preserve it in good condition.

Article 4.16: Net cost

1. For the purpose of this Article, the following definitions apply, in addition to those set out in Article 1:

"**motor vehicle**" means a product of subheading 8703.21 through 8703.90 of the Harmonized System;

"**net cost**" means total cost minus sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, and non-allowable interest cost that are included in the total cost;

"**non-allowable interest cost**" means interest costs incurred by a producer that exceed 700 basis points above the applicable national government interest rate identified for comparable maturities;

"**royalty**" means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

(a) personnel training, without regard to where it is performed; and

(b) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services.

"**sales promotion, marketing, and after-sales service costs**" means the following costs related to sales promotion, marketing, and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogues, technical literature, price lists, service manuals and sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages; sales commissions; bonuses; benefits (for example, medical, insurance, and pension); travelling and living expenses; and membership and professional fees for sales promotion, marketing, and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, if those costs are identified separately for sales promotion, marketing, and after-sales service of products on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing, and after-sales service of products, if those costs are identified separately for sales promotion, marketing, and after-sales service of products on the financial statements or cost accounts of the producer;

(g) telephone, mail, and other communications, if those costs are identified separately for sales promotion, marketing, and after-sales service of products on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centres, where such costs are identified separately for sales promotion, marketing, and after-sales service of products on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs.

"**shipping and packing costs**" means the costs incurred in packing a product for shipment and shipping the product from the point of direct shipment to the buyer, excluding costs of preparing and packaging the product for retail sale; and

"**total cost**" means all product costs, period costs and other costs incurred in relation to the production of a product in the United Kingdom:

(a) "**product costs**" means those costs that are associated with the production of a product and include the value of materials, direct labour costs, and direct overheads.

(b) "**period costs**" means those costs other than product costs that are expensed in the period in which they are incurred, including selling expenses and general and administrative expenses.

(c) "**other costs**" means all costs recorded on the books of the producer that are not product costs or period costs.

2. For the purpose of calculating the net cost of a product, the producer of the product may:

(a) calculate the total cost incurred with respect to all products produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, and non-allowable interest cost that is included in the total cost of all those products, and then reasonably allocate the resulting net cost of those products to the product;

(b) calculate the total cost incurred with respect to all products produced by that producer, reasonably allocate the total cost to the product, and then subtract any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs and non-allowable interest cost that is included in the portion of the total cost allocated to the product; or

(c) reasonably allocate each cost that forms part of the total cost incurred by that producer with respect to the product so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, or non-allowable interest cost.

3. For the purpose of calculating the net cost of a product under paragraph 1, the producer may average its calculation over its fiscal year using any one of the following categories, on the basis of either all motor vehicles produced by that producer in the category or only those motor vehicles in the category that are produced by that producer and exported to the territory of the other Party:

(a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;

(b) the same model line of motor vehicles produced in the same plant in the territory of a Party;

(c) the same model line of motor vehicles produced in the territory of a Party;

(d) the same class of motor vehicles produced in the same plant in the territory of a Party; or

(e) any other category as the Parties may decide.

PART II: ORIGIN PROCEDURES

Article 4.17: Proof of origin

1. Products originating in the European Union, on importation into the UK, and products originating in the UK, on importation into the European Union, benefit from preferential tariff treatment of this Agreement on the basis of a declaration ("origin declaration").

2. The origin declaration may be provided on an invoice or any other commercial document that describes the originating product in sufficient detail to enable its identification.

Article 4.18: Obligations regarding exportation

1. An origin declaration as referred to in Article 4.17.1 shall be completed:

    (a) in the European Union, by an exporter in accordance with the relevant European Union legislation; and

    (b) in the UK, by an exporter in accordance with its relevant customs law or by analogue to the UCC;

2. The exporter completing an origin declaration shall at the request of the customs authority of the Party of export submit a copy of the origin declaration and all appropriate documents proving the originating status of the products concerned, including supporting documents or written statements from the producers or suppliers, and fulfil the other requirements of this Protocol.

3. An origin declaration shall be completed and signed by the exporter unless otherwise provided.

4. A Party may allow an origin declaration to be completed by the exporter when the products to which it relates are exported, or after exportation if the origin declaration is presented in the importing Party within two years after the importation of the products to which it relates or within a longer period of time if specified in the laws of the importing Party.

5. The customs authority of the Party of import may allow the application of an origin declaration to multiple shipments of identical originating products that take place within a period of time that does not exceed 12 months as set out by the exporter in that declaration.

6. An exporter that has completed an origin declaration and becomes aware or has reason to believe that the origin declaration contains incorrect information shall immediately notify the importer in writing of any change affecting the originating status of each product to which the origin declaration applies.

7. The Parties may allow the establishment of a system that permits an origin declaration to be submitted electronically and directly from the exporter in the territory of a Party to an importer in the territory of the other Party, including the replacement of the exporter's signature on the origin declaration with an electronic signature or identification code.

Article 4.19: Validity of the origin declaration

1. An origin declaration shall be valid for 12 months from the date it was completed by the exporter, or for such longer period of time as provided by the Party of import. The preferential tariff treatment may be claimed, within this validity period, to the customs authority of the Party of import.

2. The Party of import may accept an origin declaration submitted to its customs authority after the validity period referred to in Paragraph 1 for the purpose of preferential tariff treatment in accordance with that Party's laws.

Article 4.20: Obligations regarding importations

1. For the purpose of claiming preferential tariff treatment, the importer shall:

(a) submit the origin declaration to the customs authority of the Party of import as required by and in accordance with the procedures applicable in that Party;

(b) if required by the customs authority of the Party of import, submit a translation of the origin declaration; and

(c) if required by the customs authority of the Party of import, provide for a statement accompanying or forming a part of the import declaration, to the effect that the products meet the conditions required for the application of this Agreement.

2. An importer that becomes aware or has reason to believe that an origin declaration for a product to which preferential tariff treatment has been granted contains incorrect information shall immediately notify the customs authority of the Party of import in writing of any change affecting the originating status of that product and pay any duties owing.

3. When an importer claims preferential tariff treatment for a good imported from the territory of the other Party, the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Protocol.

4. A Party shall, in conformity with its laws, provide that, if a product would have qualified as an originating product when it was imported into the territory of that Party but the importer did not have an origin declaration at the time of importation, the importer of the product may, within a period of time of no less than three years after the date of importation, apply for a refund of duties paid as a result of the product not having been accorded preferential tariff treatment.

Article 4.21: Proof related to transport through a third country

Each Party, through its customs authority, may require an importer to demonstrate that a product for which the importer claims preferential tariff treatment was shipped in accordance with Article 4.14 by providing:

(a) carrier documents, including bills of lading or waybills, indicating the shipping route and all points of shipment and transhipment prior to the importation of the product; and

(b) when the product is shipped through or transhipped outside the territories of the Parties, a copy of the customs control documents indicating to that customs authority that the product remained under customs control while outside the territories of the Parties.

Article 4.22: Importation by instalments

Each Party shall provide that if dismantled or non-assembled products within the meaning of General Rule 2(a) of the Harmonised System falling within Sections XVI and XVII or heading 7308 and 9406 of the Harmonised System are imported by instalments at the request of the importer and on the conditions set out by the customs authority of the Party of import, a single origin declaration for these products shall be submitted, as required, to that customs authority upon importation of the first instalment.

Article 4.23: Exemptions from origin declarations

1. A Party may, in conformity with its laws, waive the requirement to present an origin declaration as referred to in Article 4.21, for low value shipments of originating products from another Party and for originating products forming part of the personal luggage of a traveller coming from another Party.

2. A Party may exclude any importation from the provisions of Paragraph 1 when the importation is part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of this Protocol related to origin declarations.

3. The Parties may set value limits for products referred to in paragraph 1, and shall exchange information regarding those limits.

Article 4.24: Supporting documents

The documents referred to in Article 4.18.2 may include documents relating to the following:

(a) the production processes carried out on the originating product or on materials used in the production of that product;

(b) the purchase of, the cost of, the value of, and the payment for the product;

(c) the origin of, the purchase of, the cost of, the value of, and the payment for all materials, including neutral elements, used in the production of the product; and

(d) the shipment of the product.

Article 4.25: Preservation of records

1. An exporter that has completed an origin declaration shall keep a copy of the origin declaration, as well as the supporting documents referred to in Article 14.24, for three years after the completion of the origin declaration or for a longer period of time as the Party of export may specify.

2. If an exporter has based an origin declaration on a written statement from the producer, the producer shall be required to maintain records in accordance with Paragraph 1.

3. When provided for in laws of the Party of import, an importer that has been granted preferential tariff treatment shall keep documentation relating to the importation of the product, including a copy of the origin declaration, for three years after the date on which preferential treatment was granted, or for a longer period of time as that Party may specify.

4. Each Party shall permit, in accordance with that Party's laws, importers, exporters, and producers in its territory to maintain documentation or records in any medium, provided that the documentation or records can be retrieved and printed.

5. A Party may deny preferential tariff treatment to a product that is the subject of an origin verification when the importer, exporter, or producer of the product that is required to maintain records or documentation under this Article:

   (a) fails to maintain records or documentation relevant to determining the origin of the product in accordance with the requirements of this Protocol; or

   (b) denies access to those records or documentation.

Article 4.26: Discrepancies and formal errors

1. The discovery of slight discrepancies between the statements made in the origin declaration and those made in the documents submitted to the customs authorities for the purpose of carrying out the formalities for importing the products shall not, because of that fact, render the origin declaration null and void if it is established that this document corresponds to the products submitted.

2. Obvious formal errors such as typing errors on an origin declaration shall not cause this document to be rejected if these errors do not create doubts concerning the correctness of the statements made in the document.

Article 4.27: Cooperation

1. The Parties shall cooperate in the uniform administration and interpretation of this Protocol and, through their customs authorities, assist each other in verifying the originating status of the products on which an origin declaration is based.

2. For the purpose of facilitating the verifications or assistance referred to in paragraph 1, the customs authorities of the Parties shall provide each other, through the European Commission, with addresses of the responsible customs authorities.

3. It is understood that the customs authorities of the Parties of export assumes all expenses in carrying out Paragraph 1.

4. It is further understood that the customs authorities of the Parties will discuss the overall operation and administration of the verification process, including forecasting of workload and discussing priorities. If there is an unusual increase in the number of requests, the customs authorities of the Parties will consult to establish priorities and consider steps to manage the workload, taking into consideration operational requirements.

5. With respect to products considered originating in accordance with Article 3, the Parties may cooperate with a third country to develop customs procedures based on the principles of this Protocol.

Article 4.28: Origin verification

1. For the purpose of ensuring the proper application of this Protocol, the Parties shall assist each other, through their customs authorities, in verifying whether products are originating and ensuring the accuracy of claims for preferential tariff treatment.

2. A Party's request for an origin verification concerning whether a product is originating or whether all other requirements of this Protocol are fulfilled shall be:

   (a) based on risk assessment methods applied by the customs authority of the Party of import, which may include random selection; or

(b) made when the Party of import has reasonable doubts about whether the product is originating or whether all other requirements of this Protocol have been fulfilled.

3. The customs authority of the Party of import may verify whether a product is originating by requesting, in writing, that the customs authority of the Party of export conduct a verification concerning whether a product is originating. When requesting a verification, the customs authority of the Party of import shall provide the customs authority of the Party of export with:

   (a) the identity of the customs authority issuing the request;

   (b) the name of the exporter or producer to be verified;

   (c) the subject and scope of the verification; and

   (d) a copy of the origin declaration and, where applicable, any other relevant documentation.

4. When appropriate, the customs authority of the Party of import may request, pursuant to Paragraph 3, specific documentation and information from the customs authority of the Party of export.

5. A request made by the customs authority of the Party of import pursuant to paragraph 3 shall be provided to the customs authority of the Party of export by certified or registered mail or any other method that produces a confirmation of receipt by that customs authority.

6. The customs authority of the Party of export shall proceed to the origin verification. For this purpose, the customs authority may, in accordance with its laws, request documentation, call for any evidence, or visit the premises of an exporter or a producer to review the records referred to in Article 4.25 and observe the facilities used in the production of the product.

7. If an exporter has based an origin declaration on a written statement from the producer or supplier, the exporter may arrange for the producer or supplier to provide documentation or information directly to the customs authority of the Party of export upon that Party's request.

8. As soon as possible and in any event within 12 months after receiving the request referred to in Paragraph 4, the customs authority of the Party of export shall complete a verification of whether the product is originating and fulfils the other requirements of this Protocol, and shall:

   (a) provide to the customs authority of the Party of import, by certified or registered mail or any other method that produces a confirmation of receipt by that customs authority, a written report in order for it to determine whether the product is originating or not, and that contains:

      i. the results of the verification;

      ii. the description of the product subject to verification and the tariff classification relevant to the application of the rule of origin;

      iii. a description and explanation of the production sufficient to support the rationale concerning the originating status of the product;

      iv. information on the manner in which the verification was conducted; and

      v. where appropriate, supporting documentation; and

   (b) subject to its laws, notify the exporter of its decision concerning whether the product is originating.

9. The period of time referred to in paragraph 8 may be extended by mutual consent of the customs authorities concerned.

10. Pending the results of an origin verification conducted pursuant to Paragraph 8, or consultations under Paragraph 13, the customs authority of the Party of import, subject to any precautionary measures it deems necessary, shall offer to release the product to the importer.

11. If the result of an origin verification has not been provided in accordance with Paragraph 8, the customs authority of the importing Party may deny preferential tariff treatment to a product if it has reasonable doubt or when it is unable to determine whether the product is originating.

12. If there are differences in relation to the verification procedures of this Article or in the interpretation of the rules of origin in determining whether a product qualifies as originating, and these differences cannot be resolved through consultations between the customs authority requesting the verification and the customs authority responsible for performing the verification, and if the customs authority of the importing Party intends to make a determination of origin that is inconsistent with the written report provided under paragraph 8(a) by the customs authority of the exporting Party, the importing Party shall notify the exporting Party within 60 days of receiving the written report.

13. At the request of either Party, the Parties shall hold and conclude consultations within 90 days from the date of the notification referred to in paragraph 12 to resolve those differences. The period of time for concluding consultations may be extended on a case by case basis by mutual written consent between the Parties. The customs authority of the importing Party may make its determination of origin after the conclusion of these consultations. The Parties may also seek to resolve those differences within the Sub-Committee referred to in Chapter 2.

14. In all cases, the settlement of differences between the importer and the customs authority of the Party of import shall be under the law of the Party of import.

15. This Chapter does not prevent a customs authority of a Party from issuing a determination of origin or an advance ruling relating to any matter under consideration by the Sub-Committee established under Chapter 2 or from taking any other action that it considers necessary, pending a resolution of the matter under this Agreement.

Article 4.29: Review and appeal

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings issued by its customs authority as it provides to importers in its territory, to any person who:

   (a) has received a determination on origin in the application of this Chapter; or

   (b) has received an advance ruling pursuant to Article 4.32.

2. Each Party shall provide that the rights of review and appeal referred to in paragraph 1 include access to at least two levels of appeal or review including at least one judicial or quasi-judicial level.

Article 4.30: Penalties

Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws relating to this Chapter.

Article 4.31: Confidentiality

1. This Chapter does not require a Party to furnish or allow access to business information or to information relating to an identified or identifiable natural person, the disclosure of which would impede law enforcement or would be contrary to that Party's law protecting business information and personal data and privacy.

2. Each Party shall maintain, in conformity with its law, the confidentiality of the information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information. If the Party receiving or obtaining the information is required by its laws to disclose the information, that Party shall notify the person or Party who provided that information.

3. Each Party shall ensure that the confidential information collected pursuant to this Protocol shall not be used for purposes other than the administration and enforcement of determination of origin and of customs matters, except with the permission of the person or Party who provided the confidential information.

4. Notwithstanding paragraph 3, a Party may allow information collected pursuant to this Protocol to be used in any administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with customs related laws implementing this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

5. The Parties shall exchange information on their respective law concerning data protection for the purpose of facilitating the operation and application of paragraph 2.

Article 4.32: Advance rulings relating to origin

1. Each Party shall, through its customs authority, provide for the expeditious issuance of written advance rulings in accordance with its law, prior to the importation of a product into its territory, concerning whether a product qualifies as an originating product under this Chapter.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.

3. Each Party shall provide that its customs authority:

(a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;

(b) issue the ruling within 120 days from the date on which it has obtained all necessary information from the person requesting the advance ruling; and

(c) provide, to the person requesting the advance ruling, a full explanation of the reasons for the ruling.

4. When an application for an advance ruling involves an issue that is the subject of:

(a) a verification of origin;

(b) a review by, or appeal to, a customs authority; or

(c) a judicial or quasi-judicial review in the customs authority's territory; the customs authority, in accordance with its laws, may decline or postpone the issuance of the ruling.

5. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory of the product for which the ruling was requested on the date of its issuance or at a later date if specified in the ruling.

6. Each Party shall provide, to any person requesting an advance ruling, the same treatment as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

7. The Party issuing an advance ruling may modify or revoke an advance ruling:

(a) if the ruling is based on an error of fact;

(b) if there is a change in the material facts or circumstances on which the ruling is based;

(c) to conform with an amendment of Chapter Two (Market Access for Goods), or this Chapter; or

(d) to conform with a judicial decision or a change in its law.

8. Each Party shall provide that a modification or revocation of an advance ruling is effective on the date on which the modification or revocation is issued, or on a later date if specified in the ruling, and shall not be applied to importations of a product that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

9. Notwithstanding paragraph 8, the Party issuing the advance ruling may, in conformity with its law, postpone the effective date of a modification or revocation for no more than six months.

10. Subject to Paragraph 7, each Party shall provide that an advance ruling remains in effect and is honoured.

Article 4.33: Oversight by the Sub-Committee on Trade in Goods

1. In relation to the functioning of this Chapter, the Sub-Committee on Trade in Goods established in Chapter 2 of this Agreement shall have the following functions:

(a) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on:

(i) the implementation and operation of this Chapter; and

(ii) any amendments of the provisions of this Chapter proposed by a Party;

(b) adopting explanatory notes to facilitate the implementation of the provisions of this Chapter;

(c) setting the consultation procedure referred to in Article 4.28.13; and

(d) considering any other matter related to this Chapter as the representatives of the Parties may agree.

ANNEX 4.1

PRODUCT-SPECIFIC RULES OF ORIGIN

1. This Annex sets out the conditions required for a product to be considered originating within the meaning of Article 4.4 (Sufficient Working).

2. The following definitions apply:

   "**chapter**" means a chapter of the Harmonized System;

   "**heading**" means any four-digit number, or the first four digits of any number, used in the Harmonized System;

   "**section**" means a section of the Harmonized System;

   "**subheading**" means any six-digit number, or the first six digits of any number, used in the Harmonized System; and

   "**tariff provision**" means a chapter, heading, or subheading of the Harmonized System.

3. The product-specific rule of origin, or set of rules of origin, that applies to a product classified in a particular heading, subheading, or group of headings or subheadings is set out immediately adjacent to that heading, subheading, or group of headings or subheadings.

4. Unless otherwise specified, a requirement of a change in tariff classification or any other condition set out in a product-specific rule of origin applies only to non-originating material.

5. Section, chapter, heading, or subheading notes, where applicable, are found at the beginning of each new section, chapter, heading, or subheading. These notes must be read in conjunction with the product-specific rules of origin for the applicable section, chapter, heading, or subheading and may impose further conditions on, or provide an alternative to, the product-specific rules of origin.

6. Unless otherwise specified, reference to weight in a product-specific rule of origin means the net weight, which is the weight of a material or a product not including the weight of

packaging as set out in the definitions of "net weight of non-originating material" and "net weight of the product" in Article 4.1 (Definitions) of this Chapter.

7. If a product-specific rule of origin requires:

(a) a change from any other chapter, heading, or subheading, or a change to product *x*[5] from any other chapter, heading, or subheading, only non-originating material classified in a chapter, heading, or subheading other than that of the product may be used in the production of the product;

(b) a change from within a heading or subheading, or from within any one of these headings or subheadings, non-originating material classified within the heading or subheading may be used in the production of the product, as well as non-originating material classified in a chapter, heading, or subheading other than that of the product;

(c) a change from any heading or subheading outside a group, only non-originating material classified outside the group of headings or subheadings may be used in the production of the product;

(d) that a product is wholly obtained, the product must be wholly obtained within the meaning of Article 4.3 (Wholly Obtained Products). If a shipment consists of a number of identical products classified under tariff provision *x*, each product shall be considered separately;

(e) production in which all the material of tariff provision *x* used is wholly obtained, all of the material of tariff provision *x* used in production of the product must be wholly obtained within the meaning of Article 4.2 (Originating Goods);

(f) a change from tariff provision *x*, whether or not there is also a change from any other chapter, heading or subheading, the value of any non-originating material that satisfies the change in tariff classification specified in the phrase commencing with the words "whether or not" is not considered when calculating the value of non-originating materials. If two or more product-specific rules of origin are applicable to a heading, subheading, or group of headings or subheadings, the change in tariff

[5] In these notes product x or tariff provision x denotes a specific product or tariff provision, and x per cent denotes a specific percentage.

classification specified in this phrase reflects the change specified in the first rule of origin;

(g) that the value of non-originating materials of tariff provision *x* does not exceed *x* per cent of the transaction value or ex-works price of the product, only the value of the non-originating material specified in this rule of origin is considered when calculating the value of non-originating materials. The percentage for the maximum value of non-originating materials as set out in this rule of origin may not be exceeded through the use of Article 4.7 (Tolerance);

(h) that the value of non-originating materials classified in the same tariff provision as the final product does not exceed *x per cent* of the transaction value or ex-works price of the product, non-originating material classified in a tariff provision other than that of the product may be used in the production of the product. Only the value of the non-originating materials classified in the same tariff provision as the final product is considered when calculating the value of non-originating materials. The percentage for the maximum value of non-originating materials as set out in this rule of origin may not be exceeded through the use of Article 4.7 (Tolerance);

(i) that the value of all non-originating materials does not exceed *x* per cent of the transaction value or ex-works price of the product, the value of all non-originating materials is considered when calculating the value of non-originating materials. The percentage for the maximum value of non-originating materials as set out in this rule of origin may not be exceeded through the use of Article 4.7 (Tolerance); and

(j) that the net weight of non-originating material of tariff provision *x* used in production does not exceed *x* per cent of the net weight of the product, the specified non-originating materials may be used in the production of the product, provided that it does not exceed the specified percentage of the net weight of the product in accordance with the definition of "net weight of the product" in Article 1. The percentage for the maximum weight of non-originating material as set out in this rule of origin may not be exceeded through the use of Article 4.7 (Tolerance).

8. The product-specific rule of origin represents the minimum amount of production required on non-originating material for the resulting product to achieve originating status. A greater amount of production than that required by the product-specific rule of origin for that product also confers originating status.

9. If a product-specific rule of origin provides that a specified non-originating material may not be used, or that the value or weight of a specified non-originating material cannot exceed a specific threshold, these conditions do not apply to non-originating material classified elsewhere in the Harmonized System.

10. In accordance with Article 4.4 (Sufficient Working), when a material obtains originating status in the territory of a Party and this material is further used in the production of a product for which origin is being determined, no account will be taken of any non-originating material used in the production of that material. This applies whether or not the material has acquired originating status inside the same factory where the product is produced.

11. The product-specific rules of origin set out in this Annex also apply to used products.

[Table of Specific Products and Tolerances to be agreed and set forth here].

Comments

1. These Rules of Origin provisions are based on CETA and the EU-Japan FTA.

2. We have limited the application of local content rules as much as possible and limited the number of specific product rules to which these would apply. We have also increased percentages where we have found them to allow more non-local content to qualify under the rules in order to increase trade creation.

3. Rules of Origin should be simplified where possible to limit trade diversion. We have eliminated the provisions on sugar which are not applicable between the UK and EU. We have also increased percentages of local content requirements in order to make the overall agreement more trade creative. Of course, in an ideal world there would be very limited provisions on rules of content.

4. We have deleted some provisions from CETA. Each Party shall apply paragraph 8 only if equivalent provisions are in force between each Party and the third country and upon agreement by the Parties on the applicable conditions. We have eliminated this as we would want regional cumulation to apply to any third countries with whom the Parties have preferential arrangements. There may be other reasons why content from third countries

makes the overall product unacceptable in the EU, but customs/rules of origin should not be affected by this. It is therefore removed.

5. Article 4.7.(a) (Tolerance). The total value of those non-originating materials does not exceed certain percentage of the transaction value or ex-works price of the product; 10 per cent is the CETA tolerance. In keeping with seeking to make the agreement more open, we would suggest 25%.

6. Article 4.16.2: Calculating the net cost of a product. Canada agreement has a quota allocation for export of cars from Canada to the EU. We want to avoid this approach as it is highly managed trade and highly distortive.

7. Assumes no quotas between the EU and UK for agriculture/textiles etc as we would want zero restrictions (this will be an EU ask)].

8. It is possible to agree an auto pact (subject to WTO compliance) in order to obtain greater simplifications for the sector. This could include UN regs in the motor vehicles sector as in EU-Japan Agreement]. There may be other product-specific rules of origin we would agree.

CHAPTER 5
CROSS-BORDER TRADE IN SERVICES

Article 5.1: Scope

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

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

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

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

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

2. Such measures include measures affecting:

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

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

   (c) the access to 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 financial security as a condition for the supply of a service.

Article 5.2: National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers 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 favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 5.3: Most Favoured Nation

1. Each party shall accord to service providers of the other Party and to other Covered Enterprises treatment no less favourable that that it accords, in like situations, to service providers of a third country and to their enterprises, with respect to establishment or operation in its territory.

2. Paragraph 1 shall not be construed as obliging a party to extend to service providers of the other Party and to covered Enterprises the benefit of any treatment resulting from:

   (a) An international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation;

   (b) Existing or future measures providing for recognition of qualifications, licenses or prudential measures as referred to Article VII of GATS or paragraph 3 of its Annex on Financial Services

3. Substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute treatment under this Article. For greater certainty, actions or inactions of a Party in relation to those provisions can constitute treatment and thus can give rise to a breach of this Article to the extent that the breach is not established solely based on the said provisions.

Article 5.4: 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:

1. impose limitations on:

   (a) the number of service 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 service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) 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

(d) 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

(e) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or

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

Article 5.5: 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 5.6: Senior Management

A Party shall not require a Covered Enterprise to appoint individuals of any particular nationality as executives, managers or members of boards of directors.

Article 5.7: Prohibition on Performance Requirements

1. A Party shall not impose or enforce any of the following requirements or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory:

   (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 or services supplied in its territory, or to purchase goods or services from natural or juridical persons or any other entity 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 Enterprise;

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

(f) To restrict exportation or sale for export;

(g) To transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its territory;

(h) To locate the headquarters of such enterprise for a specific region of the world market in its territory;

(i) To hire a given number or percentage of its nationals;

(j) To achieve a given level or value of research and development in its territory;

(k) To supply one or more of the goods produced or services supplied by the enterprise to a specific region or to the world market exclusively from its own territory; or

(l) To adopt:

i. A rate or amount of royalty below a certain level; or

ii. A given duration of the term of a licence contract[6];

[6] A "licence contract" means any contract concerning the licencing of technology, a production process or other proprietary knowledge

With regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or juridical person or any other entity in its territory, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of a non-judicial governmental authority of a Party.

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with any of the following requirements:

   (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 natural or juridical persons or any other entity 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 enterprise;

   (d) To restrict sales of goods or services in its territory that such enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or

   (e) To restrict exportation or sale for export.

3. The restrictions in this Chapter do not apply when:

   (a) A Party authorises use of an intellectual property right in accordance with Article 31 or 31bis of the TRIPS agreement, or measures requiring the disclosure of data or proprietary information that fall within the scope of, are consistent with, paragraph 3 of Article 39 of the TRIPS agreement; or

   (b) The requirement is imposed or enforced, or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority in order to remedy a violation of competition law, the enforcement of a Party's copyright laws.

Article 5.8: Non-Conforming Measures

Neither Party may apply non-conforming measures unless specifically listed in Annex 5.1.

Article 5.9: 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 this Chapter.

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

3. Each Party shall ensure that any regulations or laws promulgated are the least trade restrictive and least anti-competitive consistent with a legitimate and publicly stated regulatory goal.

Article 5.10: 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, non-discriminatory 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 offences; or (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 5.11: Denial of Benefits

A Party may deny the benefits of this Section to an service provider or entrepreneur of the other Party that is a juridical person of the other Party and to its Covered Enterprise if that juridical

person is owned or controlled by a natural or juridical person of a third country and the denying Party adopts or maintains measures with respect to the third country that:

1. Are related to the maintenance of international peace and security, including the protection of human rights; and

2. Prohibit transactions with that juridical person or its Covered Enterprise, or would be violated or circumvented if the benefits of this Section were accorded them.

PART II: REGULATORY FRAMEWORK

SUB-SECTION 1: Domestic Regulation in Services Trade

Article 5.12: Scope and Definitions

1. This sub-section applies to measures by a Party relating to licensing requirements and procedures, qualifications requirements and procedures and technical standards that affect:

   (a) Cross-border trade in services defined as the supply of a service:

      (i) from the territory of a Party into the territory of the other Party; or

      (ii) in the territory of a Party to the service consumer of the other Party; or

   (b) Establishment defined as defined the setting up or the acquisition of a juridical person, including through capital participation, or the creation of a branch or representative office, in the European Union or in the United Kingdom respectively, with a view to establishing or maintaining lasting economic links; or

   (c) The supply of a service through the presence of a natural person of a Party in the territory of the other Party.

2. This sub-section does not apply to any of the non-conforming measures listed in Annex 5.1.

3. For the purposes of this sub-section, a “Competent Authority” is a central, regional or local government or authority, or a non-governmental body in the exercise of powers delegated by central, regional or local government or authority, or a non-governmental body in the

exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation to supply a service, including through establishment, or concerning the authorisation to establish an enterprise in order to engage in an economic activity other than a service.

Article 5.13: Conditions for Licensing and Qualification

1. Measures relating to licensing requirements and procedures, and qualification requirements and procedures for each Party shall be the least trade restrictive and market distortive consistent with a legitimate, clearly stated regulatory goal, based on the following criteria

   (a) Clarity;

   (b) Objectivity;

   (c) Transparency;

   (d) Advance public availability; and

   (e) Accessibility

   (f) Due process in the application process

Article 5.14: Licensing and Qualification Procedures

1. Licensing and qualification procedures shall be clear, made public in advance and be such as to ensure that the applications are dealt with objectively and impartially.

2. Licensing and qualification procedures shall be as simple as possible and shall not in themselves be a restriction on the supply of a service or the pursuit of any other economic activity. Any authorisation fee which the applicants may incur from their application should be reasonable, transparent and shall not in itself restrict the supply of a service or the pursuit of economic activity

3. The procedures used by, and the decisions of, the competent authority in the authorisation process shall be impartial with respect to all applicants. The competent authority should

reach its decision in an independent manner and should not be accountable to any person supplying the services or carrying out the economic activities for which the authorisation is required.

4. If a specific period of time for applications exists, the competent authority shall allow an applicant a reasonable period of time for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. The competent authority should accept an application in electronic format under the same conditions of authenticity as an application in paper format.

5. The competent authority shall complete the processing of an application, including reaching a final decision, within a reasonable period of time from the submission of a complete application. Each Party shall endeavour to establish an indicative timeframe for the processing of an application and shall make publicly available that timeframe, when established.

6. The Competent Authority shall, immediately after the receipt of an application which it considers incomplete, inform the applicant and shall identify the additional information required to complete the application and provide the opportunity to correct deficiencies.

7. The Competent Authority should, where possible accept authenticated copies in place of original documents.

8. If the Competent Authority rejects an application by an applicant, it shall inform the applicant in writing without undue delay. It shall, also upon request of the applicant inform it of the reasons for rejection of the application and the timeframe for an appeal against the decision.

9. The Competent Authority shall grant an authorisation as soon as it is established, in the light of an appropriate examination, that the applicant meets the conditions specified therein.

Article 5.15: Technical Standards

1. Each Party shall adopt technical standards for trade in services which are developed through open and transparent processes, and shall encourage any body designated to develop technical standards to use open and transparent processes.

2. Technical standards shall not be used as barriers in services trade between one Party and the other.

SUB-SECTION 2: PROVISIONS OF GENERAL APPLICATION

Article 5.16: Administration of Measures of General Application

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner, except for those nonconforming measures listed in Annex 5.1.

Article 5.17: Review procedures for administrative decisions

1. Each Party shall ensure that adequate judicial, arbitral or administrative tribunals or procedures which provide, upon request of an affected entrepreneur or service supplier of the other Party, for a prompt review of, and where justified, appropriate remedies for, administrative decisions that affect:

   (a) cross-border trade in services

   (b) establishment as defined the GATS; or

   (c) The supply of a service through the presence of a natural person of a Party in the territory of the other Party.

2. If the procedures referred to in Paragraph 1 are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

Article 5.18: Mutual Recognition

1. Nothing in this section shall prevent a Party from requiring that natural persons must possess the necessary qualifications or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties recognise that at the effective date of this Agreement, regulations affecting services and investment are identical between the two Parties.

3. Each Party shall ensure that the relevant professional bodies in its territory move expeditiously to recognise each other's authorisation, licensing, operation and certification of entrepreneurs and service suppliers, in particular, in the sector of professional services.

4. If either Party changes its regulatory system applying to the authorisation, licensing, operation or certification of entrepreneurs or service providers, then it will notify the other Party of the changes.

5. Parties may not unreasonable withdraw recognition, provided that the regulatory goals of the regulatory system of either Party have not changed, and that the regulatory system objectively satisfies those goals.

6. If a Party does withdraw recognition, the other Party may bring dispute settlement proceedings under the dispute settlement mechanism of this agreement.

7. Any mutual recognition agreement (included within this agreement or in others) shall be in conformity with the relevant provisions of Article VII of GATS.

SUB-SECTION 3: POSTAL AND COURIER SERVICES

Article 5.19: Universal Service obligations

1. Each Party has the right to define what kind of universal service obligation it wishes to maintain, subject to the requirement for it be administered in a transparent, non-discriminatory, least trade and market distortive manner consistent with a legitimate, publicly stated regulatory goal.

2. The Universal Service commitment must not be more burdensome than necessary for the kind of universal service defined by the Party, with regard to all suppliers subject to the obligation.

3. Each Party shall ensure that a supplier of postal and courier services in its territory which is subject to a universal service obligation under its laws and regulations does not engage in the following practices:

   (a) Excluding the business activities of other enterprises by cross-subsidising, with revenues in whole or in part, derived from the supply of the universal service, the

supply of express mail services (EMS) or any non-universal service in an anti-competitive manner as defined by each Parties' competition law; or

(b) Unjustifiably differentiating among customers, such as large volume mailers or consolidators, where like conditions prevail with respect to charges and the provisions concerning acceptance, delivery, redirection, return and the number of days required for delivery for the supply of a service subject to a universal service obligation.

Article 5.20: Border Procedures

1. The border procedures for international postal services and international courier services are enforced in accordance with related international agreements and the laws and regulations of both Parties, and shall not unduly accord less favourable treatment with respect to border procedures to international courier services than it accords to international postal services.

Article 5.21: Licences

1. Each Party may require licenses for the supply of services covered by this Sub-Section.

2. If a Party requires a licence, such application shall be governed by Article 5.2 in terms of transparency, due process and regulatory systems which are the least trade restrictive and market distortive consistent with a regulatory goal.

Article 5.22: Independence of the regulatory body

1. Each Party shall ensure that relevant regulatory bodies covered by this Sub-Section is legally separate from and not accountable to any supplier of those services.

2. Each Party shall ensure that the laws and regulations of each Party, decisions of, and procedures used by, its regulatory body are impartial.

SUB-SECTION 4: TELECOMMUNICATIONS SERVICES

Article 5.23: Scope

1. This Sub-Section sets out the principles of the regulatory framework for all telecommunications services and applies to measures by a Party affecting trade in telecommunications services, which consists in the conveyance of signals including, inter alia, the transmission of video and audio signals (irrespective of the types of protocols and technologies used) through public telecommunications transport networks.

2. A supplier of broadcasting services shall be considered as a supplier of public telecommunications transport services and its networks as public telecommunications transport networks, when and to the extent that such networks are also used for providing public telecommunications transport services.

3. Nothing in this Annex shall be construed as requiring a Party:

   (a) To authorise a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than as provided for in this Agreement; or

   (b) To establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally, or to oblige a service supplier under its jurisdiction to do so.

Article 5.24: Definitions

1. For the purposes of this Sub-Section:

(a) "**associated facilities**" means services and infrastructures associated with public telecommunications transport networks or services which are necessary for the provision of services via those networks or services, such as buildings (including entries and wiring), ducts and cabinets as well as masts and antennae;

(b) "**cost-oriented**" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(c) "**end user**" means a final consumer of, or subscriber to, a public telecommunications transport network or service, including a service supplier other than a supplier of public telecommunications transport networks or services;

(d) "**essential facilities**" means facilities of a public telecommunications transport network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and
(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(e) "**interconnection**" means linking[7] with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with the users of another supplier or to access services provided by any supplier who has access to the network;

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

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

(h) "**major supplier**" means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public telecommunications transport services as a result of:

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

[7] For greater certainty, linking may include physical or logical linking, as appropriate.

(i) "**non-discriminatory**" means treatment no less favourable than that accorded, under like circumstances, to other service suppliers and users of like public telecommunications transport networks or services;

(j) "**number portability**" means the ability of an end user of public telecommunications transport services who requests to retain, at the same location, the same telephone numbers without impairment of quality or reliability when switching between the same category of suppliers of like public telecommunications transport services;

(k) "**public telecommunications transport network**" means public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

(l) "**public telecommunications transport service**" means any telecommunications transport service offered to the public generally that may include, *inter alia*, telegraph, telephone, telex and data transmission typically involving transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

(m) "**regulatory authority**" means the body or bodies of a Party responsible for the regulation of telecommunications;

(n) "**telecommunications**" means the transmission and reception of signals by wire, radio, optical or any other electromagnetic means; and

(o) "**users**" means end users, or suppliers of public telecommunications transport networks or services that are consumers of, or subscribers to, a public telecommunications transport network or service.

Article 5.25: Approaches to Regulation

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

2. A Party may:

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

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

3. For greater certainty, a Party that refrains from engaging in regulation in accordance with subparagraph 2(b) remains subject to the obligations under this Sub-Section. Nothing in this Article shall prevent a Party from applying regulation to telecommunications services.

Article 5.26: Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to, and use of, public telecommunications transport networks and services on terms and conditions which are reasonable, non-discriminatory and no less favourable than those which the supplier of those public telecommunications transport networks and services provides for its own like services under like circumstances. This obligation shall be applied, inter alia, through paragraphs 2 to 6 below.

2. Each Party shall ensure that service suppliers of the other Party are accorded access to, and use of, any public telecommunications transport network or service offered within or across the borders of the former Party, including private leased circuits, and shall to that end ensure, subject to paragraphs 5 and 6, that such service suppliers are permitted to:

(a) purchase or lease, and attach, terminal or other equipment which interfaces with the network and which is necessary to supply their services;

(b) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers; and

(c) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across the borders of the former Party, including for intra-corporate communications of such service suppliers, and for access to information contained in

databases or otherwise stored in machine-readable form in either Party or any other member of the WTO.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages subject to the requirement that those measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to, and use of, public telecommunications transport networks and services other than as necessary to:

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

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

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

(a) restrictions on resale or shared use of those services;

(b) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with public telecommunications transport networks and services;

(c) requirements, if necessary, for the inter-operability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 5.2.5;

(d) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of that equipment to those networks;

(e) restrictions on inter-connection of private leased or owned circuits with public telecommunications transport networks or services, or with circuits leased or owned by other service suppliers; or

(f) notification, permit, registration and licensing.

Article 5.27: Number portability

1. Each Party shall ensure that suppliers of public telecommunications transport services in its territory provide number portability for mobile services and any other services designated by that Party, on a timely basis and on reasonable terms and conditions.

Article 5.28: Resale

1. If a Party requires a supplier of public telecommunications transport services to offer its public telecommunications transport services for resale, that Party shall ensure that such supplier does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications transport services.

Article 5.29: Enabling use of network facilities and interconnection

1. The Parties recognise that enabling use of network facilities[8] and interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers of public telecommunications transport networks or services concerned.

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services in its territory has a right and, if requested by a supplier of public telecommunications transport networks or services of the other Party, an obligation to negotiate interconnection for the purpose of providing public telecommunications transport networks or services. Each Party shall provide its regulatory authority with the power to require, where necessary, a supplier of public telecommunications transport networks or services to provide interconnection with suppliers of public telecommunications transport networks or services of the other Party.

3. A Party shall not adopt or maintain any measure which obliges suppliers of public telecommunications transport networks or services enabling use of network facilities or

[8] For the purposes of this Article, "enabling use of network facilities" means the making available of facilities or services to another supplier of public telecommunications transport networks or services under defined conditions, for the purpose of providing public telecommunications transport services. It may include the use of active or passive network elements, associated facilities, virtual network services, co-location or other forms of associated facilities sharing, the use of leased circuits and the use of specified network facilities or elements, including the local loop, on an unbundled basis.

providing interconnection to offer different terms and conditions to different suppliers for like services or imposes obligations that are not related to the services provided.

Article 5.30: Obligations relating to major suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

   (a) engaging in anti-competitive cross-subsidisation;

   (b) using information obtained from competitors with anti-competitive results; and

   (c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which is necessary for them in order to provide services.

2. Each Party shall provide its regulatory authority with the power to require, where appropriate, that major suppliers in its territory accord to suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable than that which the major supplier concerned accords in like circumstances to its subsidiaries or its affiliates, regarding:

   (a) the availability, provisioning, rates or quality of like telecommunications services; and

   (b) the availability of technical interfaces necessary for interconnection.

3. Each Party shall ensure that major suppliers in its territory provide interconnection with suppliers of public telecommunications transport networks or services of the other Party at any technically feasible point in the network of the major supplier concerned and that the major supplier concerned provides such interconnection:

   (a) under terms, conditions (including with respect to technical standards, specifications, quality and maintenance) and rates which are non-discriminatory and no less favourable than those provided for its own like services under like circumstances, and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including with respect to technical standards, specifications, quality and maintenance) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

4. Each Party shall ensure that major suppliers in its territory provide suppliers of public telecommunications transport networks or services of the other Party with the opportunity to interconnect their facilities and equipment with those of a major supplier through:

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services; or

(b) the terms and conditions of an interconnection agreement in effect.

5. Each Party shall ensure that the procedures applicable for interconnection with major suppliers in its territory are made publicly available.

6. Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or their reference interconnection offers.

7. Each Party shall ensure that major suppliers in its territory that acquire information from another supplier of public telecommunications transport networks or services in the process of negotiating arrangements on, and as a result of, the use of network facilities or interconnection, use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

8. Each Party shall ensure that major suppliers in its territory enable the use of network facilities, which may include, inter alia, network elements and associated facilities, to suppliers of public telecommunications transport networks or services of the other Party on terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance) which are transparent, reasonable, non-discriminatory (including

with respect to timeliness) and no less favourable than those provided for their own like services under like circumstances.[9]

Article 5.31: Regulatory authority

1. Each Party shall ensure that its regulatory authority is legally distinct, and functionally independent[10] from any supplier of telecommunications services, telecommunications networks or telecommunications network equipment.

2. A Party that retains ownership or control of a supplier of public telecommunications transport networks or services shall ensure effective structural separation of the regulatory function of telecommunications from activities associated with the ownership or control.

3. Each Party shall provide its regulatory authority with the power to regulate the telecommunications sector, and to carry out the task assigned to it including enforcement of the measures relating to the obligations under this Sub-Section. The tasks to be undertaken by the regulatory authority shall be made publicly available in an easily accessible and clear form.

4. Each Party shall ensure that the decisions of, and the procedures used by, its regulatory authority are impartial with respect to all market participants.

5. Each Party shall ensure that its regulatory authority performs its tasks in a transparent manner and, to the extent practicable, without undue delay.

6. Each Party shall provide its regulatory authority with the power to request from suppliers of telecommunications networks and services all the information, including financial information, which is necessary to carry out its tasks in accordance with this Sub-Section. The regulatory authority shall not request more information than that which is necessary to perform its tasks and shall treat the information obtained from those suppliers in accordance with the laws and regulations of that Party relating to business confidentiality.

---

[9] For greater certainty, nothing in this paragraph shall be construed as preventing a Party from allowing a major supplier in its territory to reject co-location where there is a reasonable ground for rejection, in particular with regard to technical feasibility.

[10] For greater certainty, the regulatory authority of a Party shall not be regarded as not functionally independent solely based on the fact that an authority of that Party (other than the regulatory authority) holds shares or other equity interest in a supplier of telecommunications services, telecommunications networks or telecommunications network equipment.

Article 5.32: Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain. Those obligations are not be regarded as anti-competitive per se, provided that they are administered in a transparent, objective, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

2. All suppliers of telecommunications services should be eligible to provide universal service. Universal service suppliers shall be designated through a transparent, non-discriminatory and not unduly burdensome mechanism.

3. The regulatory authority of a Party may determine whether a mechanism is required in order to compensate the net cost of the suppliers designated to provide universal service, taking into account the market benefit, if any, accruing to those suppliers, or to share the net cost of the universal service obligations.

Article 5.33: Authorisation to provide telecommunications networks and services

1. Each Party shall authorise the provision of telecommunications networks or services, to the extent possible, upon simple notification or registration without requiring a prior explicit decision by its regulatory authority. The rights and obligations resulting from such authorisation shall be made publicly available in an easily accessible form.

2. If necessary, a Party may require a licence for the right of use for radio frequencies and numbers, in particular in order to:

   (a) avoid harmful interference;

   (b) ensure technical quality of service; and

   (c) safeguard efficient use of spectrum.

3. If a Party requires a licence, that Party shall make publicly available:

   (a) all the licensing criteria and a reasonable period of time normally required to reach a decision on a licence; and

(b) the terms and conditions of individual licences.

4. Each Party shall notify an applicant of the outcome of its application without undue delay after a decision on the licence has been taken. In case a decision is taken to deny an application for or revoke a licence, each Party shall make known to the applicant, in principle in writing, upon request, the reasons for the denial or revocation. In that case, the applicant shall be able to have recourse to an appeal body as referred to in Article 8.54.

5. Each Party shall ensure that any administrative fees imposed on suppliers of telecommunications networks or services are objective, transparent and commensurate with the administrative costs of its regulatory authority. Those administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

Article 5.34: Allocation and use of scarce resources

1. Each Party shall carry out any procedures for the allocation and use of scarce resources related to telecommunications, including frequencies, numbers and rights of way, in an open, objective, timely, transparent, non-discriminatory and not unduly burdensome manner.

2. Each Party shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. Measures by a Party allocating and assigning spectrum and managing frequency are not per se inconsistent with Articles 8.7 and 8.15. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport services, provided that the Party does so in a manner consistent with the other provisions of this Agreement. That right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article 5.35: Transparency

1. Each Party shall ensure that its measures relating to access to, and use of, public telecommunications transport networks and services are made publicly available, including measures relating to:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces;

(c) bodies responsible for the preparation, amendment and adoption of standards affecting the access and use;

(d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport networks; and

(e) notifications, permits, registrations or licensing requirements, if any.

Article 5.36: Resolution of telecommunications disputes

1. Each Party shall ensure, in accordance with its laws and regulations, that suppliers of public telecommunications transport networks or services of the other Party have timely recourse to the regulatory authority of the former Party to resolve disputes in relation to the rights and obligations of those suppliers arising from this Sub-Section. In such cases, the regulatory authority shall aim to issue a binding decision, as appropriate, in order to resolve the dispute without undue delay.

2. If the regulatory authority declines to initiate any action on a request to resolve a dispute, it shall, upon request and within a reasonable period of time, provide a written explanation for its decision.

3. The regulatory authority shall make the decision resolving the dispute available to the public in accordance with the laws and regulations of the Party, having regard to the requirements of business confidentiality.

4. Each Party shall ensure that a supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its regulatory authority may obtain review of that determination or decision by either the regulatory authority or an independent appeal body which may or may not be a judicial authority.

5. Each Party shall ensure that a supplier of public telecommunications transport networks or services affected by a decision of its regulatory authority or independent appeal body, if the latter is not a judicial authority, may obtain further review of that decision by an

independent judicial authority, except if the supplier has accepted a procedure where the regulatory authority or independent appeal body issues a final decision, in accordance with the laws and regulations of the Party.

6. A Party shall not permit an application for review by an appeal body or a judicial authority to constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant appeal body or judicial authority withholds, suspends or repeals such determination or decision.

7. The procedure referred to in paragraphs 1 to 3 shall not preclude either party concerned from bringing an action before the judicial authorities.

Article 5.37: Relation to international organisations

1. The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications transport networks and services, and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 5.38: Confidentiality of information

1. Each Party shall ensure the confidentiality of telecommunications and related traffic data of users over public telecommunications transport networks and services without unduly restricting trade in services.

Article 5.39: International mobile roaming[11]

1. Each Party shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services with a view to promoting the growth of trade between the Parties and enhancing consumer welfare.

---

[11] This Article does not apply to intra-European Union roaming services, which are commercial mobile services provided pursuant to a commercial agreement between suppliers of public telecommunications transport services that enable an end user to use its home mobile handset or other device for voice, data or messaging services in a Member State of the European Union other than that in which the end user's home public telecommunications transport network is located.

2. Each Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers, when visiting the territory of a Party from the territory of the other Party, can access telecommunications services using the device of their choice.

3. Each Party shall encourage suppliers of public telecommunications transport services in its territory to make publicly available information on retail rates for international mobile roaming services for voice, data and text messages offered to their end users when visiting the territory of the other Party.

4. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

SUB-SECTION 5: INTERNATIONAL MARITIME TRANSPORT SERVICES

Article 5.40: Scope and definitions

1. This Sub-Section sets out the principles of the regulatory framework for the provision of international maritime transport services and applies to measures by a Party affecting trade in international maritime transport services.

2. For the purposes of this Sub-Section:

(a) "**container station and depot services**" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

(b) "**customs clearance services**" means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, irrespective of whether this service is the main activity of the service supplier or a usual complement of its main activity;

(c) "**door-to-door or multimodal transport operations**" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(d) "**freight forwarding services**" means activities consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(e) "**international maritime transport services**" means the transport of passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or a third country, and includes the direct contracting with suppliers of other transport services, with a view to covering door-to-door or multimodal transport operations under a single transport document, but does not include the right to supply such other transport services;

(f) "**maritime agency services**" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

   (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and

   (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

(g) "**maritime auxiliary services**" means maritime cargo handling services, storage and warehousing services, customs clearance services, container station and depot services, maritime agency services and freight forwarding services;

(h) "**maritime cargo handling services**" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

   (i) the loading or discharging of cargo to or from a ship;

   (ii) the lashing or unlashing of cargo; and

   (iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge; and

(i) "**storage and warehousing services**" means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and storage and warehousing services of other goods including cotton, grain, wool, tobacco, other farm products and other household goods.

Article 5.41: Obligations

1. Without prejudice to non-conforming measures or other measures referred to in Articles 5.9 and 5.10, each Party shall:

   (a) respect the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;

   (b) accord to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that it accords to its own ships, with regard to, *inter alia*, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading;[12]

   (c) permit international maritime transport service suppliers of the other Party to establish and operate an enterprise in its territory under conditions of establishment and operation no less favourable than that it accords to its own service suppliers; and

   (d) make available to international maritime transport suppliers of the other Party, on reasonable and non-discriminatory terms and conditions, the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth and berthing services, shore-based operational services essential to ship operations, including communications, water and electrical supplies.

Comments on Sector-Specific Service Sections excluding Financial Services

1. Generally speaking, these provisions draw inspiration form the EU-Japan FTA.

2. Article 5.16.3: Mutual Recognition - Higher level of commitment than EU-Japan because of our common starting point. The starting point is deemed equivalence and then a mechanism to deal with changes

[12] In applying the principles set out in subparagraphs (a) and (b), each Party shall not adopt or maintain cargo-sharing arrangements in any agreement concerning international maritime transport services. Each Party shall terminate any such arrangement in any agreement in force or signed prior to the date of entry into force of this Agreement, upon the entry into force of this Agreement.

3. Article 5.21 (Telecommunications exceptions - unlike, EU-Japan, we should have no broadcasting exceptions and let the EU apply for them]

4. Adoption of Use “cost-based” on “cost-oriented” objective to Ensure cost based interconnection “essential facilities doctrine” for telecoms commitments in Article 5.22

5. Given the unique starting point of the UK and EU, we do not believe the usual exemptions in trade agreements for the above sectors are necessary or desirable. We would have very minimal non-conforming measures. For example in the Canada and Japan agreements, the following areas are exempted - cabotage in maritime transport services, aircraft repair and maintenance, airline reservation. We would include these in the agreement.

SUB-SECTION 6: FINANCIAL SERVICES[13]

Article 5.42: Definitions

1. The following definitions shall apply to this chapter

(a) "**agreed equivalence recognitions**" means the recognitions which have been agreed in Article 5.42 and as further detailed in Schedule 1, whereby each Party confirms the sector of the financial services regulatory regime of the other party which is agreed to be equivalent and the national legal effect that is intended to result from the relevant equivalence recognition;

[13] Barnabas Reynolds has contributed this chapter of Treaty text from his Politeia publication “Free Trade in UK-EU Financial Services: How Best to Structure a Brexit Trade Deal”, October 2018, which, together with the drafting and thinking in his previous publication “A Template for Enhanced Equivalence: Creating a Lasting Relationship for Financial Services Between the EU and the UK", published by Politeia in July 2017, is reflected in the UK Government’s post-Chequers White Paper "The Future Relationship Between the United Kingdom and the European Union", July 2018, and in broad outline in the UK-EU "Political Declaration Setting Out the Framework for the Future Relationship Between the European Union and the United Kingdom", November 2018. The following Chapter can be fitted into any final form Free Trade Agreement, as here, or into a separate Mutual Recognition Agreement. It would continue the current arrangements which the UK and EU benefit from under the jointly developed financial services passport concept, but under another form based on a slightly amended version of the existing EU law concept of equivalence. The equivalence concept is in use for the EU’s financial services trade with the US, Singapore, Mexico and elsewhere. As proposed it would allow UK businesses to service customers in the EU27 cross-border from the UK whilst being supervised solely in the UK under UK regulation. The same would be true for EU27 businesses accessing the UK’s global markets. This arrangement would allow financial services firms based here to avoid pursuing their contingency plans for the post-Brexit world, avoiding the considerable additional cost imposed on EU27 corporates and consumers in delivering financial services and products to them from the global liquidity pools located in the UK.

(b) "**disagreement on compliance**" has the meaning specified in Article 5.47.35;

(c) "**disagreement on suspension**" has the meaning specified in Article 5.47.35;

(d) "**DSU**" means the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 to the WTO Agreement;

(e) "**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;

(f) "**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, policy holders, clients, counterparties and/or any other persons who may be owed a fiduciary or other similar duty; and

(ii) there is no significant risk of increased systemic risk in the financial markets either globally or within the jurisdiction of a Party.

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) – (ii) are not satisfied;

(b) "**financial services**" means any service of a financial nature offered by a financial service supplier established in and/or authorised 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:

Insurance and insurance-related services

(i) direct insurance (including co-insurance):

(A) life; and

(B) non-life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency;

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

  (A) money market instruments (including cheques, bills, certificates of deposits);

  (B) foreign exchange;

  (C) derivative products including, but not limited to, futures and options;

  (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

  (E) transferable securities; and

  (F) other negotiable instruments and financial assets, including bullion;

(xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) money broking;

(xiii) asset management, such as cash or portfolio management, all forms of collective investment or fund management, pension fund management, custodial, depository and trust services;

(xiv) settlement and clearing services for financial assets, including receiving and transmitting orders or trades, securities, derivative products and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) to (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(xvii) market infrastructure:

(A) clearing;

(B) exchange/platform trading; and

(C) central securities depositories, depositories and settlement systems;

(xviii) marketing of financial services; and

(xix) agreements concerning any of the products and services mentioned in paragraphs (i) to (xviii) above.

(c) "**GATS**" means the General Agreement on Trade in Services and the GATS Annex on Financial Services;

(d) "**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;

(e) "**New York Convention**" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

(f) "**recognition conditions**" has the meaning specified in Article 5.42.4 and as further detailed in Schedule 2;

(g) "**recognition principles**" has the meaning specified in Article 5.41.1;

(h) "**Regulatory Sub-Committee**" has the meaning specified in Article 5.44.1;

(i) "**relevant private party**" means any natural person or legal entity (whether or not incorporated or otherwise established under the jurisdiction of either Party) which is entitled to the benefit of an agreed equivalence recognition as described in Schedule 1;

(j) "**relevant regulatory development**" means: (i) a proposed or new legislative development in either Party's jurisdiction which, if proposed could, or if already effective does, alter the previously agreed legal effect in either Party's jurisdiction of an agreed equivalence recognition; or (ii) a proposed or new legislative development in either Party's jurisdiction which, if proposed could be, or if already effective is, relevant to determining whether the recognition conditions applicable to an agreed equivalence recognition remain satisfied;

(k) "**Tribunal**" means the tribunal established under Article 5.48;

(l) "**Union recognition body**" means the [description of representative body] which will represent the Union in all matters relating to this Agreement;

(m) "**UK recognition body**" means the [description of representative body] which will represent the United Kingdom in all matters relating to this Agreement;

(n) "**UNCITRAL Arbitration Rules**" means the arbitration rules of the United Nations Commission on International Trade Law;

(o) "**UNCITRAL Transparency Rules**" means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration;

(p) "**United Kingdom**" means the United Kingdom of Great Britain and Northern Ireland;

(q) "**Union**" means the European Union; and

(r) "**Vienna Convention on the Law of Treaties**" means the Vienna Convention on the Law of Treaties, concluded on 23 May 1969.

Article 5.43: Overseas Persons Exclusion

1. The Parties agree to maintain an overseas persons exclusion (in the case of the United Kingdom) and to maintain a reverse solicitation exclusion in a form which is at least as wide as the United Kingdom's overseas persons exclusion (in the case of the Union) under the law of their respective jurisdictions to facilitate the provision of financial services between the jurisdictions of each of the Parties.

2. For the purposes of this Article 5.40, an "overseas persons exclusion" and a "reverse solicitation" exclusion means, in respect of a Party, an exclusion under law from the requirement to be authorised to conduct [any financial services activities] / [specified financial services activities][14] 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

[14] NOTE: Adapt as required and state any specified activities in the conditions in Article 5.40.3.

financial services activities are conducted or offers to conduct financial services activities are made, subject to certain [specifications and] conditions.

3. The [specifications and] conditions referred to in Article 5.40.2 are as follows:

   (a) [no direct marketing efforts;

   (b) no clients who are individuals; and

   (c) no retail clients][15]

4. For financial services activities which fall outside the scope of the overseas persons exclusion and reverse solicitation exclusion maintained under this Article 5.40, the Parties may adopt equivalence recognitions in accordance with the remainder of this Agreement.

Article 5.44: Equivalence Recognition Principles

1. The following principles in this 5.41 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.

2. 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.

<u>Good faith</u>

3. 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 which 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.

<u>Transparency, objectivity and impartiality</u>

---

[15] NOTE: Consider reflecting current conditions (i.e. dealing or arranging with or through an authorised person or entering into a deal as a result of a 'legitimate approach') that apply under the UK's overseas persons exclusion contained in Article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

4. 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.

5. Each Party commits to ensuring that its laws, regulations, procedures, supervision, enforcement and judicial rulings which apply generally to the financial services businesses that are designated in Schedule 1 as being entitled to the agreed equivalence recognitions:

   (a) are applied in a reasonable, objective and impartial manner; and

   (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

6. 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 which refers to this provision).

7. The Parties shall ensure that measures are not adopted in their respective jurisdictions which are inconsistent with the legal effect that the agreed equivalence recognitions are intended to have, as described in Article 5.42 and Schedule 1, unless the relevant change procedures contained in Article 5.49 have been complied with.

Non-discrimination

8. Each of the Parties shall ensure that its laws, regulations, procedures, supervision, enforcement and judicial rulings do not subject financial services suppliers authorised by and/or established in the other Party's jurisdiction to less favourable treatment than:

   (a) like financial services suppliers authorised by and/or established in its own jurisdiction; or

   (b) like financial services suppliers authorised by and/or established in any other country which the other Party permits to carry out financial services business in the other Party's jurisdiction.

9. 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.

Equivalence

10. 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, policy holders, 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 effect of the agreed equivalence recognitions are further detailed in Schedule 1.[16]

Assessments of equivalence

11. 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.

12. 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 which is proportionate to the level and nature of access that is agreed under the agreed equivalence recognitions.

13. 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 Organisation for Economic Co-Operation and Development, the Financial Action Task Force and the International Organisation of Securities Commissions.

[16] NOTE: 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.

Private law remedies

14. Unless specifically provided for in this Agreement, including in particular under Article 5.48 of this Agreement, 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 the GATS

15. In compliance with Article VII:3 of the 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 authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

16. In accordance with Article VII:4(b) of the 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 5.45: Agreed Equivalence Recognitions

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 2 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.]

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.

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. The "recognition conditions" applicable to the agreed equivalence recognitions are set out in Schedule 2.

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.

6. For the avoidance of doubt, the parties are required to observe principles of non-discrimination as established by the equivalence recognitions, which includes, but is not limited to, the following grants of non-discriminatory 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:

        (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.][17]

7. Provided it does not circumvent Article 5.42.6 above and is consistent with the other provisions of this Agreement, either party may:

(a) impose terms, conditions and procedures for the authorisation 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 5.46: Cooperation Agreements

1. [The Parties shall ensure that the terms of the cooperation agreements contained in Schedule [•] are implemented within their legal and regulatory regimes and/or shall otherwise ensure that the commitments made in those cooperation agreements are complied with.][18]

Article 5.47: Sub-Committee on Financial Services

1. The Parties have agreed to establish a Sub-Committee on Regulation of Financial Services for the purposes of assisting and monitoring the mutual recognition relationship established under this Agreement (the "Regulatory Sub-Committee").

2. The Regulatory Sub-Committee's roles shall consist of:

(a) [reviewing international developments, or developments within the Parties' respective financial services regimes];

(b) [initiating the consultation process specified in Article 5.45 and issuing recommendations to the Union recognition body and UK recognition body

---

[17] NOTE: Finalised negotiated text must ensure compliance with non-discriminatory requirements of Art. VII, GATS.

[18] NOTE: A comprehensive range of detailed cooperation agreements will have to be negotiated amongst EU and UK 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.

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 Union recognition body or the UK 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 5.45 where the Regulatory Sub-Committee deems necessary];

(d) [[at its own initiative, or]where requested by the Union recognition body or the UK 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 Union recognition body or the UK recognition body, or initiating the consultation process under Article 5.45 or the mediation process under Article 5.45 where the Regulatory Sub-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].[19]

3. The Regulatory Sub-Committee shall consist of [three] permanent members appointed by the United Kingdom and [three] permanent members appointed by the Union.

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

5. The Regulatory Sub-Committee shall conduct itself by majority vote, and in the event of a tied vote, the chairperson shall cast the final binding vote.

6. The Regulatory Sub-Committee shall adopt its internal procedures initially by mutual consent of the permanent members, and subsequently in accordance with Article 5.44.5.

[19] NOTE: Indicative possible roles for the Regulatory Sub-Committee.

7. The Regulatory Sub-Committee's chairperson, permanent members and any other ancillary staff shall be chosen on the basis of appropriate experience in financial services law, regulation, practice or other relevant experience.

8. The Regulatory Sub-Committee shall meet in accordance with its established procedures, as necessary, to carry out its duties.

9. The Regulatory Sub-Committee shall be able to request specialist technical, legal or other advice and employ ancillary additional staff if it considers necessary.

10. The costs of the Regulatory Sub-Committee shall be shared equally by the Parties.

11. […][20]

Article 5.48: Consultation and Coordination[21]

1. The UK recognition body shall notify the Union recognition body [and the Regulatory Sub-Committee] promptly upon becoming aware of a relevant regulatory development.

2. The Union recognition body shall notify the UK recognition body [and the Regulatory Sub-Committee] promptly upon becoming aware of a relevant regulatory development.

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 5.49.

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 5.49.

5. Subject to Article 5.45.7, the Parties shall enter into consultations within [30] days of the date of receipt of the request by the responding Party.

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. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations. To this end, each Party shall:

[20] NOTE: Additional details to be added as negotiated between the Parties.
[21] NOTE: The consultation provisions are based on CETA.

(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 which address, the matter that is the subject of the consultations.

8. Consultations shall take place in the territory of the responding Party unless the Parties agree otherwise. Consultations may be held in person or by any other means agreed between the Parties.

<u>Implementation of mutually agreed solutions</u>

9. 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 timeframe.

10. [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 5.45 but may not be the subject of mediation under Article 5.46 or the dispute settlement procedures under Article 5.47.][22]

<u>Role of the Regulatory Sub-Committee</u>

11. The Regulatory Sub-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.

12. The Regulatory Sub-Committee may prescribe detailed procedures for the purposes of this Article 5.45, including provisions regarding its involvement, if relevant, in initiating and assisting or otherwise participating in the consultation and coordination process.

13. In accordance with Article VII:4(c) of the GATS, the Regulatory Sub-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 5.49: Mediation

---

[22] NOTE: 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).

1. A Party may initiate the mediation process with the other Party regarding any matter arising under this Agreement.

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.

3. A Party may initiate the mediation process by providing a written notice for requesting mediation to the other Party and the Regulatory Sub-Committee with details of a proposed date, location and other administrative terms for the mediation process. The written notice must:

   (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.

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 Sub-Committee of its response.

5. The Party that wishes to initiate the mediation process shall confirm in writing to the other Party and the Regulatory Sub-Committee whether or not it has agreed to any alternative proposals submitted by the responding Party under Article 5.46.4.

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 [five] days of the written request to initiate the mediation process being sent, the Regulatory Sub-Committee shall confirm the date, venue and other administrative terms of the mediation, which the Parties shall comply with.

7. The mediation process shall continue for an initial period of [30] days from the commencement date agreed by the Parties under Article 5.46.4 or 5.46.5 or confirmed by the Regulatory Sub-Committee under Article 5.46.6.

8. The Parties may by mutual agreement extend the mediation process [for a maximum duration of [•] days from the initial commencement date agreed by the Parties under Article 5.46.4 or 5.46.5 or confirmed by the Regulatory Sub-Committee under Article 5.46.6].

9. At or before the end of the initial period (or any agreed extension pursuant to Article 5.46.8) 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 5.47.

10. The Regulatory Sub-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.

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 5.46.

Implementation of mutually agreed solutions

12. 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 timeframe.

13. Failure to implement the mutually agreed solution within any relevant agreed timeframes in accordance with the terms of the mutually agreed solution entitles either Party to initiate the dispute resolution process under Article 5.47 notwithstanding any other provision of this Agreement that might require the Party to undergo the consultation process under Article 5.45 or the mediation process under this Article 5.46 before initiating the dispute resolution process under Article 5.47.

Article 5.50: Dispute Resolution[23]

1. The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter that might affect its operation (including under the consultation process under Article 5.45 or the mediation process under Article 5.46 outside the dispute resolution process under this Article 5.47). However, a party may initiate the processes under this Article 5.47 at any time without any requirement to first submit the matter to any other process subject only to Articles 5.47.2 to 5.47.6.

2. Except as otherwise provided in this Agreement, this Article 5.47 applies to any dispute concerning the interpretation or application of the provisions of this Agreement.

Choice of forum

[23] NOTE: The dispute resolution provision included here is based on CETA.

3. [Recourse to the dispute settlement provisions of this 5.47 is without prejudice to recourse to dispute settlement under the WTO Agreement or under any other agreement to which the Parties are party.]

4. Notwithstanding Article 5.47.3, if an obligation is materially similar in substance under this Agreement and under the GATS, or under any other agreement to which the Parties are party, a Party may not seek redress for the breach of such an obligation in the two fora. In such case, once a dispute settlement proceeding has been initiated in one forum, the Party shall not bring a claim seeking redress for the breach of the substantially similar obligation in another forum, unless the forum selected fails, for procedural or jurisdictional reasons, to make findings on that claim.

5. For the purposes of Article 5.47.4:

   (a) dispute settlement proceedings under the GATS are deemed to be initiated by a Party's request for the establishment of a panel under Article 7 of the DSU;

   (b) dispute settlement proceedings under this Article 5.47 are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 5.47.7; and

   (c) dispute settlement proceedings under any other agreement are deemed to be initiated by a Party's request for the establishment of a dispute settlement panel or tribunal in accordance with the provisions of that agreement.

6. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the WTO Dispute Settlement Body. A Party may not invoke the GATS to preclude the other Party from suspending obligations pursuant to this Article 5.47.

Request for the establishment of an arbitration panel

7. Unless the Parties agree otherwise and subject to Articles 5.47.3 to 5.47.6, if a matter referred to in Articles 5.45 or 5.46 has not been resolved within:

   (a) [45] days of the date of receipt of the request for mediation; or

   (b) [25] days of the date of receipt of the request for consultations for matters referred to in Article 5.45.3; or

   (c) in the case where the Parties have engaged in a mediation proceeding in accordance with Article 5.46, if a mutually agreed solution has not been agreed during the initial period (or any agreed extension thereto) under Article 5.46.9,

the requesting Party may refer the matter to arbitration by providing its written request for the establishment of an arbitration panel to the responding Party.

8. The requesting Party shall identify in its written request the specific measure at issue and the legal basis for the complaint, including an explanation of how such measure constitutes a breach of the provisions referred to in Article 5.47.2.

Composition of the arbitration panel

9. The arbitration panel shall be composed of [three] arbitrators.

10. The Parties shall consult with a view to reaching an agreement on the composition of the arbitration panel within [10] working days of the date of receipt by the responding Party of the request for the establishment of an arbitration panel.

11. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame set out in Article 5.47.10, either Party may request the chairperson of the Regulatory Sub-Committee, or the chair's delegate, to draw by lot the arbitrators from the list established under Article 5.47.16. One arbitrator shall be drawn from the sub-list of the requesting Party, one from the sub-list of the responding Party and one from the sub-list of chairpersons. If the Parties have agreed on one or more of the arbitrators, any remaining arbitrator(s) shall be selected by the same procedure in the applicable sub-list of arbitrators. If the Parties have agreed on an arbitrator, other than the chairperson, who is not a national of either Party, the chairperson and other arbitrator shall be selected from the sub-list of chairpersons.

12. The chairperson of the Regulatory Sub-Committee, or the chair's delegate, shall select the arbitrators as soon as possible and normally within [five] working days of the request referred to in Article 5.47.11 by either Party. The chairperson of the Regulatory Sub-Committee, or the chair's delegate, shall give a reasonable opportunity to representatives of each Party to be present when lots are drawn.

13. The date of establishment of the arbitration panel shall be the date on which the last of the [three] arbitrators is selected.

14. If the list provided for in Article 5.47.16 is not established or if it does not contain sufficient names at the time a request is made pursuant to Article 5.47.11, the [three] arbitrators shall be drawn by lot from the arbitrators who have been proposed by one or both of the Parties in accordance with Article 5.47.16.

15. Replacement of arbitrators shall take place only for the reasons and according to the procedure [prescribed by the Regulatory Sub-Committee for the purposes of this Article] / [prescribed by Schedule [•] of this Agreement].

List of arbitrators

16. The Regulatory Sub-Committee shall, at its first meeting after the entry into force of this Agreement, establish a list of at least [15] individuals, chosen on the basis of relevant experience in financial services economics, law and regulation, objectivity, reliability and sound judgment, who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party to act as chairpersons. Each sub-list shall include at least [five] individuals. The Regulatory Sub-Committee may review the list at any time and shall ensure that the list conforms with this Article 5.47.16.

17. The arbitrators must have specialised knowledge of international financial services law and regulation. The arbitrators acting as chairpersons must also have experience as counsel or panellist in dispute settlement proceedings on subject matters within the scope of this Agreement. The arbitrators shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties[, and shall comply with any code of conduct prescribed for the purposes of this Article by the Regulatory Sub-Committee].

Interim panel report

18. The arbitration panel shall present to the Parties an interim report within [150] days of the establishment of the arbitration panel. The report shall contain:

(a) findings of fact; and

(b) determinations as to whether the responding Party has conformed with its obligations under this Agreement.

19. Each Party may submit written comments to the arbitration panel on the interim report, subject to any time limits set by the arbitration panel. After considering any such comments, the arbitration panel may:

(a) reconsider its report; or

(b) make any further examination that it considers appropriate.

20. The interim report of the arbitration panel shall be confidential.

Final panel report

21. Unless the Parties agree otherwise, the arbitration panel shall issue a report in accordance with this Article 5.47.21 and Articles 5.47.22 and 5.47.23. The final panel report shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The ruling of the arbitration panel in the final panel report shall be binding on the Parties.

22. The arbitration panel shall issue to the Parties [and to the Regulatory Sub-Committee] a final report within [30] days of the interim report.

23. Each Party shall make publicly available the final panel report, subject to any [agreement reached between the Parties as to confidential sections of the final panel report which shall not be made publicly available] / [procedures regarding the confidentiality of panel reports as agreed between the Parties for the purposes of this Article].

Urgent proceedings

24. In cases of urgency, including those involving events of substantial systemic risk to the financial services sectors of either of the Parties, the arbitration panel and the Parties shall make every effort to accelerate the proceedings to the greatest extent possible. The arbitration panel shall aim at issuing an interim report to the Parties within [75] days of the establishment of the arbitration panel, and a final report within [15] days of the interim report. Upon request of a Party, the arbitration panel shall make a preliminary ruling within [10] days of the request on whether it deems the case to be urgent.

Compliance with the final panel report

25. The responding Party shall take any measure necessary to comply with the final panel report. No later than [20] days after the receipt of the final panel report by the Parties, the responding Party shall inform the other Party [and the Regulatory Sub-Committee] of its intentions in respect of compliance.

Reasonable period of time for compliance

26. If immediate compliance is not possible, no later than [20] days after the receipt of the final panel report by the Parties, the responding Party shall notify the requesting Party [and the Regulatory Sub-Committee] of the period of time it will require for compliance.

27. In the event of disagreement between the Parties on the reasonable period of time in which to comply with the final panel report, the requesting Party shall, within [20] days of the receipt of the notification made under Article 5.47.26 by the responding Party, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party [and to the Regulatory Sub-Committee]. The arbitration panel shall issue its ruling to the Parties [and to the Regulatory Sub-Committee] within [30] days from the date of the request.

28. The reasonable period of time may be extended by mutual agreement of the Parties.

29. At any time after the midpoint in the reasonable period of time and at the request of the requesting Party, the responding Party shall make itself available to discuss the steps it is taking to comply with the final panel report.

30. The responding Party shall notify the other Party [and the Regulatory Sub-Committee] before the end of the reasonable period of time of measures that it has taken to comply with the final panel report.

Temporary remedies in case of non-compliance

31. If:

(a) the responding Party fails to notify its intention to comply with the final panel report under Article 5.47.25 or the time it will require for compliance under Article 5.47.26;

(b) at the expiry of the reasonable period of time, the responding Party fails to notify any measure taken to comply with the final panel report; or

(c) the arbitration panel on compliance referred to in Article 5.47.36 establishes that a measure taken to comply is inconsistent with that Party's obligations under the provisions referred to in Article 5.47.2,

the requesting Party shall be entitled to take measures to suspend [any of the requesting Party's obligations under this Agreement [including the agreed legal effect of any of the agreed equivalence recognitions]] / [benefits in the financial services sector that have an effect corresponding to the measure complained of [including the agreed legal effect of any of the agreed equivalence recognitions]]. The [level] / [proportionality] of the suspension shall be assessed from the date of notification of the final panel report to the Parties.

32. Before suspending obligations, the requesting Party shall notify the responding Party [and the Regulatory Sub-Committee] of its intention to do so, including a description of the level of obligations it intends to suspend.

33. [Except as otherwise provided in this Agreement, the suspension of obligations (including the legal effect of an agreed equivalence recognition) may concern any provision referred to in Article 5.47.2 and shall be limited at a level proportionate to the nullification or breach of this Agreement caused by the violation.]

34. The requesting Party may implement the suspension [10] working days after the date of receipt of the notification referred to in Article 5.47.32 by the responding Party, unless a Party has requested arbitration under Articles 5.47.35 and 5.47.36.

35. A disagreement between the Parties concerning the existence of any measure taken to comply or its consistency with the provisions referred to in Article 5.47.2 ("disagreement on compliance"), or on the equivalence between the level of suspension and the nullification or impairment caused by the violation ("disagreement on suspension"), shall be referred to the arbitration panel.

36. A Party may reconvene the arbitration panel by providing a written request to the arbitration panel and the other Party [and the Regulatory Sub-Committee.] In case of a disagreement on compliance, the arbitration panel shall be reconvened by the requesting Party. In case of a disagreement on suspension, the arbitration panel shall be reconvened by the responding Party. In case of disagreements on both compliance and on suspension, the arbitration panel shall rule on the disagreement on compliance before ruling on the disagreement on suspension.

37. The arbitration panel shall notify its ruling to the Parties and to the Regulatory Sub-Committee accordingly:

    (a) within [90] days of the request to reconvene the arbitration panel, in case of a disagreement on compliance;

    (b) within [30] days of the request to reconvene the arbitration panel, in case of a disagreement on suspension; and

    (c) within [120] days of the first request to reconvene the arbitration panel, in case of a disagreement on both compliance and suspension.

38. The requesting Party shall not suspend obligations until the arbitration panel reconvened under Articles 5.47.35 and 5.47.36 has delivered its ruling. Any suspension shall be consistent with the arbitration panel's ruling.

39. The suspension of obligations shall be temporary and shall be applied only until the measure found to be inconsistent with the provisions referred to in Article 5.47.2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Articles 5.47.41 and 5.47.42, or until the Parties have settled the dispute.

40. At any time, the requesting Party may request the responding Party to provide an offer for temporary compensation, and the responding Party shall present such offer.

<u>Review of measures taken to comply after the suspension of obligations</u>

41. When, after the suspension of obligations by the requesting Party, the responding Party takes measures to comply with the final panel report, the responding Party shall notify the other Party and the Regulatory Sub-Committee and request an end to the suspension of obligations applied by the requesting Party.

42. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 5.47.2 within [60] days of the date of receipt of the notification, the requesting Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the Regulatory Sub-Committee. The final panel report shall be notified to the Parties and to

the Regulatory Sub-Committee within [90] days of the date of submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 5.47.2, the suspension of obligations shall be terminated.

Rules of procedure

43. The dispute settlement procedure under this Article 5.47 shall be governed by the rules of procedure for arbitration [prescribed by the [Regulatory Sub-Committee] for the purposes of this Article] unless the Parties agree otherwise.

General rule of interpretation

44. The arbitration panel shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, including those set out in the Vienna Convention on the Law of Treaties. The arbitration panel shall also take into account relevant interpretations in reports of Panels and the appellate body adopted by the WTO Dispute Settlement Body.

Rulings of the arbitration panel

45. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

Mutually agreed solutions

46. The Parties may reach a mutually agreed solution to a dispute under this Article 5.47 at any time. They shall notify the [Regulatory Sub-Committee] and the arbitration panel of any such solution. Upon notification of the mutually agreed solution, the arbitration panel shall terminate its work and the proceedings shall be terminated.

Article 5.51: Private Law Remedies

1. Without prejudice to the other rights and obligations of the Parties under Article 5.47, a relevant private party may submit to the Tribunal constituted under this Article 5.48 a claim that a Party has breached its obligations under this Agreement by acting inconsistently with [the recognition principles or Articles 5.42, 5.46 or 5.47,] where the relevant private party claims to have suffered loss or damage as a result of the alleged breach.

2. Claims under Article 5.48.1 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.

3. The Panel shall not decide claims that fall outside the scope of Articles 5.48.1 and 5.48.2.

Consultations

4. A dispute should, to the extent possible, be settled amicably. Such a settlement may be agreed at any time, including after the claim has been submitted pursuant to Article 5.48.22. 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 5.48.7.

5. Unless the disputing parties agree otherwise, the place of consultation shall be:

   (a) London, if the measures challenged are measures of the United Kingdom; and

   (b) Brussels, if the measures challenged are measures of the Union.

6. The disputing parties may hold the consultations through videoconference or other means where appropriate.

7. The relevant private party shall submit to the other Party a request for consultations setting out:

   (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.

   (f) 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.

8. The requirements of the request for consultations set out in Article 5.48.7 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defence.

9. A request for consultations must be submitted within:

   (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.

10. A request for consultations concerning an alleged breach by the Union shall be sent to the Union recognition body.

11. A request for consultations concerning an alleged breach by the United Kingdom shall be sent to the UK recognition body.

12. In the event that the relevant private party has not submitted a claim pursuant to Article 5.48.22 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 5.48 with respect to the same measures. This period may be extended by agreement of the disputing parties.

Mediation

13. The disputing parties may at any time agree to have recourse to mediation.

14. Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Article 5.48 and is governed by the rules agreed to by the disputing parties.

15. The mediator is appointed by agreement of the disputing parties. The disputing parties may also request that the Regulatory Sub-Committee appoint the mediator.

16. The disputing parties shall endeavour to reach a resolution of the dispute within [60] days from the appointment of the mediator.

17. If the disputing parties agree to have recourse to mediation, Articles 5.48.9 and 5.48.12 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

18. A relevant private party may only submit a claim pursuant to Article 5.48.22 if the relevant private party:

(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 5.48;

(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.

19. If the claim submitted pursuant to Article 5.48.22 is for loss or damage to an undertaking that the relevant private party owns or controls directly or indirectly, the requirements in Articles 5.48.18(e) and 5.48.18(f) apply both to the relevant private party and the relevant undertaking.

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 fulfil any of the requirements of Articles 5.48.18 and 5.48.19.

21. The waiver provided pursuant to Articles 5.48.18(f) or 5.48.19 as applicable shall cease to apply:

(a) if the Tribunal rejects the claim on the basis of a failure to meet the requirements of Articles 5.48.18 or 5.48.19 on any other procedural or jurisdictional grounds;

(b) if the Tribunal dismisses the claim pursuant to Article 5.48.46 or Article 5.48.48; or

(c) if the relevant private party withdraws its claim, in conformity with the applicable rules under Article 5.48.23, within 12 months of the constitution of the division of the Tribunal.

Submission of a claim to the Tribunal

22. If a dispute has not been resolved through consultations, a claim may be submitted under this 5.48 by:

(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 which it owns or controls directly or indirectly.

23. Subject to the provisions of this Article 5.48 or as otherwise agreed by the disputing parties, the arbitration shall be conducted under the UNCITRAL Arbitration Rules.

24. The rules applicable under Article 5.48.23 are those that are in effect on the date that the claim or claims are submitted to the Tribunal under this Article 5.48, subject to the specific rules set out in this Article 5.48.

25. The place of arbitration shall be determined in accordance with the same principles as the place of consultation under Article 5.48.5.

26. A claim is submitted for dispute settlement under this Article 5.48 when the notice under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent.

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 5.48. Each Party shall ensure this information is made publicly available.

Proceedings under another international agreement

28. Where a claim is brought pursuant to this Article 5.48 and another international agreement and:

(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 5.48,

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

29. The respondent consents to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Article 5.48.

30. The consent under Article 5.48.29 and the submission of a claim to the Tribunal under this Article 5.48 shall satisfy the requirements of Article II of the New York Convention for an agreement in writing.

Third-party funding

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.

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

33. The dispute shall be decided by a Sole Arbitrator, unless either of the disputing parties requests dispute resolution by a three-person Tribunal.

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 Article 5.48.22 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 Chairperson of the Regulatory Sub-Committee, or the chair's delegate, to make the relevant appointment. In the case of the Sole Arbitrator and the chairperson of a three-person Tribunal, the arbitrator shall be drawn from the sub-list of chairpersons. If the disputing parties were unable to reach agreement on the two (non-presiding) arbitrators of a three-person Tribunal, one arbitrator shall be drawn from the sub-list of the responding Party and one arbitrator shall be drawn from the sub-list of the other Party to this Agreement. In the event the disputing parties have agreed on the chairperson as well as on one of the other two arbitrators, the remaining arbitrator shall be drawn from the sub-list of chairpersons. Articles 5.48.12 to 5.48.15 apply, mutatis mutandis, to this Article.

Ethics

35. The Members of the Tribunal shall be independent. They shall not be affiliated with any government. They shall not take instructions from any organisation 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.

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.

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 endeavour 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.

38. Upon a reasoned recommendation from the President of the Tribunal, or on their joint initiative, the Parties, by decision of the Regulatory Sub-Committee, may remove a Member from the Tribunal where his or her behaviour is inconsistent with the obligations set out in Article 5.48.35 and incompatible with his or her continued membership of the Tribunal.

<u>Applicable law and interpretation</u>

39. When rendering its decision, the Tribunal established under this Article 5.48 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.

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.

41. An interpretation of this Agreement adopted by the Regulatory Sub-Committee shall be binding on the Tribunal established under this Article 5.48. The Regulatory Sub-Committee may decide that an interpretation shall have binding effect from a specific date.

Claims manifestly without legal merit

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.

43. An objection shall not be submitted under Article 5.48.42 if the respondent has filed an objection pursuant to Article 5.48.48.

44. The respondent shall specify, as precisely as possible, the basis for the objection.

45. On receipt of an objection pursuant to Article 5.48.42, 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.

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.

47. Articles 5.48.42, 5.48.45 and 5.48.16 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

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 5.48.22, is not a claim for which an award in favour of the claimant may be made under this 5.48, even if the facts alleged were assumed to be true.

49. An objection under Article 5.48.48 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial.

50. If an objection has been submitted pursuant to Article 5.48.42, the Tribunal may, taking into account the circumstances of that objection, decline to address an objection submitted pursuant to Article 5.48.48.

51. On receipt of an objection under Article 5.48.48, and, if appropriate, after rendering a decision pursuant to Article 5.48.50, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

Interim measures of protection

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 5.48.40. For the purposes of this Article, an order includes a recommendation.

Discontinuance

53. If, following the submission of a claim under this Article 5.48, 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

54. The UNCITRAL Transparency Rules, as modified by this Agreement, shall apply in connection with proceedings under this Article 5.48.

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.

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.

57. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, the United Kingdom or the Union, as the case may be, shall make publicly available in a timely manner relevant documents pursuant to Article 5.48.55, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository.

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.

59. Nothing in this Article 5.48 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

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 5.48. However, the disputing party shall ensure that those persons protect the confidential or protected information contained in those documents.

61. This Agreement does not prevent a respondent from disclosing to officials of the United Kingdom or the Union such unredacted documents as it considers necessary in the course of proceedings under this Article 5.48. However, the respondent shall ensure that those officials protect the confidential or protected information contained in those documents.

Non-disputing Party

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 non-disputing Party:

(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 5.48.22, a request for consolidation and any other documents that are appended to such documents;

(b) on request:

(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 non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.

63. The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the non-disputing Party regarding the interpretation of this Agreement. The non-disputing Party may attend a hearing held under this Article 5.48.

64. The Tribunal shall not draw any inference from the absence of a submission pursuant to Article 5.48.63.

65. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on a submission by the non-disputing Party to this Agreement.

Final award

66. If the Tribunal makes a final award against the respondent, the Tribunal may only award monetary damages and any applicable interest.

67. Subject to Articles 5.48.66 and 5.48.70, if a claim is made under Article 5.48.22(b):

(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the undertaking which a relevant private party owns or controls directly or indirectly;

(b) an award of costs in favour 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 which has provided a waiver pursuant to Article 5.48.18(f), may have in monetary damages or property awarded under a Party's law.

68. Monetary damages shall not be greater than the loss suffered by the relevant private party or, as applicable, the undertaking which 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.

69. The Tribunal shall not award punitive damages.

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.

71. The Regulatory Sub-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.

72. The Tribunal, the Regulatory Sub-Committee and the disputing parties shall make every effort to ensure 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 5.48.22. 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

73. A respondent shall not assert, and the Tribunal shall not accept a defence, 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 5.48.

Enforcement of awards

74. An award issued pursuant to this Article 5.48 shall be binding between the disputing parties and in respect of that particular case.

75. Subject to Article 5.48.76, a disputing party shall recognise and comply with an award without delay.

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.

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.

78. A final award issued pursuant to this Article 5.48 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

79. A Party shall not bring an international claim, in respect of a claim submitted pursuant to Article 5.48.22, unless the other Party has failed to abide by and comply with the award rendered in that dispute.

80. Article 5.48.79 shall not exclude the possibility of dispute settlement under Article 5.47 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 48.22.

81. Article 48.79 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Consolidation

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 48.22 in relation to a claim or claims under this Agreement. The Tribunal shall not consolidate such proceedings unless: (i) 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 (ii) 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.

83. In the case of a consolidated proceeding, the arbitrator(s) in the consolidated proceeding shall be appointed by the Regulatory Sub-Committee on the request of any of the disputing parties.

84. A relevant private party may withdraw a claim under this Article 5.48 that is subject to consolidation, and such claim shall not be resubmitted pursuant to Article 5.48.22. 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 5.48.

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 5.52: Change Mechanisms

Amended and repealed legislation

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 5.45 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 the GATS.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the consultation request through the consultation process under Article 5.45.

3. The change process described in Articles 5.49.1 to this Article 5.49.3 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

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 5.45 for the purposes of negotiating an equivalence change with the responding Party.

Article 5.53: Suspensions

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:

   (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 5.49;

   (c) in accordance with a mutually agreed solution that has been reached between the Parties in accordance with the consultation process specified in Article 5.45;

   (d) in accordance with a mutually agreed solution that has been reached between the Parties in accordance with the mediation process specified in Article 5.46; or

   (e) in accordance with the dispute resolution process specified in Article 5.47.

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 5.47)].

Schedule 1

Agreed Equivalence Recognitions

Agreed equivalence recognition relating to: [•]	
Relevant Union Legislation	Relevant United Kingdom Legislation
[•]	[•]
Description of legal effect in the Union	Description of legal effect in the United Kingdom
[•]	[•]
Conditions applicable to Union 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 Union undertakings entitled to the agreed equivalence recognition
[•]	[•]
Agreed equivalence recognition relating to: [•]	
Relevant Union Legislation	Relevant United Kingdom Legislation
[•]	[•]
Description of legal effect in the Union	Description of legal effect in the United Kingdom
[•]	[•]
Conditions applicable to Union 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 Union undertakings entitled to the agreed equivalence recognition
[•]	[•]

Schedule 2

Recognition Conditions

A Party (the "Adopting Party") may adopt and maintain an equivalence recognition in favour of the other Party (the "Recognised Party") by an implementing act or by including it in a mutual recognition agreement if:

(a) the Recognised Party applies requirements which 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 2, as determined by the Adopting Party;

(b) the Recognised Party applies materially equivalent ongoing and effective supervision and enforcement to entities that are authorised and supervised in its jurisdiction;

(c) equivalent standards of professional secrecy and data protection are in place and enforced in the Recognised Party's jurisdiction;

(d) equivalent standards or requirements relating to anti-money laundering and anti-terrorist financing are in place and enforced in the Recognised 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 Recognised Party in respect of each relevant sector that include, at the least, provisions relating to:

    (i) notifications between regulators;

    (ii) the establishment of public registers of the entities in the Recognised 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 Recognised Party's financial services regulators where entities authorised or supervised in the Recognised 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 Recognised Party's jurisdiction, are subject to a variation, termination or suspension of authorisation to carry out any particular financial service under the Recognised Party's legal and supervisory regime, or enter into any insolvency, administration, receivership, resolution or any other similar event or process; and

(f) the Recognised Party provides reciprocal recognitions that are, or will be, effective in the Recognised Party's legal system specifically corresponding to each agreed equivalence recognition. This condition (f) is subject to the Adopting Parting electing not to require a reciprocal recognition be provided by the Recognised Party.

Annex 5.1

Permitted non-conforming measures

[To be negotiated and inserted]

Comments on Financial Services

1. It is a common misunderstanding that FTAs do not cover financial services. In fact both CETA and Japan have financial services chapters and the overall direction of travel for FTAs is for greater coverage and commitments to liberalization, as well as attempts to deal with regulatory cooperation and coherence.

2. The EU should find these financial services provisions acceptable. It already has equivalence arrangements in place with numerous other countries around the world, including the US, Singapore and Mexico. These provisions fill in some gaps and add procedural certainty, both of which benefit the EU. The EU should also wish to collaborate with the United Kingdom on financial regulation going forward, to enhance its status in the global financial regulatory world (preventing the EU from slipping to a much more peripheral position), and because it needs frictionless access to the City in order for EU27 citizens and companies to have the cheapest possible access to capital.

CHAPTER 6
CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES

Article 6.1: Current account

1. Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency[24], and in accordance with the Articles of Agreement of the International Monetary Fund, as applicable, any payments and transfers with regard to transactions on the current account of the balance of payments which fall within the scope of this Agreement.

Article 6.2: Capital movements

1. Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purpose of liberalisation of investments and other transactions as provided for in Chapter 8 (Investments).

2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote trade and investment.

Article 6.3: Application of laws and regulations relating to capital movements, payments or transfers

1. Articles 6.1 and 6.2 shall not be construed as preventing a Party from applying its laws and regulations relating to:

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

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

---

[24] For the purposes of this Chapter, "freely convertible currency" means a currency that can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions. For greater certainty, currencies that are widely traded in international foreign exchange markets and widely used in international transactions include freely usable currencies as designated by the IMF in accordance with the Articles of Agreement of the International Monetary Fund.

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences, or deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in adjudicatory proceedings; or

(f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall not be applied in an inequitable, arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

Comments

1. This chapter is drawn from the EU-Japan FTA

CHAPTER 7
MOVEMENT OF LABOUR

Article 7.1: Temporary Business Visas

1. A Party shall grant the entry and temporary stay to natural persons of the other Party for business purposes in accordance with this Section, and Annex 7.1, provided that those persons comply with the immigration laws and regulations of the Party applicable to entry and temporary stay.

2. Each Party shall allow the grant of temporary business visas in such a way as to avoid unduly impairing or delaying trade in goods or services, or establishment or operation under this Agreement.

3. The measures taken by each Party to facilitate and expedite procedures related to the entry and temporary stay of natural persons of the other Party for business purposes shall be consistent with Annex 7.1.

4. The Parties will make public all information necessary for persons wishing to apply for temporary business visas which relates to the entry and temporary stay by natural persons of the other Party including :

    (a) Categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;

    (b) Documentation required and conditions to be met;

    (c) Method of filing an application and options on where to file, such as consular offices or online;

    (d) Application fees and an indicative timeframe of the processing of an application;

    (e) The maximum length of stay under each type of authorisation described in subparagraph (a);

    (f) Conditions for any available extension or renewal;

    (g) Rules regarding accompanying dependents;

(h) Relevant laws of general application pertaining to the entry and temporary stay of natural persons.

5. With respect to the information referred to in 7.1.4 above, each Party shall promptly inform the other Party of the introduction of any new requirements and procedures or of any changes in any requirements and procedures that affect the effective application for the grant of, entry into, temporary stay in and , where applicable, permission to work in the former Party.

Article 7.2: Mutual Recognition of Occupational Licensing

1. With the exception of those occupations and conditions identified in Annex 7.1, 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 7.3: Exceptions

1. It is the intention of the Parties to minimize exemptions and exclusions to this Chapter.

Annex 7.1: Conditions for entry and temporary stay to natural persons for business purposes

[To be negotiated]

Comments

1. Provisions taken from EU-Japan FTA as modified.

CHAPTER 8
INVESTMENT

Article 8.1: Definitions

For purposes of this Chapter:

"**enterprise**" 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;

"**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. Forms that an investment may take include:

1. Establishment of an enterprise;

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

3. bonds, debentures, other debt instruments, and loans[25];

4. futures, options, and other derivatives;

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

6. intellectual property rights;

7. licenses, authorizations, permits, and similar rights conferred pursuant to domestic law[26][27];

---

[25] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

[26] 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.

[27] The term "investment" does not include an order or judgment entered in a judicial or administrative action.

8. other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges[28].

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.

"**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;

"**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. This Chapter applies to measures adopted or maintained by a Party relating to:

    (a) investors of the other Party; and

    (b) covered investments.

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

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

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

[28] For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

Article 8.3: Non-Discrimination

1. Each Party shall accord to investors of the other Party treatment no less favourable 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 favourable 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 favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 8.4: Expropriation and Compensation[29]

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

   (a) for a public purpose;

   (b) in a non-discriminatory manner;

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

   (d) in accordance with due process of law.

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

   (a) be paid without delay;

[29] Interpreted in accordance with Annex 8.

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

(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:

(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.

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:

(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, non-discriminatory, and good faith application of its laws relating to:

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

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

   (c) criminal or penal 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[30]:

   (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;

[30] 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.

(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:

(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.

(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[31].

(b) Paragraph 1(f) of this Article does not apply:

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 anticompetitive under the Party's competition laws.[32]

(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), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including 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 non-living exhaustible natural resources.

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

[31] 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).

[32] The Parties recognize that a patent does not necessarily confer market power.

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

(f) Paragraphs 2(a) and (b) of this Article 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 of this Article 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 this Chapter 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:

   (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 this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter 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 this Chapter, 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 8.1: Understanding on 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 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 or is an action tantamount to an 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:

      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[33]; and

[33] For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations

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.

Comments

1. The provisions of the investment chapter are broadly standard provisions drawn from existing FTAs all over the world. They do not have the comprehensive investor-state dispute settlement that exist in the TPP or NAFTA for example. Breaches of the investment chapter would be resolved by recourse to ordinary dispute resolution.

that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

CHAPTER 9
E-COMMERCE

Article 9.1: Scope and General Provisions

This Chapter 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: Non-Discriminatory Treatment of Digital Products

No Party shall accord less favourable 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 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 endeavour 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:

   (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 endeavour 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 recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. 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:

   (a) is not applied in a manner which 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 recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

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

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

   (a) is not applied in a manner which 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.

Article 9.9: Source codes

1. A Party may not require the transfer of, or access to, source code of software owned by a person of the other Party[34]. Nothing in this paragraph shall prevent the inclusion or implementation of terms and conditions related to the transfer of or granting of access to source code in commercially negotiated contracts, or the voluntary transfer of or granting of access to source code for instance in the context of government procurement.

2. Nothing in this Article shall affect:

   (a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition law;

   (b) requirements by a court, administrative tribunal or administrative authority with respect to the protection and enforcement of intellectual property rights to the extent that source codes are protected by those rights; and

[34] For greater certainty, "source code of software owned by a person of the other Party" includes source code of software contained in a product.

(c) the right of a Party to take measures in accordance with Article III of the GPA.

3. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures[35] which are inconsistent with paragraph 1, in accordance with [ ].

Article 9.10: Domestic regulation

Each Party shall ensure that all its measures of general application affecting electronic commerce are administered in a reasonable, objective and impartial manner, and are the least trade restrictive and least damaging to ordinary market competition as possible consistent with a clearly stated, legitimate regulatory goal.

Article 9.11: Principle of no prior authorisation

1. The Parties will endeavour not to impose prior authorisation or any other requirement having equivalent effect on the provision of services by electronic means.

2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

Article 9.12: Cooperation on electronic commerce

1. The Parties shall, where appropriate, cooperate and participate actively in multilateral fora to promote the development of electronic commerce.

2. The Parties agree to maintain a dialogue on regulatory matters relating to electronic commerce with a view to sharing information and experience, as appropriate, including on related laws, regulations and their implementation, and best practices with respect to electronic commerce, in relation to, inter alia:

    (a) consumer protection;

    (a) cybersecurity;

[35] Those measures include measures to ensure security and safety, for instance in the context of a certification procedure.

(b) combatting unsolicited commercial electronic messages;

(c) the recognition of certificates of electronic signatures issued to the public;

(d) challenges for small and medium-sized enterprises in the use of electronic commerce;

(e) the facilitation of cross-border certification services;

(f) intellectual property; and

(g) electronic government.

Comments

1. The E-Commerce provisions are drawn from modern FTAs such as CETA, Japan and TPP.

2. As with other areas, we provide that regulation should be applied in a manner that is least trade restrictive and anti-competitive consistent with a clearly articulated, legitimate regulatory goal.

CHAPTER 10
GOVERNMENT PROCUREMENT

Article 10.1: Scope

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

2 The GPA Agreement is incorporated into and made part of this Chapter, mutatis mutadis, and the rules which apply to Part 1 of Annex 10 apply to procurement covered by Part 2 of Annex 10.

3 Further to Article VIII of the GPA Agreement, a procuring entity of a Party shall not exclude a supplier established in the other Party from participating in a tendering procedure on the basis of a legal requirement according to which the supplier must be:

(a) a natural person; or

(b) a legal person.

4 While a procuring entity of a Party may, in establishing the conditions for participation, require relevant prior experience where essential to meet the requirements of the procurement in accordance with subparagraphs 2(b) of Article VIII of the GPA Agreement, that procuring entity shall not impose the condition that such prior experience must have been required within the territory of that Party.

Article 10.2: Covered Procurement

1. 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 shall be open to tenders from entities of all Parties.

Article 10.3: Non-Discrimination

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 favourable 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:

   (a) treat a locally established supplier less favourably 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.

Article 10.4: Least Restrictive Measures

1. With respect to any measure regarding a covered procurement, each Party shall ensure that the measure is the least trade restrictive and least anti-competitive consistent with a legitimate, clearly stated regulatory goal.

Article 10.5: Selective Tendering

1. If in accordance with paragraphs 4 and 5 of Article IX of the GPA Agreement, a procuring entity limits the number of suppliers for a given procurement, the number of suppliers permitted to submit a tender shall be sufficient to ensure competition without affecting the operational efficiency of the procurement system.

Article 10.6: Environmental Conditions

1. Any environmental conditions laid down relating to the performance of the procurement must comply with this Chapter, and may not be more trade restrictive or market distortive than necessary consistent with a legitimate, publicly stated regulatory goal.

2. If a procuring entity applies environment-friendly technical specifications as set out for environmental labels or as defined by relevant laws and regulations in force in either Party, each Party shall ensure that those specifications are:

(a) Appropriate to define the characteristics fo the goods or services that are the object of the contract

(b) Based on objectively verifiable and non-discriminatory criteria; and

(c) Accessible to all interested suppliers.

Article 10.7: Requirement of Test Reports

1. Each Party including its procuring entities, may require that interested suppliers provide a test report issued by a conformity assessment body or a certificate issued by such body as a means of proof of conformity with the requirements or the criteria set out in the technical specifications, the evaluation criteria or any other terms and conditions.

2. When requiring the submission of a test report or a certificate issued by a conformity assessment body, each Party, including its procuring entities shall:

   (a) accept the results of the conformity assessment procedures that are conducted by the registered conformity assessment bodies of the other Party in accordance with the mutual recognition provisions of this or other agreements between the UK and the EU.

   (b) Ensure that any requirements will not be used as a disguised barrier to trade or unnecessary market distortion.

Article 10.8: Abnormally Low Pricing

1. If a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier whether the price takes into account the grant of government subsidies, government privileges, or other market distorting practices by the government of the Party where the tenderer is located.

Article 10.9: Domestic Review Mechanisms

1. The Parties shall ensure that there are domestic review mechanisms in place in the event of disputes over government procurements. Each Party shall ensure that

   (a) members of the designated authority are independent, impartial and free from external influence during the term of their appointment.

(b) Members of the designated authority cannot be dismissed against their will while they are in office, unless their dismissal is required by the provisions governing the designated authority; and

(c) The President and at least one other member of the designated authority must have legal and professional qualifications equivalent to those necessary for judges, lawyers, or other legal experts qualified under the laws and regulations of the Party.

2. Each Party shall adopt or maintain procedures that provide for rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures could include suspension of the procurement process or, if a contract has been concluded by the procuring entity and if a Party has so provided, in suspension of performance of a contract. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing.

3. In case an interested or participating supplier has submitted a challenge with the designated authority referred to in paragraph 1, each Party shall, in principle, ensure that a procuring entity shall not conclude the contract until the authority has made a decision or recommendation on the challenge with regard to interim measures, corrective action or compensation for the loss or damages suffered as referred to in paragraphs 2, 5 and 6 in accordance with its rules, regulations and procedures. Each Party may provide that in unavoidable and duly justified circumstances, the contract can be nevertheless concluded.

4. Each Party may provide for:

(a) A standstill period between the contract award decision and the conclusion of a contract in order to give sufficient time to unsuccessful suppliers to assess whether it is appropriate to initiate a review; or

(b) A sufficient period for an interested supplier to submit a challenge, which may constitute grounds for suspension of the execution of a contract.

5. Corrective action, as referred to in Article XVIII (7) (b) of the GPA Agreement may include one or more of the following:

(a) The removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or any other document relating to the tendering procedure and conduct of new procurement procedures;

(b) The Repetition of the procurement procedure without changing the conditions;

(c) The setting aside of the contract award decision and the adoption of a new contract award;

(d) The termination of a contract or the declaration of its ineffectiveness; or

(e) The adoption of other measures with the aim to remedy a breach of this Chapter, for example an order to pay a particular sum until the breach has been effectively remedied.

6. In accordance with Article XVIII(7)(b) of the GPA Agreement, each Party may provide for the award of compensation for the loss or damages suffered. In this regard, if the review body of the Party is not a court and a supplier believes that there has been a breach of the domestic laws and regulations implementing the obligations under this Chapter, the supplier may bring the matter before a court, including with a view to seeking compensation, in accordance with the judicial procedures of the Party.

7. Each Party shall adopt or maintain the necessary procedures by which decisions or recommendations made by review bodies are effectively implemented, or the decisions by judicial review bodies are effectively enforced.

Article 10.10: Modification to GPA Schedules

1. Any modification that a Party makes to its GPA Agreement's schedules will automatically become effective for the purposes of this Agreement. Any Party modifying its schedules shall notify the other Party in writing, and include a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification. Compensatory adjustments are not required if the reason for the modification is that procuring entity has ceased to be controlled or influenced by the Party.

2. In the event that the Committee of Government Procurement established by Article XXI of the GPA adopts criteria pursuant to Article XIX (8)(b) and (c), those criteria shall be applicable within the context of this Article.

3. If the other Party objects that:

   (a) an adjustment proposed in accordance with subparagraph 3(b) is inadequate to maintain a comparable level of mutually agreed coverage; or

   (b) the intended modification referred to in paragraph 4 concerns a procuring entity over whose procurement the Party has not effectively eliminated its control or influence, it shall submit an objection in writing to the Party intending to modify its commitments within 45 days from the date of receipt of the notification referred to in subparagraph 3(a) or be deemed to have accepted the adjustment or modification.

4. The following changes to a Party's commitments under Part 2 of Annex 10 shall be considered a rectification:

   (a) a change in the name of a procuring entity;

   (b) a merger of two or more procuring entities listed in the same paragraph of Part 2 of Annex 10;

   (c) the separation of a procuring entity listed in Part 2 of Annex 10 into two or more procuring entities that are added to the procuring entities listed in the same paragraph of that Part; and

   (d) updates of indicative lists such as those set out in paragraph 3 of Section A of Part 2 of Annex 10, subparagraph 1(b) of Section B of Part 2 of Annex 10, or in Annexes 2 and 3 of the European Union to Appendix I to the GPA.

5. In the case of intended rectifications, the Party shall notify the other Party in writing every two years, in line with the cycle of notifications provided for in the Decision of the Committee on Government Procurement on Notification Requirements under Articles XIX and XXII of the Agreement adopted on 30 March 2012 (GPA/113), following the entry into force of this Agreement.

6. The other Party may, within 45 days from the date of receipt of the notification pursuant to paragraph 8, submit an objection in writing to the Party intending to rectify its commitments. The Party submitting an objection shall set out the reasons why it believes the intended rectification is not a change provided for in paragraph 7, and describe the effect of the intended rectification on the mutually agreed coverage provided for in this Agreement.

7. If the Party objects to the intended modification or rectification, or to the proposed compensatory adjustment, the Parties shall seek to resolve the issue through consultations. If no agreement between the Parties is reached within 150 days from the date of receipt of the notification of the objection, the Party intending to modify or rectify its commitments may have recourse to dispute settlement under Chapter 19 to determine whether the objection is justified. An intended modification or rectification in respect of which an objection has been submitted, shall be deemed to have been accepted only when so agreed through the consultations or so decided by the panel established pursuant to Article 19.7.

Article 10.11: Cooperation

1. The Parties shall endeavour to cooperate with a view to achieving enhanced understanding of their respective government procurement markets. The Parties also recognise that the involvement of related industries of the Parties, through means such as dialogues, is important for that purpose.

Article 10.12: Contact points

1. Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Chapter and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

Article 10.13: Exceptions

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

   (a) 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;

   (b) Publishes a list of procurement that is exempted along with the most recent government spending figures on the exempted procurement;

   (c) 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 sub-national governments to open their procurement markets.

Article 10.14: Sub-Committee on Government Procurement

1. The Parties hereby establish a Sub-Committee on Government Procurement ("the GP Sub-Committee"), comprising representatives of each Party which will report to the overall Joint Committee set out in Articles 20.1 and 20.2 of this Agreement.

2. The GP Sub-Committee shall be responsible for the effective implementation and operation of this Chapter.

2. The GP Sub-Committee shall have the following functions:

   (a) making recommendations to the Joint Committee to adopt decisions amending this Chapter to reflect modifications or rectifications accepted pursuant to Article 10.10 or agreed compensatory adjustments;

   (b) adopting modalities for the communication of statistical data if deemed necessary;

   (c) considering matters regarding government procurement that are referred to it by a Party; and

   (d) exchanging information relating to government procurement opportunities, including those at sub-central levels, in each Party.

Annex 10.1: List of Exceptions.

[To be negotiated]

Comments

1. The government procurement provisions are standard provisions drawn from existing agreements. Given the close alignment of the UK and EU on day one, and the interconnected nature of our economies, we have deepened liberalisation by seeking maximum coverage as described below, whereas other FTAs tend to have lower levels of coverage.

2. We have opted for maximum coverage versus minimum limits especially with regard to SOEs; we have included provisions that ensure that where government has influence or control, government procurement disciplines apply.

3. EU Standards for monetary thresholds to be applied.

4. Need for government procurement obligations to cover municipalities as well as national and subnational entities.

5. Article 10.9.(c) of the EU-Japan FTA excludes sub central entities from these requirements which does not make sense given how much procurement is at this level.

CHAPTER 11
INTELLECTUAL PROPERTY

PART I: GENERAL PROVISIONS

Article 11.1: Initial Provisions

1. In order to facilitate the production and commercialisation of innovative and creative products and the provision of services between the Parties and to increase the benefits from trade and investment, the Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and provide for measures for the enforcement of intellectual property rights against infringement thereof, including counterfeiting and piracy, in accordance with the provisions of this Chapter and of the international agreements to which both Parties are party.

2. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Agreement.

Article 11.2: Definitions

1. For the purposes of this Chapter, "**intellectual property**" means all categories of intellectual property that are covered by the rest of this Chapter or by sections 1 to 7 of Part II of the TRIPS agreement.

Article 11.3: TRIPS Agreement

1. The objectives and principles set out in Part 1 of the TRIPS Agreement, in particular Articles 7 and 8 shall apply to this Chapter, *mutatis mutandis*.

Article 11.4: International Agreements

1. This Chapter shall include by reference the following provisions of the following international treaties to which the Parties are members:

   (a) The TRIPS Agreement

(b) The Paris Convention

(c) The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on26 October, 1961 (the "Rome Convention").

(d) The Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September, 1886 (the "Berne Convention")

(e) The WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;

(f) The WIPO Performance and Phonograms Treaty, adopted at Geneva on 20 December, 1996

(g) the Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the purposes of Patent Procedure, done at Budapest on 28 April, 1977

(h) the International Convention for the Protection of New Varieties of Plants, done at Paris on 2 December, 1961 (the "1991 UPOV Treaty");

(i) The Protocol relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June, 1989; and

(j) The Patent Cooperation Treaty, done at Washington on 19 June, 1970;

(k) The Beijing Treaty on Audiovisual Performances, adopted on 24 June, 2012

(l) The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind,Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June, 2013.

Article 11.5: National Treatment

1. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property subject to the exceptions in the international treaties referred to in Article 11.4.

Article 11.6: Due Process and Transparency

1. Each Party shall promote efficiency and transparency in the administration of its intellectual property system, in line with international standards.

2. Each Party shall promote transparency and due process by publishing

   (a) Applications for and grants of patents

   (b) Registration of industrial designs

   (c) Registration of trademarks and applications therefor

   (d) Registration of new varieties of plant

   (e) Registration of geographical indications;

3. Each Party shall make available to the public information on measures taken by the competent authorities for the suspension of the release of goods infringing intellectual property rights as a border measure set out in this Chapter.

4. Each Party, in the administration of its intellectual property rights system shall make available to applicants for registration of any Covered IP right, any reasons for its refusal to grant such a right, and shall ensure the applicant has sufficient time to present argument justifying why the right should be granted.

Article 11.7: Public Awareness

1. Each Party shall take necessary measures to promote public awareness of the importance of protecting intellectual property rights, including education and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

PART II: COPYRIGHT

Article 11.8: Author's Rights

1. Each Party shall provide for authors the exclusive right to authorise or prohibit:

(a) Direct or indirect reproduction by any means and in any form, in whole or in part, of their works;

(b) Any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof; Each Party may determine the conditions under which the exhaustion of the rights set out in this provision applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorisation of the author; and

(c) Any communication to the public of their works by wire or wireless means, including making available to the public in such a way that members of the public can access them from a place and at a time individually chosen by them.

Article 11.9: Performing Rights

1. Each Party shall provide for performers the exclusive rights to authorise or prohibit:

(a) The fixation of their performances

(b) Direct or indirect reproduction by any means and in any form, in whole or in part, of fixations of their performances;

(c) Distribution to the public, by sale or otherwise, of fixations of their performances in phonograms; Each Party may determine the conditions under which the exhaustion of the right set out in this provision applies after first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorisation of the performer;

(d) The making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) The broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

Article 11.10: Producers of Phonograms

1. Each Party shall provide for phonogram producers the exclusive right to authorise or prohibit:

   (a) Direct or indirect reproduction by any means and in any form, in whole or in part, of their phonograms;

   (b) The distribution to the public, by sale or otherwise, of their phonograms, including copies; each Party may determine the conditions under which the exhaustion of right set out in this provision applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorisation of the producer of the phonogram; and

   (c) The making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 11.11: Broadcasting Organisations

1. Each Party shall provide broadcasting organisations the exclusive right to authorise or prohibit:

   (a) The fixation of their broadcasts

   (b) The reproduction of fixations of their broadcasts;

   (c) The making available to the public of their broadcasts, by wire or wireless means, which is made in response to a request from a member of the public; and

   (d) The communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; each Party may determine the conditions under which that exclusive right may be exercised.

Article 11.12: Use of Phonograms

1. The Parties agree to continue discussion on adequate protection for the use of phonograms for all communication to the public, giving due consideration to the importance of international standards regarding protection for the use of phonograms.

Article 11.13: Term of Protection

1. The term of protection for the rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author plus 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public. In any event the term of protection may not be less than 70 years from the work's creation.

2. The term of protection for rights of performers shall be no less than 50 years after the performance.

3. The term of protection for rights of producers of phonograms shall be no less than 70 years after the phonogram was published. Failing such publication within at least 50 years from the fixation of the phonogram, the term of protection shall be no less than 50 years after the fixation was made.

4. The term of protection for rights in broadcasts shall be no less than 50 years after the first transmission of the broadcast.

5. The terms laid down in this Article shall be counted from January 1 of the year following the year of the event which gives rise to them.

Article 11.14: Limitations and Exceptions

1. Any limitations or exceptions to these rights must be agreed by both Parties, and must include prompt notification to the rights holder and give the rights holder ample opportunity to challenge the limitation or exception and shall not take effect until that challenge is concluded.

2. Such challenge shall be brought in the appropriate courts of the Party concerned.

Article 11.15: Collective Management Organisations

1. The Parties agree that collective management organisation are useful ways of promoting the rights of rights' holders and agree:

   (a) To facilitate non-discriminatory treatment by CMOs of rights holders they represent either directly or via another collective management organisation.

(b) To promote transparency of CMOs.

PART III: TRADEMARKS

Article 11.16: Protection

1. Each Party shall ensure that the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

2. The rights described above shall not prejudice any existing prior rights nor shall they affect the possibility of a Party to make rights available on the basis of use.

Article 11.17: Exceptions

1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms and may provide for other limited exceptions, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

Article 11.18: Labelling and Packaging

1. With regard to labels and packaging, each Party shall provide that at least each of the following preparatory acts are deemed as an infringement of a registered trademark if the act has been performed without the consent of the registered trademark owner:

   (a) The manufacture;

   (b) The importation; and

   (c) The presentation

   of labels or packaging bearing a sign which is identical or similar to the registered trademark, for the purpose of using such sign or causing it to be used in the course of trade

for goods or services which are identical or similar to those in respect of which the trademark is registered.

Article 11.19: Well-Known Trademarks

1. The Parties shall ensure that well-known trademarks within the meaning of Article 6bis of the Paris Convention, and paragraphs 2 and 3 of Article 16 of TRIPS are fully protected.

PART IV: GEOGRAPHICAL INDICATIONS

Article 11.20: Definitions

1. "**Geographical indications**" means indications which identify a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.

Article 11.21: Application

1. This subsection only applies to the protection of geographical indications for wines, spirits and other alcoholic beverages as well as certain agricultural products set forth in Annex [ ].

Article 11.22: New Geographical indications

2. Either Party may add to the list of protected geographical indications if both Parties agree to the addition.

Article 11.23: Registration and Protection

1. Each Party shall establish or maintain a system for the registration and protection of geographic indications in its territory.

2. The system shall include the following elements

   (a) An official means to make available to the public the list of registered geographical indications;

(b) An administrative process to verify that a given geographical indication to be registered identifies as originating from the territory of a Party, or a region or locality in the Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

(c) An opposition procedure that allows the legitimate interests of third parties to be taken into account; and

(d) A procedure for cancellation of the protection of a geographical indication, taking into account the legitimate interests of third parties and the users of registered geographical indications to question.

Article 11.24: Preventative Action

1. The Parties will ensure that they provide the legal means for interested parties in its territory to prevent the use of marks, labels or indications that are confusingly similar to the protected and properly registered GI where the test of what is confusingly similar is the meaning as developed under trademark law.

2. If a geographical indication is protected in this subsection, then each Party shall refuse to register a trademark the use of which would be likely to mislead or confuse consumers as to the quality of the good or its origin.

Article 11.25: Good Faith

1. The Parties agree that if a trademark has been applied for or registered in good faith, or if the rights to a trademark have been acquired through use in good faith, in a Party, before a geographical indication is protected, then nothing in this subsection shall prejudice the eligibility or the validity of the registration of the trademark, or the right to use the trademark on the basis that such trademark is identical with, or similar to, the geographical indication.

PART V: INDUSTRIAL DESIGNS

Article 11.26: Protection

1. Each Party shall provide for the protection of independently created industrial designs that are new and original, including designs of a part of a product, regardless of whether or not the part can be separated from the product. This protection shall be provided by registration

and shall confer an exclusive right upon their holders in accordance with the provisions of this Article.

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall be considered to be new and original in the following circumstances:

   (a) If the component part, once it has been incorporated into the complex product, remains visible during the normal use of the latter; and

   (b) To the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

3. Each Party may provide limited exceptions to the protection of industrial designs in a manner consistent with paragraph 2 of Article 26 of the TRIPS agreement.

4. The provisions of this Article shall be without prejudice to any provisions of this Chapter or of the laws and regulations of each Party relating to other intellectual property including unregistered appearances of products, trademarks or other distinctive signs and patents.

5. Each Party shall ensure that an owner of a protected industrial design has at least the right to prevent third parties not having the owner's consent from making, selling, importing or exporting articles bearing or embodying a design which is identical or similar to the protected design, when such act is undertaken for commercial purposes.

6. Each Party shall provide that an applicant for an industrial design registration may request the competent authority to maintain the design unpublished for a period designated by the applicant not exceeding the period provided for in its laws and regulations.

7. Each Party shall ensure that the total term of protection available for industrial designs is no less than 20 years.

PART VI: PATENTS

Article 11.27: Protection

1. Each Party shall ensure that a patent confers on its owner exclusive rights:

(a) Where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from making, suing, offering for sale, selling or importing for these purposes that product;

(b) Where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from using the process, and from using, offering for sale, selling or importing for these purposes at least the product obtained directly by that process.

2. Each Party may provide for very limited exceptions to the exclusive right conferred by the patent, provided that these do not conflict with the normal exploitation of the patent and do not prejudice the rights of the patent holder, having regard to the interests of third parties.

3. The Parties shall give due consideration to cooperation for enhancing mutual utilisation of search and examination results, such as those based on the PCT, so as to allow applicants to obtain patents in an efficient and expeditious manner, without prejudice to their respective substantive patent examination.

Article 11.28: Patents and Public Health

1. The Parties shall interpret the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November, 2001 and the decision of the WTO General Council of 30 August 2003 consistently with Article 31 of the TRIPS agreement itself.

2. Before granting a compulsory license, the Parties will consider whether all the exceptions listed in Article 31 of the TRIPS agreement have been fulfilled, and shall grant compulsory licenses only in the most limited and exceptional of circumstances.

Article 11.29: Patent Term Extension

1. With respect to the patents which are grated for inventions related to pharmaceutical products or agricultural chemical or biotechnological products, each Party shall provide for a compensatory term of protection for a period during which the patented invention cannot be worked due to the marketing approval process.

PART VII: TRADE SECRETS AND UNDISCLOSED TEST OR OTHER DATA

Article 11.30: Protection

1. Each Party shall ensure that it provides adequate protection of trade secrets in accordance with paragraph 2 of Article 39 of the TRIPS agreement.

2. For the purposes of this Article

   (a) "**trade secret**" means information that:

      i. Is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

      ii. Has commercial value because it is secret; and

      iii. Being in breach of a confidentiality agreement or any other duty not to disclose the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder; or

      iv. Being in breach of a contractual or any other duty to limit the use of the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder; and

   (b) "**Trade secret holder**" means any person lawfully in control of a trade secret

3. The following practices shall be considered violations of trade secrets:

   (a) The acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by a wrongful means, or, alternatively, unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

   (b) The use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

i. Having acquired the trade secret in a manner referred to in (a) above;

ii. Being in breach of a confidentiality agreement or any other duty not to disclose the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder; or

iii. Being in breach of a contractual or any other duty to limit the use of the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder; and

(c) The acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was the disclosing the trade secret in a manner referred to in (b) above, including when a person induced another person to carry out the actions referred to in (b).

4. Nothing in this sub-section shall require a Party to consider any of the following conduct contrary to honest, commercial practices or unlawful activity:

(a) Independent discovery or creation by a person of the relevant information;

(b) Reverse engineering of a product by a person lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;

(c) Acquisition, use or disclosure required or allowed by its relevant laws and regulations;

(d) Use by employees of their experience and skills honestly acquired in the normal course of their employment; or

(e) Disclosure of information in the exercise of the right to freedom of expression and information.

Article 11.31: Treatment of test data in marketing approval procedures

1. Each Party shall prevent applicants for marketing approval for pharmaceutical products which utilise new active pharmaceutical ingredients from relying on or referring to undisclosed test or other data submitted to its competent authority by the first applicant for a certain period

of time counted from the date of approval of that application. As of the date of entry into force of this Agreement, such period of time is stipulated as being no less than six years by the relevant laws and regulations of each Party.

2. If a Party requires a condition for approving the marketing of agricultural chemical products or biotechnological products which utilises new chemical or bio-chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall ensure that, in accordance with its relevant laws and regulations, applicants for marketing approval are either:

   (a) may rely on such data submitted to its competent authority by the first applicant for a period of at least ten years counted from the date of approval of that application; and

   (b) generally not required to submit a full set of test data, even in cases there was a prior application for the same product, for a period of at least ten years, counted from the date of approval of prior application.

Article 11.32: New Varieties of Plant

Each Party shall provide for the protection of new varieties of all plant genera and species in accordance with its rights and obligations under the 1991 UPOV Convention.

PART VIII: UNFAIR COMPETITION

Article 11.33: Effective Protection

1. Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention.

2. In connection with the respective systems of the EU and the UK for the management of their country-code top-level (ccTLD) domain names appropriate remedies shall be available, in accordance with their respective laws and regulations, at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

3. Each Party shall provide for effective protection against unauthorised use of trademarks through the implementation of paragraph 2 of Article 6*septies* of the Paris Convention.

PART IX: ENFORCEMENT

Article 11.34: General

1. The Parties affirm their commitments under the TRIPS agreement and in particular Part III thereof. Each Party shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. The measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

2. The measures, procedures and remedies referred to in paragraph 1 shall be effective, proportionate and act as a deterrent, and shall be applied in such a manner as to avoid the creation of berries to legitimate trade and to provide for safeguards against their abuse.

3. Each Party shall:

   (a) Encourage the establishment of public or private advisory groups to address the issue of counterfeiting and piracy (and other issues covered by this Chapter as appropriate)

   (b) Ensure internal coordination among, and facilitate joint actions by, its competent authorities concerned with enforcement of intellectual property rights, subject to their available resources.

Article 11.35: Relief

1. Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this section:

   (a) The holders of intellectual property rights in accordance with its laws and regulations;

   (b) The trade secret holders referred to in the section on trade secrets; and

   (c) All other persons and entities, as far as permitted by and in accordance with its laws and regulations.

Article 11.36: Measures for preserving evidence

1. The judicial authorities of each Party shall have the authority to order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, in

accordance with procedures which ensure the protection of confidential information as appropriate.

2. The judicial authorities of each Party shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed.

3. In cases of intellectual property rights infringements, each Party shall provide that in civil judicial proceedings its judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, materials and implements relevant to the act of infringement and of documentary evidence, either originals or copies thereof, relevant to the act of infringement.

Article 11.37: Right of Information

1. Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority, upon a justified request of a rights holder, to order the infringer or the alleged infringer to provide the right holder or judicial authorities, at least for the purpose of collecting evidence with relevant information as provided for in its applicable laws or regulations that the infringer or alleged infringer possesses or controls.

2. Such information may include information regarding any person involved in any aspect Of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third parties allegedly involved in the production or distribution of such goods or services and of their channels of distribution.

Article 11.38: Provisional and Precautionary Measures

1. Each Party shall ensure that its judicial authorities may, on request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an alleged intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment the continuation of the alleged infringement of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rights holder. An interlocutory injunction may also be issued, under the same conditions where appropriate, against a third party over

whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

Article 11.39: Corrective Measures

1. Each Party shall ensure that its judicial authorities may order, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, at least the definitive removal from the channels of commerce, or the destruction, except in exceptional circumstances, of goods that they have found to be infringing an intellectual property right, without compensation of any sort. If appropriate, the judicial authorities may also order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each party's judicial authorities shall have the authority to order those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article 11.40: Injunctions

1. Each Party shall ensure that, if a judicial decision finds an infringement of an intellectual property right, its judicial authorities may issue an injunction aimed at prohibiting the continuation of the infringement against the infringer as well as, where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.

Article 11.41: Damages

1. Each Party shall provide that in civil judicial proceedings its judicial authorities have the authority to order an infringer who has engaged in activities infringing intellectual property rights to pay the rights holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.[36]

2. In determining the amount of damages for infringement of intellectual property rights, judicial authorities of each Party may consider, *inter alia*, any legitimate measure of value that may be submitted by the right holder, which may include lost profits.

3. A Party may provide in its laws and regulations presumptions for determining the amount of damages referred to in paragraph 1.

Article 11.42: Costs

1. Each Party shall provide in its judicial proceedings, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringements of intellectual property rights, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided under its laws and regulations.

Article 11.43: Presumption of authorship or ownership

1. Each Party shall ensure that it is sufficient for the name of an author of a literary or artistic work to appear on the work in the usual manner in order for that author to be regarded as such, unless there is a proof to the contrary, and consequently to be entitled to institute infringement proceedings.

2. A Party may apply 11.43.1 *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

[36] The test of whether the infringer has engaged in infringing activities depends on whether the infringer knew, had grounds to know, ought to have known or was reckless as to the likelihood that its activity would infringe the rights holder's right.

Article 11.44: Border Measures

1. With respect to goods imported or exported, Each Party shall adopt or maintain procedures under which a right holder may submit applications requesting its customs authority to suspend the release of or detail goods suspected of infringing trademarks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, and plant variety rights ("Suspect Goods") in its customs territory.

2. Each Party shall have in place electronic systems for the management by its customs territory of the applications referred to in paragraph 1 once they have been granted or recorded.

3. The customs authority of each Party shall decide on granting or recording the applications referred to in paragraph 1 within a reasonable period of time from the submission of the applications.

4. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.

5. With respect to goods imported or exported, customs authority of each Party shall have the authority to act upon its own initiative to suspend the release or detail Suspect Goods in the customs territory of that Party.

6. Parties will ensure that they authorise its customs authority to provide a rights holder with information about goods, including a description and the quantities thereof, and, if known, the name and address of the consignor, importer, exporter or consignee, and the country of origin of the goods, whose release has been suspended, or which may have been detained.

7. A Party may adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described above, whether the Suspect Goods are infringing. In such case, the competent authorities shall have the authority to order the destruction of the goods following a determination that the goods are infringing. A Party may have in place procedures allowing for the destruction of Suspect Goods without there being any need for the formal determination on the infringement, where the persons concerned agree or do not oppose destruction.

8. If a Party requests rights holders to bear the costs actually incurred for the storage or destruction of the goods whose release has been suspended, or which have been detained

pursuant to this Article, those costs shall correspond to the services rendered for the storage or destruction of the goods.

9. There shall be no obligations to apply this Article to the import of goods put on the market in another country by or with the consent of the right holder. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage.

10. The Customs Authorities of both Parties shall cooperate on border measures against intellectual property infringements covered in this article.

    (a) Such cooperation shall consist of notification to the other Party when one Party receives a complaint from a rights holder;

    (b) Exchange of general information regarding Suspect Goods;

    (c) Exchanging information on risk based systems in the detection of Suspect Goods, and use of risk analysis as regards Suspect Goods.

PART X: CO-OPERATION AND INSTITUTIONAL ARRANGEMENTS

Article 11.45: Cooperation and Institutional Arrangements

1. The Parties shall cooperate to promote greater public understanding of the importance of intellectual property protection, including in third countries. Such cooperation will include:

    (a) Scientific best practice and learning regarding appropriate duration of intellectual property rights;

    (b) The importance of IPR to the development of research, innovation and venture capital formation;

    (c) Technical assistance for developing countries;

    (d) Best practices to prevent violations of intellectual property rights, including those practices from third countries.

2. The Parties shall cooperate on evaluating and determining whether to sign, ratify and implement other intellectual property rights treaties as appropriate.

Article 11.46: Establishment of Sub-Committee on Intellectual Property Rights

1. The Parties hereby establish a Sub-Committee on Intellectual Property Rights (the "IPR Sub-Committee"), comprising representatives of each Party which will report to the overall Joint Committee set out in Articles 20.1 and 20.2 of this Agreement.

2. The IPR Sub-Committee shall have the following functions:

   (a) reviewing and monitoring the operation of this Chapter;

   (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property systems;

   (c) reporting its findings and the outcomes of its discussions to the Joint Committee;

   (d) Exchanging information on intellectual property developments in third countries;

   (e) Setting up an early warning system for suspected intellectual property violations in third countries; and

   (f) Other functions as delegated by the Joint Committee.

3. The IPR Sub-Committee may invite representatives of relevant entities other than the Parties, such as those from the private sector, with the necessary expertise relevant to the issues to be discussed.

Comments

1. IP chapter based on what EU has agreed in CETA/Japan.

2. Article 15 Corporate Governance is not included here, as the Parties Corporate governance rules do not impact trade or competition.

3. In Article 11.28:2 we have removed the word “unreasonably” as we want to make sure that this exception is very narrowly construed.

4. No need for cooperation on patent harmonisation – investment and venture capital will flow to the best protected jurisdiction. The UK should retain its right to its own development of patent law.

5. The Parties shall give due consideration to cooperation for enhancing mutual utilisation of search and examination results, such as those based on the PCT, so as to allow applicants to obtain patents in an efficient and expeditious manner, without prejudice to their respective substantive patent examination.

6. The jurisdiction that finds the right balance of patent rights, scope and grant with competition will do well – we do not want to limit the UK’s ability to better find this balance than the EU.

7. Article 11.46(2)(c): This is a very important innovation to deal with China (and other) third country IP violations, especially for repeated violations or those carried out on an industrial or commercial basis.

8. GI negotiation will need to take into account other deals the UK seeks to do with other countries esp. US which is opposed to many of the EU GIs.

9. No artificial cap on number of years as required under Article 14.35 of EU-Japan FTA. Patent term extension should not have an artificial number of years applied to it. It depends why the patent term must be extended (delays in application process).

10. In Article 11.44.10, the language in EU-Japan FTA is tightened to make customs checks for Suspect Goods required.

CHAPTER 12
SANITARY AND PHYTOSANITARY MEASURES

Article 12.1: Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis.

2. In addition, for the purposes of this Chapter:

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

   (b) "**area**" shall have the meaning ascribed to that term by the OIE when used in relation to animal health, and shall have the meaning ascribed to that term by the 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[37] with the sanitary and phytosanitary requirements of the importing Party;

(h) "**import programme**" 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 rDNA plant material that is authorized for use in at least one country, but not in the importing country;

(k) "**modern technology**" means any new technology which has been developed over the last [insert] 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:

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

[37] For greater certainty, the Parties recognise that import checks are one of many tools available to assess compliance with an importing Party's sanitary and phytosanitary measures.

(p) "**risk assessment**" shall have the same meaning ascribed to the term in the WTO 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

1. The objectives of this Chapter are to:

(a) protect human, animal or plant life or health in the territories of the Parties while facilitating and expanding trade by utilising 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.

(g) Encourage the maximum deemed equivalence between the Parties on the basis that their regulatory systems are identical on the day of the departure of the United Kingdom from the European Union.

Article 12.3: Scope

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

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: Sub-Committee on Sanitary and Phytosanitary Measures

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

2. The functions of the Sub-Committee shall include:

   (a) consulting on issues and positions related to the meetings and work of the WTO SPS Committee, the International Plant Protection Convention (hereinafter “IPPC”), World Animal Health Organization (hereinafter “OIE”), and the Codex Alimentarius Commission (hereinafter “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;

(d) approving any modifications to the Annexes of this Chapter; and

(e) 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 Sub-Committee to refer a specific trade concern regarding an SPS measure or other SPS matters to a technical working group. If the Sub-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 Sub-Committee may refer matters to a technical working group no more than once a year, except in cases of exceptional urgency.

4. The Sub-Committee:

(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 Organisation 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 Sub-Committee's terms of reference and identify through an exchange of letters the primary representative of both Parties that shall serve as its co-chair on the Committee.

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

7. Both Parties shall ensure that its representatives on the Sub-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. Both Parties recognises that adaption of SPS measures to regional pest or disease conditions can facilitate trade. Both Parties shall provide that such adaption may be made on the basis of an area or zone, place of production, or subpopulation. {not limited to animal products}

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 under Article 12.7.4, 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 recognises 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 recognising regional conditions are encouraged, if mutually agreed, to report the outcome to the Sub-Committee.

10. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognise 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 recognising 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 but [not limited to animal products].

13. Both Parties shall normally recognise the demarcations of the other Party located in the other Party's territory but not limited to animal products.

14. Both Parties, in determining the pest or disease status 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.

15. Both Parties shall follow the procedures set forth in Annex 12.1 with respect to a request from the other Party to determine that a particular demarcation is free of a particular pest or disease.

16. The importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates to the importing Party that the exporting Party’s measure:

    (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.[38]

Article 12.8: Equivalence and Management of Differences

1. The Parties acknowledge that their SPS measures will be identical on the day that the UK leaves the European Union which shall be on March 30, 2019 [or, if a transition period is agreed, Jan 1, 2021].

2. The Parties therefore agree to deem their SPS measures fully equivalent at this point.

3. Thereafter, the Parties agree to develop a management of differences mechanism where different SPS rules are notified by one Party to another.

4. One Party may not unreasonably remove deemed equivalence provided that the other Party's regulation (the "New Regulation") has regulatory goals which remain the same as the Party from whom the other Party is diverging, that the New Regulation objectively achieves those goals, and that the New Regulation is the least trade restrictive and anti-competitive consistent with a clearly stated and legitimate regulatory goal.

5. The provisions of Paragraph 4 above that relate to the New Regulation being the least trade restrictive and anti-competitive are to be read to be consistent with best practices as set forth in the OECD Competition Assessment, the SPS Agreement and the TBT Agreement.

6. Upon the coming into effect of this Agreement, the EU shall grant an equivalence assessment over all the SPS acquis to the UK.

   (a) If a Party intends to adopt, modify or repeal an SPS measure in an area where there has been a recognition of equivalence as set out above, that Party should:

      i. Evaluate whether the adoption, modification or repeal of that SPS measure may effect the recognition; and

      ii. Notify the other Party of its intention to adopt, modify, or repeal that SPS measure, and of the evaluation under a) above. This notification should take place at an early appropriate stage, when amendments can still be introduced and comments taken into account.

[38] No Party shall have recourse to dispute settlement under Chapter 16 (Dispute Settlement) for this Article.

(b) If a Party adopts, modifies or repeals an SPS measure in an area for which it has made a recognition, the importing Party should continue to accept the recognition of equivalence as set out in Annex [insert] or the recognition described in Annex [insert] in that area until it has communicated to the exporting Party whether special conditions must be met, and if so, provided the special conditions to the exporting Party. The importing Party should consult with the exporting Party to develop these special conditions.

(c) If a Party modifies an SPS measure, the modified SPS measure applies to imports from the other Party, taken into account (ii) above.

(d) If an importing Party determines that a special condition listed in this Annex is no longer necessary, that Party shall notify the other Party in accordance with [notification provisions] that it will no longer apply that special condition to imports from the other Party.

(e) For greater certainty, an SPS measure of an importing Party that is not otherwise referenced in this Annex or a measure of an importing Party that is not an SPS measure applies, as appropriate, to imports from the other Party.

7. The conditions and procedures for the purpose of the establishment of facilities are as follows:

(a) The import of the product has been authorised, if so required by the competent authority of the importing Party;

(b) The establishment or facility concerned has been approved by the competent authority of the exporting Party;

(c) The competent authority of the exporting Party has the authority to suspend or withdraw the approval of the establishment or facility; and

(d) The exporting party has provided relevant information requested by the importing Party.

(e) The Parties are deemed to approve all facilities in either Party as of the date of the coming into effect of this Agreement.

8. If the EU or UK change the existing SPS acquis in any way, then either Party shall request an equivalence assessment from the other Party, which shall be granted as much as possible on a system-wide basis, but may be granted on a group of measures or single measure basis.

9. 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.

10. When an importing Party adopts a measure that recognises 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.

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

12. 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.

13. 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.

14. Both Parties shall follow the process set forth in Annex 12.3 with respect to determinations of equivalence.

Article 12.9: Science and Risk

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

   (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, both Parties 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 minimises 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 5.6 of the SPS Agreement.

3. Both Parties 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. Both Parties 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. Both Parties 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:

   (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 the Sub-Committee and:

   (a) the Sub-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 Sub-Committee

   each member of the Sub-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. Both Parties that provisionally adopt an SPS measure pursuant to Article 5.7 of the SPS Agreement that affects trade between Parties shall, upon request, explain:

   (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[39]

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 programmes, including: if appropriate, reviews of the inspection and audit programmes; and on-site 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: the objectives and scope of the audit; the criteria or requirements against which the exporting Party will be assessed; and the itinerary and procedures for conducting the audit.

[39] 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.

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. Both Parties shall ensure that its import programmes are based on the risks associated with importations, and the import checks are carried out without undue delay.[40]

2. Upon request, both Parties 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, both Parties 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

[40] 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, develop or periodically review a risk-based import programme. Article 12.11 is to be read in conjunction with Chapter 3 (Customs and Trade Facilitation).

assurance programme that is consistent with international laboratory standards. Both Parties 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 non-conformity 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: the importer or its agent; the exporter; the manufacturer; or the exporting Party.

7. When providing the notification, the Party shall:

   (a) include in the notification:

      i. the reason for the prohibition or restriction;

      ii. the legal basis or authorisation 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[41] 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 seven 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.

[41] For the purposes of this Article, the term "days" does not include national holidays of the importing Party.

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.[42]

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

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. Both Parties shall endeavour 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, both Parties 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 recognise 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.

[42] For greater certainty, nothing in this Article prevents an importing Party from disposing of goods which 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.

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, both Parties shall base its certification requirements for imports from the other Party on these model certificates.

Article 12.13: Transparency

1. The Parties recognise 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 notification under Article 12.11.6. 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 when a regulatory authority of a Party is developing an SPS regulation, it shall, under normal circumstances[43], make publicly available on the Internet:

   (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

[43] Note: Specific exceptional circumstances to be discussed.

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 Paragraph 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 Paragraph 5, the Party shall ensure that any person, regardless of domicile, has an opportunity, on no less favourable 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 Paragraph 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:

(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;

(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 which 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 Paragraphs 5 and 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:

    (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 6 (Competent Authorities and Contact Points) in a timely and appropriate manner:

    (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 regionalised pest or disease;

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

    (e) of significant changes in food safety, pest or disease management, 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 six 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.

15. 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 six 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 endeavour 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:

   (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 in Article 6.1 (b) 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 in Article 12.5 or within [15] days thereafter, 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 the he or she agrees to abide by the requirements set out in Article 12.17.7. 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:

   (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 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 data 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 organisations, 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:

   (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[44] both Parties 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. Both Parties shall endeavour 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. Both Parties shall avoid unnecessary duplication and burdens with respect to:

(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. Both Parties 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, both Parties shall endeavour 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 endeavour to accommodate and avoid lengthening the approval or authorization process for applications that were submitted prior to publication of the changes. However, where the

[44] Note: Specific exceptional circumstances to be discussed.

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:

   (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. For products covered by this Article, both Parties shall participate in the Global Low Level Presence Initiative to develop an approach or set of approaches to manage low-level presence of unapproved substances 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 co-chaired by representatives of both Parties' trade agency. Both Parties 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:

   (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 co-chaired 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 co-chairs 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:

   (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 Sub-Committee with a report, at least annually, regarding the progress of its current work programs, including timelines for future actions where appropriate.

Article 12.21: Specific Provisions Related to Import Requirements for Plant Health

1. If the Parties jointly identify a specific commodity as a priority, the Parties will establish a preliminary list of pests and notify the International Plant Protection Convention (“IPPC”) IPPC Secretariat.

2. Any preliminary list of pests established by either Party must be shared with the IPPC Secretariat

Article 12.22: Sub-Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Measures is established (the ‘SPS Sub-Committee") comprising representatives of each Party which will report to the overall Joint Committee set out in Articles 20.1 and 20.2 of this Agreement.

2. The SPS Sub-Committee shall consider any matter arising under this Chapter.

3. The SPS Sub-Committee' functions in relation to this Chapter shall include:

   (a) Supporting the Parties in implementing this Chapter;

   (b) Providing an information exchange function as described;

   (c) Support any technical groups referred to in Article 12.20

Article 12.23: Procedure, Representatives and Powers of the SPS Sub-Committee

1. The SPS Sub-Committee:

(a) will follow the same procedural rules and representation requirements as those established for the Sub-Committee for Trade in Goods and shall meet as regularly as required by the Parties;

(b) will abide by the same provisions regarding the representation of the Parties as those established by the Sub-Committee for Trade in Goods.

(c). will exercise the same powers as those conferred on the Sub-Committee for Goods mutatis mutandis.

Annex 12.1: Health Certifications/Export Certification

Comments

1. Article 12.8 builds on what the EU has agreed on deemed equivalence in other contexts as described below. This is the key theme that underpins the SPS chapter. Article 12.8 provisions are from CETA also incorporating Annexes 5-D and 5-E. This is noteworthy because this system is what the UK would want, but unlike Canada whose regulatory system is different from the EU's at the date of the agreement, the UK's is identical.

2. Article 12.8:7(e): While our regulations will be the same, the EU will argue that they need to know that they are complied with. March 2019 to December 2020/21 could include a

series of veterinary and other mutual inspections so full approvals could be granted before the date of the agreement

3. Article 12:19: The EU will resist this, but it will be a key UK ask on order to ensure that its farmers have access to modern technology.

4. Article 12:21: From EU-Canada FTA Annex 5-G, adopted to incorporate international bodies, such as IPPC

5. Annex for Health Certifications/Export Certification – Extract from Annex 5-I Canada Agreement

6. The provisions on the above build on existing EU commitments in other agreements. Note EU-Japan provides for equivalence if a Party objectively demonstrates that its measures achieve the importing Party's level of protection.

7. CETA has underlying product regulation equivalence at Article 5.6 and Annex 5-D and 5-E. 5-D provides for a maintenance of equivalence regime that is not unlike what we have proposed here, based on the WTO SPS rules which cover underlying product regulation.

8. NZ-EU Meat Products Agreement provides for recognition of underlying SPS measures. The parties agree the legislation, standards, and procedures, as well as structure of the regulatory bodies, and the performance of the regulatory bodies.

9. Consequently, the number of checks for animal products for human consumption is 2% [100% checks for live animals and documentary checks] for EU-NZ agreement

10. Under the NZ-EU agreement, different attestations are given to different health certificates on the basis of those areas where equivalence is agreed, where it is agreed in principle, where equivalence takes the form of compliance with importing country's requirements, and where there is no equivalence.

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 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:

   (a) "**central government body**"[45] 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) "**covered body**" means a central government body of a Party or a body of the EU, its ministries, and departments or any body subject to its control;

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

   (e) "**marketing authorisation**" means the process or processes by which a Party approves or registers a product in order to authorise 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 authorisation", "authorisation", "approval", "registration", "sanitary authorisation", "sanitary registration" and "sanitary approval" for a product. Marketing authorisation does not include notification procedures;

   (f) "**mutual recognition agreement**" means a binding government-to-government agreement for recognition of the results of underlying product regulation, standards and conformity assessment conducted against the appropriate technical regulations or standards in one or more sectors, including government-to-government agreements to

[45] A non-governmental 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.

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;

(g) "**mutual recognition arrangement**" means an international or regional arrangement (including a multilateral recognition arrangement) between nations on underlying product regulation, standards and accreditation bodies recognising the equivalence of accreditation systems (based on peer review) or between conformity assessment bodies recognising the results of conformity assessment; post-market 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;

(h) "**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;

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

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

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

(l) "**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 recognised the conformity assessment body, but does not include requirements that subject a product to conformity assessment in the territory of the importing Party that duplicate 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 non-compliance.

Article 13.2: Objective

The objective of this Chapter 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. This Chapter 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, including any amendments thereto and any additions to their rules or product coverage, except amendments and additions of an insignificant nature.

2. Both Parties 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 which 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), 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 governmental entity for its production or consumption requirements. These specifications are covered by Chapter 10 (Government Procurement).

5. This Chapter 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.

7. Recognising that the Parties' technical regulations, and standards are identical on the day of the departure of the United Kingdom from the European Union, the Parties shall deem that their technical regulations are equivalent on this day.

8. The Parties agree a management of differences mechanism where they notify each other of any changes to technical regulations and agree that equivalence shall not be unreasonably withdrawn provided that their regulations have a clearly stated and legitimate regulatory objective, the proposed changed regulation objectively satisfies that objective and does so in the least trade restrictive and anti-competitive manner possible, consistent with that regulatory goal.

9. The provisions of the rest of this TBT Chapter shall then apply to those technical barriers arising from non-recognition of the equivalence of technical regulation.

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:

1. Articles 2.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 2.12;

2. Articles 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9; and

3. paragraphs D, E and F of Annex 3.

Article 13.5: International Standards, Guides and Recommendations

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and 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 1 January 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, 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 13.5 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, 5 and Annex 3 of the TBT Agreement. Accordingly, neither Party shall refuse to treat a standard as an international standard based on:

   (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 5.6.1 through 5.6.4 of the TBT Agreement and this Chapter.

4. A Party shall carry out the steps set out in Articles 2.9.1 through 2.9.4 and 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:

   (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 13.6.3, the Party shall verify that the body complied with the requirements of the request as specified in Article 13.10 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 favourable 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:

(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 fulfils 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 13.7:

   i. decide whether to accept the assessment based on whether the standard fulfils 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 13.7, a Party:

   (a) may require that an assessment contain supporting documentation adequate to make the decision provided for in Article 13.7.11;

   (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:

   (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 fulfil 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, if a Party maintains procedures, criteria or other conditions as set out in this Article requires test results, certifications or inspections as positive assurance that a product conforms to a technical regulation or standard, the Party:

   (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 recognise 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 favourable procedures, criteria or other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the other Party's territory as it applies to accredit, approve, license or otherwise recognise 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 recognised by a body located in the Party's territory;

   (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 recognised or approved for this purpose, to be accredited, approved, licensed or otherwise recognised under any

procedures, criteria and other conditions the Party applies to accredit, approve, license or otherwise recognise conformity assessment bodies; and

(g) shall, whenever possible and in accordance with its laws and regulations, accept a manufacturer's or supplier's declaration of conformity as assurance of conformity with the applicable technical regulations.

2. Paragraph 1 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.

3. If a Party undertakes conformity assessment under Paragraph 1 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.

4. 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.

5. Paragraph 1 shall not preclude a Party from using mutual recognition agreements to accredit, approve, license or otherwise recognise conformity assessment bodies located outside its territory.

6. Where a Party refuses to accredit, approve, license, or otherwise recognise 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.

7. Nothing in Paragraphs 1, 2 or 6 precludes a Party from verifying the results of conformity assessment procedures undertaken by conformity assessment bodies located outside its territory.

8. 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 recognised to perform such conformity assessment and relevant information on the scope of each such body's accreditation, approval, license or recognition.

9. 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.

10. 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.

11. 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.[46] The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

12. 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 Paragraph 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.

13. 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 non-governmental body;

    (c) is domiciled in the territory of a Party that does not maintain a procedure for recognising accreditation bodies, provided that the accreditation body is recognised 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.

[46] The committee shall be responsible for developing and maintaining a list of such arrangements.

14. Nothing in this Article prohibits a Party from refusing to accept conformity assessment results from a conformity assessment body on grounds other than those set out in Article 7.13 if that Party can substantiate those grounds for the refusal, and that refusal is not inconsistent with the TBT Agreement and this Chapter.

15. Both parties shall issue guidance to encourage its authorities to rely on international accreditation agreements or arrangements to accredit, approve, license or otherwise recognise 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.

16. 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.

17. If a Party:

    (a) accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory, and refuses to accredit, approve, license or otherwise recognise 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.

18. Both Parties shall ensure where it accredits, or entrusts, or directs a non-governmental body to accredit a conformity assessment body located in its territory to conduct conformity assessment procedures in its territory, it recognises that accreditation throughout the Party's territory.

19. The Parties recognise 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 non-compliant products and possible alternative approaches.

20. 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.

21. 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.

22. Upon the request of an applicant for conformity assessment, both parties shall explain how any fee it imposes fur such conformity assessment are limited in amount to the approximate cost of services rendered.

23. Neither Party shall require consular transactions, including related fees and charges, in connection with conformity assessment,[47] nor as a condition of marketing, distribution, or sale of the product in the Party's territory.

24. Neither Party shall apply a new or modified conformity assessment fee until the fee and the method for assessing the fee is published. Both parties shall provide an opportunity for interested persons to comment on its proposed introduction or modification of a conformity assessment fee.

25. 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: Market Surveillance

1. Market surveillance is a public authority function separate from and carried out after conformity assessment procedures, and means activities conducted and measures taken by public authorities on the basis of procedures of a Party to enable that Party to monitor or address compliance of products with the requirements set out in its laws and regulations.

2. Each Party shall, inter alia:

[47] For greater certainty, this paragraph shall not apply to a Party verifying conformity assessment documents during a marketing authorisation or reauthorisation process.

(a) exchange information with the other Party on market surveillance and enforcement activities, for example on the authorities responsible for market surveillance and enforcement, or on measures taken against dangerous products;

(b) Ensure the independence of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest; and

(c) Ensure that there are no conflicts of interest between market surveillance authorities and the persons concerned, subject to control or supervision, including the manufacturer, the importer and the distributor.

Article 13.9: Marking and Labelling Regulation

1. The Parties note that a technical regulation can include a marking or labelling regulation, and that such regulations may not be prepared, adopted or applied with the effect of restricting trade or competition in accordance with Article 2.2 of the TBT Agreement

2. If a Party requires marking or labelling of a product in the form of a technical regulation:

   (a) Then any information required for such purposes shall be limited to what is relevant for consumers or users of the product to indicate the product's compliance with regulatory requirements;

   (b) Neither Party may require prior approval, registration or certification of markings or the labels of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless necessary to fulfil its legitimate objective;

   (c) If a Party requires the use of a unique identification number for marking or labelling of products, it shall issue such number to all persons concerned without delay and in a non-discriminatory fashion;

   (d) A Party shall permit the following in relation to any labelling or marking requirement

      i. Information in other languages in addition to the language of the country of destination;

      ii. Internationally accepted nomenclature, symbols, pictograms or graphics; and

iii. Information in addition to that required in the country of destination of the goods

(e) Parties shall accept that labelling and corrections to labelling may take place in customs warehouses at the point of import as an alternative to labelling in the exporting Party unless such labelling is required to be carried out by approved persons for reasons of public health and safety; and

(f) The Party shall, unless it considers that legitimate objectives under the TBT Agreement are compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

Article 13.10: Transparency

1. Both parties 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[48] or covered bodies. Both parties shall permit persons of the other Party to participate in the development of these measures on terms no less favourable than those that it accords to its own persons.[49]

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, both parties shall encourage non-governmental bodies in its territory to observe the obligations in developing standards and voluntary conformity assessment procedures.

[48] 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.

[49] 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.

4. Both parties 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 13.13 of this Chapter, both parties shall:

   (a) comply with the obligation in this Article 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: policy proposals; discussion documents; summaries of proposed technical regulations and conformity assessment procedures; or the draft text of proposed technical regulations and conformity assessment procedures. Both parties 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:

   (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 13.10.7(a) and 13.10.7(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 favourable 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

(f) technical regulation or conformity assessment procedure.[50]

8. Both parties 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 procedures, both parties shall make publicly available, preferably by electronic means:

(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;

[50] Nothing in this Agreement requires a Party to disclose confidential business information.

(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. 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.

11. Notwithstanding the provisions of this Article, 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.

12. Both parties shall endeavour 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.

13. 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 1 January 1995 (G/TBT/1/Rev. 12), as may be revised.

14. 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:

(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 enquiry points established in accordance with Article 10 of the TBT Agreement, at the same time as it notifies WTO Members.

15. Both parties shall normally allow 60 days from the date it transmits a proposal 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.

16. Both parties are 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.

17. Both parties shall endeavour 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.

18. 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:

(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.

19. Further to paragraph J of Annex 3 of the TBT Agreement, both parties shall ensure that its central government standardising body's work programme, containing the standards it is currently preparing and the standards it has adopted, is available through the central government standardising body's website.

Article 13.11: 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 six 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.[51]

2. If feasible and appropriate, both parties shall endeavour to provide an interval of more than six months between the publication of final technical regulations and conformity assessment procedures and their entry into force.

3. In addition to Paragraphs and 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 endeavour to take into account the resources available to suppliers.

Article 13.12: 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:

[51] 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.

(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) recognise 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 recognise the other Party's designation of conformity assessment bodies;

(e) unilaterally recognise 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 recognise 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 recognise 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 13.12.1 and 13.12.2, the Parties recognise 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 non-fulfilment 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 organisations responsible for standardisation, 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 13.13: 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 under this Article shall provide that information within a reasonable period of time, and if possible, by electronic means.

2. Both parties 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:

   (a) the measure at issue;

   (b) the provisions of the Chapter or the TBT 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.

   (d) any evidence of potential trade impact or anti-competitive effect.

3. 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.

4. 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 endeavour to resolve the matter as expeditiously as possible. The Parties may convene the TBT Sub-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.

5. The Parties shall endeavour to resolve the matter as expeditiously as possible, recognising 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.

6. Unless the Parties that participate in the technical discussions otherwise agree, the discussions and any non-publicly 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.

Article 13.14: Sub-Committee on Technical Barriers to Trade

1. The Parties hereby establish a Sub-Committee on Technical Barriers to Trade ("TBT Sub-Committee"), comprising representatives of both Parties which will report to the overall Joint Committee.

2. Through the TBT Sub-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 TBT Sub-Committee's functions shall include:

    (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;

    (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;

    (e) any technical discussions on matters that arise under this Chapter;

(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 pertains 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:

   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 fora, 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 7 as well as identifying opportunities for greater bilateral engagement which 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 non-governmental bodies in the Parties' territories, as well as cooperation between governmental and non-governmental bodies in the Parties' territories in matters that pertaining to this Chapter;

(k) exchanging information on developments in non-governmental, regional, and multilateral fora 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 non-governmental bodies, if appropriate, to develop common approaches regarding matters under discussion in non- governmental, regional, plurilateral and multilateral bodies or systems that develop standards, guides, recommendations, policies or other procedures relevant to this Chapter;

(n) providing a regular forum for exchanging information relating to both parties' standards, technical regulations and conformity assessment procedures and related policies;

(o) 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;

(p) taking any other steps the Parties consider will assist them in implementing this Chapter (and the TBT Agreement);

(q) 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

(r) reporting to the Joint Committee on the implementation and operation of this Chapter as appropriate.

4. The TBT Sub-Committee may establish working groups to carry out its functions.

5. To determine what activities the TBT Sub-Committee will undertake, the TBT Sub-Committee shall consider work that is being undertaken in other fora, with a view to ensuring that any activities undertaken by the TBT Sub-Committee do not unnecessarily duplicate that work.

6. The TBT Sub-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 TBT Sub-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 TBT Sub-Committee and as the Parties may decide, each working group, including an ad hoc working group, may:

(a) as it considers necessary and appropriate, include or consult with non-governmental experts and stakeholders; and

(b) determine its work program, taking into account relevant international activities.

8. Both parties 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 TBT Sub-Committee may specify.

Article 13.15: 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:

(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 13.1: Product-specific annexes

[To be added following consultation with industry experts.]

Comments

1. The starting point is mutual recognition of underlying product regulation, standards and conformity assessment. The UK should be able to participate in CEN/CENELEC and ETSI to help influence the direction of EU standards, but should have its own standards which will be initially the EU standards until we diverge. The structure of the agreement is that all is recognised on day one, and then a management of difference mechanism applies in a similar manner to the SPS rules.

2. There are therefore three categories of technical regulation. First, all technical regulations which are deemed equivalent on day 1. Second, regulations where there has been some divergence but equivalence has not been withdrawn. Third, where there has been divergence and equivalence has been withdrawn and therefore the Parties are seeking to agree disciplines relating to those products. The bulk of the chapter deals with the rules that will underpin this third category.

3. Need for 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.

4. Article 13:6: The EU will want only standards it recognises, such as those set out in the EU-Japan FTA at article 7.6.1 e.g ISO, IEC, UNECE etc. 7.6.2 also allows EU and Japan to avoid international standards that they do not believe satisfy environmental or climatic concerns as well as where they are insufficiently cognizant of fundamental technological problems – repeating Articles 2.4 and 5.4 TBT.

5. Article 13:6: EU will object to allowing UK participation in CEN/CENELEC/ETSI as a third country participant. This has been a major point of contention with the US and other trading partners. However, if the UK continues to remain in CEN/CENELEC and ETSI, this will have a significant negative impact on the possibility of achieving trade agreements with other major parties.

6. Article 13.7:(g): The Conformity Assessment language is drawn from the EU-Japan agreement, but it is noteworthy that it is not in TTIP early drafts, perhaps because EU producers are adversely affected by Japanese practices, and this was an offensive ask by the EU. Either way, it would be useful in this agreement.

7. Article 13.7: The EU accepted this in EU-Japan but had a footnote which disapplies this paragraph to the conformity assessment activities performed by a Party itself where that Party retains final decision-making authority regarding the conformity of a product, i.e. the EU.

8. Article 13:8: Market Surveillance provisions taken from EU-Japan Agreement, Article 7.10.

9. Article 13.9: Marking and Labelling Regulation taken from EU-Japan Agreement, Article 7.11.

CHAPTER 14
REGULATORY COHERENCE

Article 14.1: Definitions

For the purposes of this Chapter:

1. "**Competition Agency**" means:

   (a) in the case of the United Kingdom, the Competition and Markets Authority; and

   (b) in the case of the European Union, the European Commission Directorate-General for Competition;

2. "**Covered Action**" means any of the following actions to the extent they are material:

   (a) legally binding substantive rules including subordinate regulations;

   (b) interpretation of rules that have a binding effect on agencies or private parties;

   (c) adjudications that have a binding effect on one or more parties;

   (d) procedural rules that bind agencies or the public; and

   (e) decisions to grant, revoke, extend, or modify a License;

3. "**International Instruments**" means any document adopted by international bodies or fora 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 authorisation, licensing, qualification or on characteristics or related production methods, presentation or use of a product;

4. "**Joint Committee**" means the committee formed by the Parties pursuant to Article 3;

5. "**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;

6. “**Regulation**” means:

   (a) in the case of the European Union:

      i. Directives;

      ii. Regulations; and

      iii. any delegated directives, regulations, regulatory technical standards, implementing technical standards, orders or guidance promulgated under either of the foregoing;

   (b) in the case of the United Kingdom:

      i. Acts of Parliament;

      ii. Statutory instruments; and

      iii. 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;

7. “**Regulatory Agency**” means a governmental department or commission of a Party that engages in any Covered Action.

Article 14.2: General Provisions

1. For the purposes of this Chapter, 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 minimise regulatory divergence provided that the ultimate goal is to promote international trade and investment, markets characterised by competition, economic growth and employment.

2. The Parties affirm the importance of:

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

(b) promoting an effective, pro-competitive regulatory environment which 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 towards 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 plays 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 OECD Recommendation of 22 March 2012 on Regulatory Policy and Governance, and the OECD Competition Assessment Toolkit, based on the OECD Recommendation of 22 October 2009.

Article 14.3: Establishment of the Sub Committee on Regulatory Coherence

1. The Parties have agreed to establish a sub committee for the purposes of assisting and monitoring the regulatory coherence relationship established under this Chapter (the 'RegCo Sub-Committee").

2. The RegCo Sub-Committee's roles shall consist of:

   (a) Evaluating the Parties' compliance with the provisions of this Chapter;
   (b) Producing an annual report on regulatory promulgation processes in both Parties;
   (c) Acting as an Information Exchange on new regulations prior to their promulgation.

3. The RegCo Sub-Committee shall consist of [3] members appointed by the United Kingdom and [3] members appointed by the European Union.

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

5. The RegCo Sub-Committee shall conduct itself by majority vote, and in the event of a tied vote, the chairperson shall cast the final binding vote.

6. The RegCo Sub-Committee shall adopt its internal procedures initially by mutual consent of the permanent members, and subsequently in accordance with Article 3.5.

7. The RegCo Sub-Committee's chairperson, permanent members and any other ancillary staff shall be chosen on the basis of appropriate technical or regulatory expertise, practice or other relevant experience.

8. The RegCo Sub-Committee shall meet [at least every [•]] / [in accordance with its established procedures, as necessary] to carry out its duties.

9. The RegCo Sub-Committee shall be able to request specialist technical, legal or other advice and employ ancillary additional staff if it considers necessary.

Article 14.4: Scope of Covered Action

1. 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 14.5: Coordination and review processes

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

2. The Parties recognise that while the processes or mechanisms referred to in Article 14.5 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:

   (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 14.17 (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 14.5.1.

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 14.6: Legitimate regulatory objectives

1. The Parties will promulgate regulation which is the least trade restrictive, and anticompetitive 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 to protect 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 prescribe a particular technological process without an adequate explanation as to why it is necessary for the ban to have such broad coverage.

Article 14.7: 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 authorised 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 provide its views on substantive issues raised.

Article 14.8: Competitive effects

1. When developing a Regulation, a Regulatory Agency of a Party shall give notice to, and 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 authorised 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 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 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 utilise the following methodology:

   (a) The analysis must take into account the issues addressed in Paragraph 1.

   (b) Such analysis must include:

      i. a treatment on the impact 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 14.9: 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 base-line 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 itemised lists of the costs and benefits identified, as well as descriptions of costs and benefits that cannot be monetised.

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 this Chapter.

Article 14.10: Access to government documents

1. Each Party shall make publicly available the following:

   (a) a description of each of its Regulatory Agencies' functions and organisation, 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 utilised 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 favourable treatment to persons of the other Party than it provides to persons of the Party.

Article 14.11: 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:

(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 14.15.

Article 14.12: 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 organised logically to promote easy access to relevant Regulations. To that end, the collection should be clearly organised 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 search.

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

Article 14.13: Decision-making based on evidence

1. Each Party recognises 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:

   (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:

   (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.

   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.

3. Each Party shall prepare, on an annual basis, a public report setting forth:

(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 14.14: 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 14.15: Retrospective review of regulation and management of differences

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 14.14.

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.

3. Each Party shall include in procedures or mechanisms adopted pursuant to Article 14.15.1 provisions addressing Regulations that it considers to have a significant impact on a substantial number of small entities.

4. Acknowledging that on the effective date of this Agreement, both Parties' regulatory systems are identical and the Parties agree to recognise each other's laws and regulations in respect of goods and will accept certification of conformity to applicable laws and regulations by duly authorised conformity assessment bodies of the other Party to the fullest extent allowable by law.

5. Each Party agrees that it will not withdraw this recognition provided that the other Party has adhered to the provisions of this Chapter, and the respective laws and regulations of each Party in the relevant field achieve the respective policy objectives.

6. The Parties agree that it is the intention of the Parties to include detailed agreements in the following sectors [sectoral annexes].

7. Any disputes concerning this will be submitted to the RegCo Sub-Committee for resolution in the manner described in this Chapter, and in the event that these mechanisms do not succeed to subject the dispute to the dispute resolution mechanism of this Agreement.

Article 14.16: 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 endeavour to do so in a manner that minimises unnecessary burdens and avoids duplication.

Article 14.17: 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 similar core good regulatory practices.

2. The Parties agree that in achieving the legitimate and publicly stated goal(s) of any Covered Action, Covered Action taken or to be taken by a Party to achieve such goal(s) 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. Regulatory impact assessments conducted by a Party should, among other things:

   (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, recognising that some costs and benefits are difficult to quantify and monetise;

(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 recognising that benefits are often difficult to quantify and monetise, but the costs side can be more objectively analysed 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.

5. When conducting regulatory impact assessments, a Party may take into consideration the potential impact of the proposed Regulation on SMEs, 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 organised and easy to understand, recognising 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 14.9. 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 Licence 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 fora when planning Covered Actions.

Article 14.18: Cooperation

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

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

   (b) information exchanges, dialogues or meetings with interested persons, including with SMEs, of the other Party;

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

(d) other activities that the Parties may agree.

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

Article 14.19: 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 Sub-Committee through the designated contact points within six months of the date of entry into force of this Agreement and at least once every year 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 this Chapter, including those to:

   (a) establish processes or mechanisms to facilitate effective inter-agency coordination and review of proposed Covered Actions;

   (b) encourage relevant regulatory agencies to conduct regulatory impact assessments;

   (c) review its Covered Actions; and

   (d) provide information to the public in its annual notice of prospective Covered Actions.

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

4. In its consideration of issues associated with the implementation and operation of this Chapter, the Sub-Committee may review notifications made by a Party pursuant to Article 14.19. During that review, Parties may ask questions or discuss specific aspects of that Party's notification. The Sub-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 this Chapter.

Article 14.20: 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 14.21: Non-application of dispute settlement

No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter until the specific dispute settlement provisions of this Chapter have been exhausted under Article 14.22.

Article 14.22: Dispute settlement mechanisms

1. If one Party withdraws recognition from the other, and the other Party considers there to have been a violation of the agreement, it shall bring a complaint to the Sub-Committee.

2. If a Party considers that a valid petition has been made under this Chapter and believes that this petition has not been validly dealt with by the other Party, the other Party shall bring a Complaint to the Sub-Committee.

3. The RegCo Sub-Committee shall conduct a consultation mechanism for 30 days, and if the Parties have not resolved the issue the complaining Party can suspend concessions made under this Agreement [and/or impose fines].

4. If the Parties cannot resolve the dispute under this Article, they may refer the matter to the dispute settlement mechanism of Chapter 19 (Dispute Settlement).

Article 14.23: Contact points

1. The contact points for each Party in relation to submissions to the Committee under this Chapter shall be as follows:

   (a) For the United Kingdom: [•]; and

   (b) For the European Union: [•].

Comments

1. This is an important chapter for the UK-EU arrangements. It builds on best practice in all international trade agreements and recognises that the EU has agreed regulatory cooperation provisions in the EU-Japan agreement (for the first time). These provisions do go further, and respond to the EU's desire to ensure that the UK regulates in a way that will not harm EU concerns. It is also based on the fact that our starting point is regulatory identicality.

2. Many of the provisions build on what has been agreed in the TPP (one of the most advanced FTAs in the area of regulatory cooperation) and the proposed TTIP offers made by the EU and US.

3. This set of arrangements also ensures that the Parties will both move towards pro-competitive regulation that is least trade and market distortive, surely a goal of the EU as expressed in multiple fora.

4. The EU-Japan FTA is the first FTA where the EU has a regulatory cooperation chapter. These provisions are quite limited, in comparison with other FTAs, but the EU has at least agreed to the concept of this chapter in other FTAs.

CHAPTER 15
COMPETITION POLICY

Article 15.1: Definitions

For the purposes of this Chapter:

1. "**Arrangement**" means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organization for Economic Cooperation and Development (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;

2. "**commercial activities**" means activities the end result of which is the production of a good or supply of a service which 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;[52]

3. "**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;

4. "**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;

5. "**designated monopoly**" means a monopoly that a Party designates or has designated;

6. "**government monopoly**" means a monopoly that is owned or controlled by a Party or by another government monopoly;

7. "**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;

8. "**market**" means the geographical and commercial market for a good or service;

[52] For greater certainty, this excludes activities undertaken by an enterprise which operates on a:
- not-for-profit basis; or
- cost recovery basis.

9. "**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;

10. "**national competition laws**" shall mean the laws concerning the regulation of cartels and anti-competitive agreements or abuse of dominance / monopolisation;

11. "**non-commercial assistance**"[53] means the provision of:

    (a) grant or debt forgiveness;

    (b) a loan, equity infusion or capital, loan guarantee, or other type of financing or loan satisfaction on terms more favourable than those commercially available to that enterprise; or

    (c) a subsidy within the meaning of Article 1 of the WTO Agreement on Subsidies and Countervailing Measures; or

    (d) a good or service, other than general infrastructure, on terms more favourable than those commercially available to that enterprise;

12. "**state enterprise**" means an enterprise that is owned, or controlled through ownership interests, by a Party; and

13. "**state-owned enterprise**" means an enterprise that is engaged in economic activities; and:

    (a) is owned, or controlled, by a Party's government; or

    (b) in which a Party's government appoints or has the power to appoint the majority of members of the board of directors or any equivalent management

    (c) is controlled by a Party's government through a control person or control persons.

[53] For greater certainty, non-commercial assistance does not include intra-group transactions within a corporate group including state-owned enterprises, e.g. 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 intra-group transactions.

Article 15.2: 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 endeavour to apply its national competition laws to all commercial activities in its territory[54], 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 15.2.1 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 Chapter 14 (Regulatory Coherence).

Article 15.3: Procedural Fairness in Competition Law Enforcement

1. Both parties shall ensure that before it imposes a sanction or remedy against any person for violating its national competition laws, it shall afford such person:

   (a) information about the national competition authority's competition concerns;

   (b) a reasonable opportunity to be represented by counsel; and

[54] For greater certainty, nothing in Article 15.2.2 shall be construed to preclude a Party from applying its competition laws to commercial activities outside its borders that have anticompetitive effects within its jurisdiction.

(c) a reasonable opportunity to be heard and present evidence in its defence, 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 defence, 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[55], subject to the confidentiality provisions of this Chapter. Parties' competition authorities shall normally afford persons under investigation for possible violation of its 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 its national competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavour 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.

[55] For the purposes of this Article, enforcement proceedings means judicial or administrative proceedings following an investigation into alleged violation of the competition laws.

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.[56]

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 defence to the national competition authority's allegations.

10. Both parties 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 15.4: 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.

[56] 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 defence of the allegation.

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. Both Parties shall ensure that a right provided pursuant to Articles 15.5.2 or 15.5.3 is available to persons of the other party on terms that are no less favourable 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 15.5: Cooperation

1. The Parties recognise 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:

   (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.

Article 15.6: Consumer Protection

1. The Parties recognise 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 refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:

   (a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the 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.[57]

4. The Parties recognise that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties is 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.

[57] For greater certainty, the laws or regulations a Party adopts or maintains to proscribe these activities can be civil or criminal in nature.

6. The Parties shall endeavour 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 15.7: Transparency of Policies and Practices

1. The Parties recognise 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:

   (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 non-criminal 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 15.8: Consultations

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, 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 15.9: State-owned Enterprises, State Enterprises and Designated Monopolies

1. This Chapter 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 Paragraph 1, this Chapter does not apply to:

   (a) a central bank or monetary authority of a Party;

   (b) a financial regulatory body or a resolution authority 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;

   (d) government procurement;

   (e) regulatory or supervisory activities of any non-governmental 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 their 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 non-profit 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:

   (a) establishing or maintaining a state enterprise or state-owned enterprise, or

   (b) designating a monopoly.

4. Both parties shall ensure that when its state-owned enterprises, state enterprises, and designated monopolies exercise any regulatory, administrative, or other governmental authority[58] which 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. Both parties shall ensure that its state-owned enterprises and designated monopolies, when engaging in economic activities:

   (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 fulfil any terms of its designation that are not inconsistent with Article 15.9.5(b) and Article 15.9.7; and

   (b) accord to enterprises that are covered investments, goods of the other Party, and services suppliers of the other Party, treatment no less favourable than they accord to, respectively, like enterprises that are investments of the Party's investors, like goods of the Party, and like service suppliers of the Party, with respect to their purchases or sales of goods or services.

6. Article 15.9.5 does not preclude a state-owned enterprise or designated monopoly from:

   (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 15.9.5(b).

7. Both parties 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, anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments or trade between the Parties.

---

[58] 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.

Article 15.10: Commercial Considerations

Except to fulfil the purpose[59] for which special or exclusive rights or privileges have been granted, or in the case of a state enterprise to fulfil its public mandate, and provided that the enterprise's conduct in fulfilling that purpose or mandate is consistent with the provisions in the Chapter on Competition, both parties shall ensure that any enterprise referred to in Articles 15.9.2 (d), (e) and (f) 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 15.11: Courts and Administrative Bodies

1. Both parties 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. Both parties 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 15.12: Adverse Effects

1. Neither party shall cause adverse effects to the interests of the other Party through the use of non-commercial assistance to enterprises active in markets open to trade.

2. Both parties 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 non-commercial 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 non-

[59] 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 principals shall be grounds for violation of this agreement.

commercial assistance which is predominately used by the Party's state-owned enterprises, provides a disproportionately large amount of the non-commercial assistance to the Party's state-owned enterprises, or otherwise favours the Party's state-owned enterprises in the provision of non-commercial 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 15.12.1 to 15.12.3, adverse effects are effects that arise from the provision of a good or service by a Party's state-owned enterprise which has benefited from non-commercial assistance and:

    (a) displace or impede from the Party's market imports of a like product or service[60] 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 15.12.4(a) and 15.12.4(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

---

[60] For greater certainty, for the purpose of this Chapter, the term "product" does not include financial instruments, including money.

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%;

   (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 non-commercial 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 non-commercial 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 15.12.4(b) and 15.12.4(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 non-commercial 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 non-commercial 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 15.13: Injury

1. Neither party shall cause injury to a domestic industry of the other Party through the use of non- commercial assistance that it provides, either directly or indirectly, to any enterprises in the territory of the other Party and where:

    (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 15.14: Requirements for Transparency & Corporate Governance

1. The Parties shall ensure that enterprises referred to in Article 15.9 (a) and Article 15.9 (b) 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 which 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 15.13(a) and Article 15.13(b)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 Articles 15.9.1 (d), (e) and (f)) and which do not qualify as small and medium-sized enterprises as defined in UK or EU law. Requests for such information shall indicate the enterprise, the products/services and markets concerned, and include indicators that the enterprise is engaging in practices that hinder trade or investment between the Parties.

4. The information may include:

    (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 Articles 15.9.1 (d), (e) and (f):

(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 Articles 15.9.1 (d), (e) and (f) 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 15.9.1 (d), (e) and (f) 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 which 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, non-conforming measures, immunities and any other measures derogating from the application of a Party's laws or regulations or granting favourable treatment by a Party.

5. The provisions of Articles 15.14.2 and 15.14.3 shall not require any Party to disclose confidential information which 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 in Articles 15.9.1 (d), (e) and (f) is independent from, and not accountable to, any of the enterprises referred to in Articles 15.91 (d), (e) and (f).

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 15.9.1 (d), (e) and (f). Exemptions must be limited and transparent.

8. The provisions of this Article apply to enterprises operating in all sectors.

Article 15.15: Provision of Information

1. Both parties 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 decision-making 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 three 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 which is publicly available, including annual financial reports and third-party audits, and which 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 re-financing 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 Article 15.15 an explanation of how the activities of the state-owned enterprise may be affecting trade or investment between the Parties.

Article 15.16: 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 ways ("Anti-Competitive Market Distortions" or "ACMDs"), unless there is a clearly expressed regulatory goal which has been published in advance consistent with Chapter 14 of this Agreement (Regulatory Coherence).

2. The Parties agree that they may provide supports to regionally impoverished areas[61] in their territories, and that prior to providing these supports the Parties should consult with each other through the Competition Policy Sub-Committee.

[61] Definition of Regionally Impoverished Area

3. 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[62];

(b) the complaining party must prove that there is an adverse effect, or damage to their 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.

4. 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 15.17

The corporate governance framework of each Party shall include provisions aiming at protecting and facilitating the effective exercise of shareholders' rights in publicly listed companies, ensuring timely and accurate disclosure on all material matters, including the financial situation, performance, ownership and governance of those companies.

Article 15.18

The Parties will ensure that they maintain corporate governance rules which require all companies to disclose government supports, privileges or other benefits as part of any applicable securities filings.

[62] Any measure can give rise to an ACMD, including laws, regulations, government actions or inactions, statements by regulators, made publicly and privately.

Article 15.19

1. The Parties shall adopt or maintain corporate governance mechanisms which ensure accountability of the management and board towards the shareholders, responsible, objective and independent board decision-making, and equal treatment of shareholders of the same class.

2. The Parties may provide that some corporate governance principles, but not those set out in 15.17, may not be applied to companies outside regulated markets or early phase development of the company.

Article 15.20: Sub-Committee on State-Owned Enterprises and Designated Monopolies

1. The Parties hereby establish a Sub-Committee on State-Owned Enterprises and Designated Monopolies, State Aids and ACMDs ("SOE Committee"), comprised of officials from both parties.

2. The Sub-Committee 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 Sub-Committee shall:

   (a) review and consider the operation and implementation of this Chapter;

   (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) Provide a framework for consultations under this Chapter;

   (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 Sub-Committee may decide.

4. Prior to each Sub-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 15.21: Exceptions

1. Nothing in Article 15.11 (Courts and Administrative Bodies), Article 15.12 (Adverse Effects), or Article 15.13 (Injury), Article 15.16 (state aids and ACMDs) shall be construed to:

   (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 15.11(Courts and Administrative Bodies), Article 15.12 (Adverse Effects), Article 15.13 (Injury), Article 15.7 (Requirements for Transparency & Corporate Governance), Article 15.20 (Committee on State-Owned Enterprises and Designated Monopolies), and Article 15.22 (Dispute Settlement) shall not apply where the state-owned enterprise is:

   (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 which 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. Articles 15.11 (Courts and Administrative Bodies), Article 15.12 (Adverse Effects) and Article 15.13 (Injury) shall not apply to a state-owned enterprise or designated monopoly that provides healthcare services or 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 favourable than the treatment it accords to like enterprises which 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 15.11] (Courts and Administrative Bodies), Article 15.12 (Adverse Effects) and Article 15.13 (Injury) shall not apply to:

   (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 two 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 15.22: Dispute Settlement

Any recourse to dispute settlement pursuant to Chapter 19 (Dispute Settlement) for any matter arising under this Chapter shall be subject to Annex 15.1 of this Chapter.

ANNEX 15: Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies

1. Where a panel has been established pursuant to Chapter 19 (Dispute Settlement) to examine a matter arising under this Chapter, 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.[63] The process shall include procedures aimed at protecting information that is by nature confidential or which 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

[63] The presentation of written questions and responses pursuant to paragraph 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.

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 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 non- cooperation in the information gathering process.

Comments

1. This chapter does a lot of heavy lifting in the areas of SOEs, state aids and government distortions. This is not only important for both parties (the EU has repeatedly talked about it), but it also aligns both parties around the developing global consensus in the OECD ad other venues to deal with the problem of market distortions. A high level agreement on these points should be possible between the EU and UK and could be a template for dealing with these problems in China and other highly distorted markets.
2. These provisions are based on existing EU agreements, but we have drawn in language on state owned enterprises from other FTAs, as well competition language in the OECD Regulatory Toolkit and Competition Assessment.

3. Deleted Article 15.19: We would want no exceptions, because these disclosure obligations only apply to listed companies on regulated markets.

4. The Competition Provisions also discuss market distortions which have been raised by the EU, US, and Japan in the WTO Declaration in Buenos Aires, December, 2017. Here the trilateral group is seeking to lower market distortions in third countries. Since the UK is a third country for the EU, this FTA is an opportunity to deal with this issue. It is also something the EU will want to see disciplines on because they are concerned that the UK will distort its market in ways that will damage the competitiveness of European firms.

5. A potential dispute settlement mechanism to supplement the existing trade remedies is discussed more fully in Chapter 17.

CHAPTER 16
SUBSIDIES, STATE AID AND MARKET DISTORTIONS

Article 16.1: Definitions

For the purposes of this Chapter:

(a) "**economic activities**" means those activities pertaining to the offering of goods and services in a market;

(b) "**subsidy**" means a measure which fulfils mutatis mutandis the conditions set out in Article 1.1 of the SCM Agreement, irrespective of whether the recipients of the subsidy deal in goods or services; and

(c) "**specific subsidy**" means a subsidy which is determined mutatis mutandis to be specific in accordance with Article 2 of the SCM Agreement.

Article 16.2: Principles

1. The Parties agree to use their best endeavours to remedy or remove through the application of their competition or state aid laws or otherwise, distortions of competition caused by subsidies in so far as they affect international trade, and to prevent the occurrence of such situations.

2. Notwithstanding these commitments, the Parties reserve their rights to adopt anti-subsidy or countervailing duty measures against goods originating in the other Party in accordance with Article [insert] of this Chapter.

Article 16.3: Scope

1. This Chapter applies to specific subsidies to the extent they are related to economic activities.

2. This Chapter does not apply to:

    (a) subsidies granted to enterprises entrusted by the government with the provision of services to the general public for public policy objectives. Such exceptions from the rules on subsidies shall be transparent and shall not go beyond their targeted public policy objectives;

    (b) subsidies granted to compensate the damage caused by natural disasters or other exceptional occurrences.

(c) subsidies granted temporarily to respond to a national or global economic emergency. Such subsidies shall be targeted, economical, effective and efficient in order to remedy the identified temporary national or global economic emergency[64];

(d) subsidies granted in relation to the supply of audio-visual services; and

(e) subsidies for small and medium-sized enterprises granted in accordance with objective criteria or conditions as provided for in Article 16.2.1 (b) and footnote 2 attached thereto of the SCM Agreement.

3. The Parties shall use their best endeavours to develop rules applicable to subsidies to services, taking into account developments at the multilateral level, and to exchange information upon the request of either Party. The Parties agree to hold the first exchange of views on subsidies to services within three years after the entry into force of this Agreement.

Article 16.4: Relation to the WTO Agreement

1. Nothing in this Chapter shall affect the rights and obligations of either Party under the SCM Agreement, Article XVI of GATT 1994 and Article XV of GATS.

2. For the avoidance of doubt the provisions in this Chapter are without prejudice to the rights of a Party in accordance with the relevant provisions of the WTO Agreement to apply trade remedies or to take dispute settlement or other appropriate action against a subsidy granted by the other Party.

Article 16.5: Transparency

1. Every two years, each Party shall notify the other Party of the following with respect to any subsidy granted or maintained within its territory:

(a) the legal basis of the subsidy;

(b) the form of the subsidy; and

(c) the amount of the subsidy or the amount budgeted for the subsidy.

2. If a Party makes publicly available on an official website the information specified in paragraph 1, the notification pursuant to paragraph 1 shall be deemed to have been made.

[64] For greater certainty, an emergency shall be understood as one that affects the whole economy of a Party. For the European Union, the whole economy of a Party means the whole economy of the European Union or at least of one of the Member States of the European Union.

3. If a Party notifies subsidies pursuant to Article 25.2 of the SCM Agreement, the Party shall be considered to have met the requirement of paragraph 1 with respect to such subsidies.

4. Upon request by a Party, the other Party shall provide further information on any subsidy schemes and particular individual cases of subsidy which is specific. The Parties shall exchange this information, taking into account the limitations imposed by the requirements of professional and business secrecy.

5. The Parties shall keep under constant review the matters to which reference is made in this Article.

Article 16.6: Prohibited subsidies

1. The following subsidies shall be deemed to be specific under the conditions of Article 2 of the SCM Agreement and shall be prohibited for the purposes of this Agreement in so far as they adversely affect international trade of the Parties[65]:

   (a) subsidies granted under any legal arrangement whereby a government or any public body is responsible for covering debts or liabilities of certain enterprises within the meaning of Article 2.1 of the SCM Agreement without any limitation, in law or in fact, as to the amount of those debts and liabilities or the duration of such responsibility; and

   (b) subsidies (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices or tax exemptions) to insolvent or ailing enterprises, without a credible restructuring plan based on realistic assumptions with a view to ensuring the return of the insolvent or ailing enterprise within a reasonable period of time to long-term viability and without the enterprise significantly contributing itself to the costs of restructuring. This does not prevent the Parties from providing subsidies by way of temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely keep an ailing enterprise in business for the time necessary to work out a restructuring or liquidation plan.

2. Paragraph 1 does not apply to subsidies granted as compensation for carrying out public service obligations.

3. The Parties hereby agree that this Article applies to subsidies received only after the date when this Agreement enters into force.

[65] International trade of the Parties comprises both domestic and exports markets.

Article 16.7: Use of subsidies

1. Each Party shall ensure that enterprises use subsidies only for the specific purpose for which the subsidies were granted.

Article 16.8: State Aids and Disciplines on Anti-Competitive Market Distortions

1. The Parties recognise that the provisions of Article 15.12 are to be read as additional commitments above and beyond the subsidy commitments in this Chapter.

Article 16.9: Consultations

1. In the event a Party considers that a subsidy of the other Party has or could have a significant negative effect on its trade or investment interests under this Chapter, the former Party may submit a request for consultation in writing. The Parties shall enter into consultations with a view to resolving the matter, provided that the request includes an explanation of how the subsidy has or could have a significant negative effect on trade or investment between the Parties.

2. During the consultations, the Party receiving the request for consultation shall consider to provide information about the subsidy, if requested by the other Party, such as:

   (a) the legal basis and policy objective or purpose of the subsidy;

   (b) the form of the subsidy such as a grant, loan, guarantee, repayable advance, equity injection or tax concession;

   (c) dates and duration of the subsidy and any other time limits attached to it;

   (d) eligibility requirements of the subsidy;

   (e) the total amount or the annual amount budgeted for the subsidy and the possibility of limiting the subsidy;

   (f) where possible, the recipient of the subsidy; and

   (g) any other information, including statistical data, permitting an assessment of the effects of the subsidy on trade or investment.

3. To facilitate the consultations, the requested Party shall provide relevant information on the subsidy in question in writing no later than 90 days after the date of receipt of the request referred to in Paragraph 1.

4. In the event that any information referred to in paragraph 2 is not provided by the requested Party, that Party shall explain the absence of such information in its written response.

5. During consultations, a Party may seek additional information on a subsidy or particular instance of government support related to trade in services provided by the other Party, including its policy objective, its amount, and any measures taken to limit the potential distortive effect on trade.

6. On the basis of the consultations, the responding Party shall endeavour to eliminate or minimise any adverse effects of the subsidy, or the particular instance of government support related to trade in services, on the requesting Party's interests.

Article 16.10: Confidentiality

1. When providing information under this Chapter, a Party is not required to disclose confidential information.

Comments

1. As well as ordinary provisions on subsidies one would find in most FTAs, this agreement contains disciplines on state aids and market distortions (reinforcing and linking back to Competition Policy chapter).

2. The reason to push these provisions from this chapter to the Competition Policy chapter is to preserve the overall goal of ensuring no market distortion in ways that are anti-competitive, consistent with the EU’s own state aids disciplines.

3. This approach is actually consistent with the approach of DG Trade during the 1990s on the issue of competition and trade.

CHAPTER 17
TRADE REMEDIES

PART I: ANTI-DUMPING AND COUNTERVAILING MEASURES

Article 17.1: General Provisions

1. The Parties reaffirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement and the SCM Agreement.

2. The Chapter on rules of origin and origin procedures shall not apply to anti-dumping and countervailing measures.

Article 17.2: Transparency

1. Each Party shall apply anti-dumping and countervailing measures in accordance with the relevant WTO requirements and pursuant to a fair and transparent process.

2. A Party shall ensure, after an imposition of provisional measures and, in any case, before a final determination is made, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision whether to apply final measures. This is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement.

3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party in an anti-dumping or countervailing investigation shall be granted a full opportunity to defend its interests.

Article 17.3: Consideration of Public Interest and the Lesser Duty Rule

1. Each Party's authorities shall consider information provided in accordance with the Party's law as to whether imposing an anti-dumping or countervailing duty would not be in the public interest.

2. After considering the information in Paragraph 1 above, the Party's authorities may consider whether the amount of anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or amount of subsidy or a lesser amount, in accordance with the Party's law.

3. Parties shall include public interest tests in their law which include taking into consideration the consumer welfare impact of the application of anti-dumping or countervailing measures.

PART II: GLOBAL SAFEGUARD MEASURES

Article 17.4: Global Safeguard Measures

1. The Parties reaffirm their rights and obligations concerning global safeguard measures under Article XIX of GATT 1994 and the Safeguards Agreement.

2. The Protocol on rules of origin and origin procedures shall not apply to global safeguard measures.

Article 17.5: Transparency

1. At the request of the exporting Party, the Party initiating a safeguard investigation or intending to adopt provisional or definitive global safeguard measures shall immediately provide:

   (a) the information referred to in Article 12.2 of the Safeguards Agreement, in the format prescribed by the WTO Committee on Safeguards;

   (b) the public version of the complaint filed by the domestic industry, where relevant; and

   (c) a public report setting forth the findings and reasoned conclusions on all pertinent issues of fact and law considered in the safeguard investigation. The public report shall include an analysis that attributes injury to the factors causing it and set out the method used in defining the global safeguard measures.

2. When information is provided under this Article, the importing Party shall offer to hold consultations with the exporting Party in order to review the information provided.

Article 17.6: Imposition of Definitive Measures

1. A Party adopting global safeguard measures shall endeavour to impose them in a way that least affects bilateral trade.

2. The importing Party shall offer to hold consultations with the exporting Party in order to review the matter referred to in paragraph 1. The importing Party shall not adopt measures until 30 days have elapsed since the date the offer to hold consultations was made.

Article 17.7: Motor Vehicle Special Safeguard Provisions

1. During the 10 years following the entry into force of this Agreement, the Parties reserve the right to suspend equivalent concessions or other equivalent obligations[66] in the event that the other Party:

   (a) does not apply or ceases applying a UN Regulation as specified in Appendix [insert] or

   (b) introduces or amends any other regulatory measure that nullifies or impairs the benefits of the application of a UN Regulation as specified in Appendix [insert]

2. Suspensions pursuant to paragraph 1 shall remain in force only until a decision is made in accordance with the accelerated dispute settlement procedure referred to in Article 19 of this Annex or a mutually acceptable solution is found, including through consultations under subparagraph (b) of Article 19 of this Annex, whichever is earlier.

PART III: THIRD COUNTRY MARKET DISTORTING PRACTICES

Article 17.8: Market Distorting Practices of Third Countries

1. The Parties recognise, and commit to the principles contained in the WTO Ministerial Joint Statement of the US, EU and Japan, agreed at Buenos Aires in December, 2017 and further developed in the Joint Statement on Trilateral Meeting of the Trade Ministers of the EU, US and Japan on May 31, 2018 and on the 25th September, 2018 which addressed market-distorting practices in third countries, and called for new rules to deal with these market-distorting practices.

[66] The level of the suspension of concessions or other obligations shall be no more than the level of the amount of the bilateral trade between the Parties of products covered by the UN Regulation referred to in subparagraph 1(a) or (b) of this Article.

Article 17.9: Market Distorting Practice of the Parties

1. The Parties agree that duties may be imposed in cases where one Party can show:

   (a) that its domestic industry is harmed by an increase in imports; and

   (b) the cost of those imports has been artificially reduced by market distortions that lessen competition; and

   (c) these market distortions have caused the damage to the domestic industry; and

   (d) the domestic industry can prove that it has been harmed by these market distorting practices by the other Party.

2. Such duties may not be greater than is necessary to offset the market-distorting practice of the other Party

3. The Parties must implement a mechanism which will ensure that the Party that is subject to the duty, if it can show that one of the conditions in Paragraph 1 no longer applies, can apply to have the duty removed and it can be removed immediately.

PART IV: SUB-COMMITTEE ON TRADE REMEDIES

Article 17.10: **Trade Remedies Sub-Committee**

1. The Parties hereby establish a Sub-Committee on Trade Remedies (the "Trade Remedies Sub-Committee), comprising representatives of each Party which will report to the overall Joint Committee set out in Articles 20.1 and 20.2 of this Agreement.

2. The Trade Remedies Sub-Committee shall consider any matter arising under this Chapter.

3. The Trade Remedies Sub-Committee's functions in relation to this Chapter shall include:

   (a) Conduct and Publish an annual review of trade remedies applied between the Parties;

   (b) Evaluate the application of the public interest and lesser duty rule to ensure it is being used by the Parties in practice; and

(c) Evaluate the interaction between the mechanisms to deal with dumping, subsidies and ACMDs

Article 17.11: Procedure, Representatives and Powers of the Sub-Committee on Trade Remedies

1. The Trade Remedies Sub-Committee will:

   (a) follow the same procedural rules and representation requirements as those established for the Sub-Committee for Trade in Goods and shall meet as regularly as required by the Parties;

   (b) abide by the same provisions regarding the representation of the Parties as those established by the Sub-Committee for Trade in Goods.

   (c) exercise the same powers as those conferred on the Sub-Committee for Goods mutatis mutandis.

Comments

1. Article 17.7: Motor Vehicle Special Safeguard Provisions – This concept draws on the EU-Japan FTA. The ultimate agreement would include a list of UN regulations applicable in the auto sector which would be covered by this article in the form of an Annex.

2. Article 17.8 and 17.9 Market Distorting Practices of Third Countries: This is a key innovation which has been discussed in the context of anti-competitive market distortions. It is being discussed with USTR in the context of its trade disputes with China as a way of solving these disputes. The EU should accept this because it accords with its own state aids/competition approach and is a way of putting into practice the WTO Min Dec in Dec, 2017 on market distortions in third countries which the EU signed up to, along with Japan and the US.

3. Article 17.9 lays out the remedy available for market distorting practices between the Parties.

4. A public interest test is included pursuant to the direction of travel of UK trade remedies law.

CHAPTER 18
TRADE AND SUSTAINABLE DEVELOPMENT

Article 18.1: Labour Standards

1. The Parties reaffirm their obligations deriving from their International Labour Organisation ("ILO") membership. The Parties further reaffirm their respective commitments with regard to any ILO declarations which they have made in their own rights.

2. The Parties agree to ensure that their labour rules ensure:

   (a) the freedom of association;

   (b) the elimination of all forms of forced or compulsory labour;

   (c) the abolition of child labour; and

   (d) the elimination of discrimination in respect of employment and occupation.

3. The Parties agree to notify each other of any ratifications of ILO conventions to which they are not already party.

4. The Parties recognise that labour standards should not be used for protectionist trade purposes.

5. The Parties reaffirm their commitment to effectively implement in its laws, regulations and practices the multilateral agreements to which it is a Party.

Article 18.2: Environmental Protection

1. The Parties agree that environmental measures shall not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other Party or a disguised restriction on trade.

2. The Parties agree to comply with the international treaties on bio-diversity to which they are parties notably the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, and its protocols and the Convention on International Tarde in Endangered Species of Wild

Fauna and Flora, done at Washington, DC on 3 March 1973 (hereinafter referred to as "CITES").

3. The Parties agree that, in implementing measures that implement the treaties on Biodiversity that they are a party to, they will regulate in ways that are the least damaging to international trade and market competition as possible consistent with the legitimate and clearly stated regulatory goal.

Article 18.3: Fisheries and Aquaculture[67]

1. The Parties shall fully comply with the fishing treaties to which they are parties including:

   (a) The UN Convention on the Law of the Sea;

   (b) The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, done at Rome on 24 November, 1993;

   (c) The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish stocks and highly Migratory Fish Stocks, done at New York on 4 August, 1995; and

   (d) The Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organisation on 31 October, 1995

2. The Parties agree to promote conservation and sustainable use of fisheries resources through appropriate regional bodies including the Regional Fisheries Management Organisations ("RFMOs"), by means of, where applicable, effective monitoring, control and enforcement of RFMOs' resolutions, recommendations and measures, and implementation of their catch documentaries or certification schemes.

3. The Parties agree to adopt and implement their respective tools for combating illegal, unreported and unregulated ("IUU") fishing, including through legal instruments, and, where appropriate, control, monitoring and enforcement, and capacity management measures, recognising that voluntary sharing of information on IUU fishing will enhance the

[67] The market access issues related to fisheries are covered in Chapter 2.

effectiveness of these tools in the fight against IUU fishing, and underlining the crucial role of the members of RFMOs with major fisheries markets to leverage a sustainable use of fisheries resources; and

4. The Parties agree to promote the development of sustainable aquaculture, taking into account appropriate commercial, economic, social and environmental factors.

Article 18.4: Application of Science and Transparency

1. The Parties will implement measures under this section that are based on sound science, relevant international standards, guidelines or recommendations

Article 18.5: Consultations

1. In the event of disagreement between the Parties shall have recourse to the mechanisms set out in this article and more specifically:

   (d) Either Party may request in writing consultations with the other Party on any matter concerning the interpretation or application of this Chapter

   (e) The request in writing must set out the reasons for the request, and the factual and legal basis for the claim, setting out the relevant provisions of this Chapter

   (f) On receipt of a written request for consultations, the other Party shall reply promptly and enter into consultations with a view to reaching a mutually satisfactory resolution of the matter

   (g) During consultations, each Party shall provide sufficient information to enable a full examination of the matter in question.

   (h) In the event that no solution is reached, the parties shall have recourse to arbitration set out in [insert section reference]

2. The provisions of this Chapter shall not be subject to dispute settlement under Chapter 19 (Dispute Settlement).

Article 18.6: Sub-Committee on Trade and Sustainable Development

2. The Parties hereby establish a Sub-Committee on Trade and Sustainable Development (the 'Trade and Sustainable Development Sub-Committee") comprising representatives of each Party which will report to the overall Joint Committee set out in Articles 20.1 and 20.2 of this Agreement.

2. The Trade and Sustainable Development Sub-Committee shall consider any matter arising under this Chapter.

3. The Trade and Sustainable Development Sub-Committee' functions in relation to this Chapter shall include:

    (a) Monitor compliance with this Chapter; and

    (b) Consider and evaluate the appropriateness of environmental and labour treaties;

Article 18.7: Procedure, Representatives and Powers of the Trade and Sustainable Development Sub-Committee

1. The Trade and Sustainable Development Sub-Committee:

    (a) will follow the same procedural rules and representation requirements as those established for the Sub-Committee for Trade in Goods specified in Articles 2.15 and 2.16 shall meet as regularly as required by the Parties;

    (b) will abide by the same provisions regarding the representation of the Parties as those established by the Sub-Committee for Trade in Goods.

    (c) will exercise the same powers as those conferred on the Sub-Committee for Goods mutatis mutandis.

Comments

1. Chapter based on EU-Japan FTA, and other FTA's typical provisions on labour and environmental disciplines.

2. Includes fisheries section. Specific negotiations on access to territorial waters would be conducted separately from the trade agreement through UK participation on RFMOs.

3. Article 18:1.5: No need for further elaboration on MEAs or Paris UN Convention on Climate Change as the UK and EU are already members.

4. Article 18.3:4 - Added “commercial” to list of factors with respect to fisheries.

5. Article 18.4.1 - Added a commitment to sound science based regulation as in the SPS agreement, and removed the explicit reference to the Precautionary Principle from EU-Japan.

6. Article 18:5: Many developed countries do not sign up to all the ILO Conventions and the UK should ensure that only ILO Conventions which are appropriate to the UK are followed. The key commitment is to ensure neither side derogates from the treaties that they have already signed up to, in either the labour or environmental space.

7. Full dispute resolution provisions shall not apply as is common practice in other FTAs.

CHAPTER 19
DISPUTE SETTLEMENT

PART I: DISPUTE SETTLEMENT BETWEEN THE PARTIES

Article 19.1: Definitions

For the purposes of this Chapter:

1. "**complaining Party**" means a Party that requests the establishment of a panel under Article 19.7.1 (Establishment of a Panel);

2. "**consulting Party**" means a Party that requests consultations under Article 19.5.1 (Consultations) or the Party to which the request for consultations is made;

3. "**disputing Party**" means a complaining Party or a responding Party;

4. "**panel**" means a panel established under Article 19.7 (Establishment of a Panel);

5. "**perishable goods**" means perishable agricultural and fish goods classified in HS Chapters 1 through 24;

6. "**responding Party**" means a Party that has been complained against under Article 19.7 (Establishment of a Panel);

7. "**Rules of Procedure**" means the rules referred to in Article 19.13 (Rules of Procedure for Panels).

Article 19.2: Cooperation

The Parties shall at all times endeavour 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 19.3: Scope

1. Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(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 which are not party to the instrument; and

(b) may be subject to the dispute settlement procedures under this Chapter for any matter arising under the instrument if that instrument so provides.

Article 19.4: 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 1, the forum selected shall be used to the exclusion of other fora.

Article 19.5: Consultations

1. Any Party may request consultations with respect to any matter described in Article 19.3 (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[68] 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 seven days after the date of its receipt of the request.[69] That Party shall enter into consultations in good faith.

3. Unless the consulting Parties agree otherwise, they shall enter into consultations no later than:

   (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:

   (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.

---

[68] 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.

[69] 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 seven days after the date on which the Party making the request for consultations transmitted that request.

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 19.6: 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 7 (Establishment of a Panel).

Article 19.7: Establishment of a Panel

1. A Party that requested consultations under Article 19.5.1 (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:

   (a) a period of 60 days after the date of receipt of the request for consultations under Article 19.5.1 (Consultations);

   (b) a period of 30 days after the date of receipt of the request for consultations under Article 19.5.1 (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 19.8: Terms of Reference

1. 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 19.7.1 (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 19.16.4 (Panel Report).

Article 19.9: 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 19.7.1 (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 panellists, and notify each other of those appointments.

(b) If the complaining Party fails to appoint a panellist 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 panellist within the period specified in subparagraph (a), the complaining Party shall select the panellist 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 19.7.1 (Establishment of a Panel).

(d) For appointment of the third panellist, who shall serve as chair:

i. the disputing Parties shall endeavour 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 19.7.1 (Establishment of a Panel) the third panelist shall be chosen by lot from the non-nationals on the roster established under Article 19.11.

iii. The process of choosing by lot is to be administered by the Secretariat.

3. Each disputing Party shall endeavour to select panellists who have expertise or experience relevant to the subject matter of the dispute.

4. If a panellist selected under Article 19.9.2 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 seven days after learning that the panellist is unavailable, select another panellist in accordance with the same method of selection that was used to select the panellist who is unable to serve, unless the disputing Parties agree otherwise.

5. If the process for selecting the new panellist under Article 19.9.6 is not completed within the timeframe set out in that paragraph then the Secretariat shall select the panellist by random selection from the roster no later than 15 days after learning that the original panellist is no longer able to serve.

6. If a panellist 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 19.18 (Non-Implementation - Compensation and Suspension of Benefits) or Article 19.19

(Compliance Review), a replacement panellist shall be appointed within 15 days in accordance with paragraphs 43,4 and 5. The replacement shall have all the powers and duties of the original panellist. The work of the panel shall be suspended pending the appointment of the replacement panellist, 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 panellist is in violation of the code of conduct referred to in Article 19.10.1 (Qualifications of Panellists), the disputing Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 19.10: Qualifications of Panellists

1. All panellists shall:

   (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;

   (b) be chosen strictly on the basis of objectivity, reliability and sound 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 panellist for a dispute in which that person has participated under Article 19.6 (Good Offices, Conciliation and Mediation).

Article 19.11: Roster of Panellists

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 non-nationals 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 19.10. At least 5 of these individuals must be non-nationals 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 19.12: 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 19.13: Rules of Procedure for Panels

The Rules of Procedure, established under this Agreement in accordance with Article 19.12(Functioning of Panels), shall ensure that:

(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:

(e) 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

(f) if not already released, release all these documents by the time the final report of the panel is issued;

(g) the panel shall consider requests from non-governmental 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;

(h) confidential information is protected;

(i) unless the disputing Parties agree otherwise, hearings shall be held in the capital of the responding Party.

Article 19.14: 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 19.15: 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 this Chapter 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 19.16: 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 19.14 (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 panellist. In cases of urgency, including those related to perishable goods, the panel shall endeavour to present its report to the disputing Parties no later than 120 days after the date of the appointment of the last panellist.

4. The report shall contain:

   (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.

   (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. Panellists 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 19.17: Implementation of Report

1. The Parties recognise the importance of prompt compliance with determinations made by panels under Article 19.16 (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 non-conformity.

3. Unless the disputing Parties agree otherwise, the responding Party shall have a reasonable period of time in which to eliminate the non-conformity if it is not practicable to do so immediately.

4. The disputing Parties shall endeavour 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 19.16 (Panel Report), any disputing Party may, no later than 60 days after the presentation of the report under Article 19.16 (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 19.16 (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 19.18: Non-Implementation – 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 non-conformity or the nullification or impairment; or

   (b) following the expiry of the reasonable period of time established in accordance with Article 19.17 (Implementation of Report), there is disagreement between the disputing Parties as to whether the responding Party has eliminated the non-conformity 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:

   (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.[70] 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 non-conformity or 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.

   (c) in applying the principles set out in subparagraphs (a) and (b), it shall take into account:

      i. the trade in the good, the supply of the service or other subject matter in which the panel has found the nonconformity or nullification or impairment, and the importance of that trade to the complaining Party;

      ii. that goods, all financial services covered under Annex 1 (Financial Services) in Chapter 5, 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.

[70] 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 non-conformity, or nullification or impairment in the sense of Article 19.3.1(c) (Scope), determined to exist by the panel in its final report issued under Article 19.18. (Non-Implementation-Compensation and 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 non-conformity 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 non-conformity 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 per cent 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 per cent 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 Euros or pounds sterling or any other currency agreed by the disputing Parties in equal, quarterly instalments 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 instalment is due, the responding Party shall provide to the complaining Party a plan of the steps it intends to take to eliminate the non-conformity 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:

    (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 three 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 per cent 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 non-conformity 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 non-conformity or the nullification or impairment, or until a mutually satisfactory solution is reached.

Article 19.19: Compliance Review

1. Without prejudice to the procedures in Article 19.18 (Non-Implementation - Compensation and Suspension of Benefits), if a responding Party considers that it has eliminated the non-conformity 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 19.18 (Non-Implementation - Compensation and Suspension of Benefits).

PART II: Domestic Proceedings and Private Commercial Dispute Settlement

Article 19.20: Private Rights

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 19.21: 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 10 June 1958.

Comments

1. Dispute Resolution process is a more refined process building on standard FTA practice, but improving where possible. Given that this is a process issue, dispute settlement provisions are unlikely to be contestable.

CHAPTER 20
INSTITUTIONAL PROVISIONS

Article 20.1: Joint Committee

1. The Parties hereby establish a Joint Committee comprising representatives of both Parties.

2. The Joint Committee shall hold its first meeting within three months of the date of entry into force of this Agreement. Thereafter, the Joint Committee shall, unless otherwise agreed by the representatives of the Parties, meet once a year, or in urgent cases on request of either Party. The Joint Committee may meet in person or by other means, as agreed by the representatives of the Parties.

3. The meetings of the Joint Committee shall take place in the European Union or the United Kingdom alternately, unless otherwise agreed by the representatives of the Parties. The Joint Committee shall be co-chaired by the Member of the European Commission and a representative of the United Kingdom at ministerial level responsible for matters under this Agreement, or their respective delegates.

4. In order to ensure that this Agreement operates properly and effectively, the Joint Committee shall:

   (a) review and monitor the implementation and operation of this Agreement and, if necessary, make appropriate recommendations to the Parties;

   (b) supervise and coordinate, as appropriate, the work of all specialised committees, working groups and other bodies established under this Agreement, and recommend to them any necessary action;

   (c) without prejudice to Chapter 19, seek to solve problems that may arise under this Agreement or resolve disputes that may arise regarding the interpretation or application of this Agreement;

   (d) consider any other matter of interest under this Agreement as the representatives of the Parties may agree; and

   (e) adopt at its first meeting its rules of procedure and a Code of Conduct.

5. In order to ensure that this Agreement operates properly and effectively, the Joint Committee may:

   (a) establish or dissolve sub-committees, working groups or other bodies, and determine their composition, function and tasks;

   (b) allocate responsibilities to specialised committees, working groups or other bodies;

   (c) provide information on issues falling within the scope of this Agreement to the public;

   (d) recommend to the Parties any amendments to this Agreement or adopt decisions to amend this Agreement in instances specifically provided for in Paragraph 4 ;

   (e) adopt interpretations of the provisions of this Agreement, which shall be binding on the Parties and all specialised committees, working groups and other bodies set up under this Agreement, including panels established under Chapter 19; and

   (f) take any other action in the exercise of its functions as the Parties may agree.

Article 20.2: Decisions and recommendations of the Joint Committee

1. The Joint Committee may take decisions where provided for in this Agreement. The decisions taken shall be binding on the Parties. Each Party shall take the measures necessary to implement the decisions taken.

2. The Joint Committee may make recommendations relevant for the implementation and operation of this Agreement.

3. All decisions and recommendations of the Joint Committee shall be taken by consensus and may be adopted either by meeting in person or in writing.

Article 20.3: Specialised Sub-Committees

1. As specified in the relevant Chapters of this Agreement, the following specialised sub-committees have been established and operate under the auspices of the Joint Committee:

   (a) the Sub-Committee on Trade in Goods;
   (b) the Sub-Committee on the Regulation of Financial Service;

(c) the Sub-Committee on Trade in Services, Investment Liberalisation and Electronic Commerce;
(d) the Sub-Committee on Government Procurement;
(e) The Sub-Committee on Intellectual Property
(f) the Sub-Committee on Sanitary and Phytosanitary Measures;
(g) the Sub-Committee on Technical Barriers to Trade;
(h) the Sub-Committee on Regulatory Coherence;
(i) The Sub-Committee on Trade Remedies; and
(j) the Sub-Committee on Trade and Sustainable Development.

2. The responsibilities and functions of the sub-committees referred to in paragraph 1 are defined, as appropriate, in the relevant Chapters of this Agreement and can be modified by a decision of the Joint Committee but their responsibilities shall remain within the scope of the Chapters for the implementation and operation of which they are responsible.

3. Unless otherwise provided for in this Agreement, the subcommittees shall:

(a) meet once a year, unless otherwise agreed by the representatives of the Parties to the specialised committees, or on request of a Party or of the Joint Committee;

(b) be composed of representatives of the Parties;

(c) be co-chaired, at an appropriate level, by the representatives of the Parties;

(d) hold their meetings in the European Union or the United Kingdomalternately, unless otherwise agreed by the representatives of the Parties to the specialised committees, or by any other appropriate means of communication;

(e) agree on their meeting schedules and set their agenda by consensus; and

(f) take all decisions and make recommendations by consensus either by meeting in person or in writing.

4. The sub-committees may adopt their rules of procedure. As long as they do not adopt their rules of procedure the rules of procedure for the Joint Committee apply mutatis mutandis.

5. The subcommittees may submit proposals for decisions to be adopted by the Joint Committee or take decisions in accordance with the relevant provisions of this Agreement.

6. On request of a Party or on referral from the relevant sub-committee, the Joint Committee may address matters that have not been resolved by the relevant specialised committee.

7. Each subcommittee shall inform the Joint Committee of the schedules and agenda of its meetings sufficiently in advance and shall report to the Joint Committee on results and conclusions from each of its meetings.

8. The existence of a sub-committee shall not prevent a Party from bringing any matter directly to the Joint Committee.

Article 20.4: Working groups

1. The following working groups may be established in accordance with relevant Chapters:

   (a) *ad hoc* working groups under the auspices of the Committee on Sanitary and Phytosanitary Measures;

   (b) *ad hoc* technical working groups under the auspices of the Committee on Technical Barriers to Trade;

   (c) *ad hoc* working groups under the auspices of the Committee on Regulatory Cooperation; and

   (d) an Animal Welfare Technical Working Group under the auspices of the Joint Committee.

2. Unless otherwise provided for in this Agreement or unless otherwise agreed by the representatives of the Parties to the working groups, the working groups shall:

   (a) meet once a year, or on request of a Party or of the Joint Committee;

   (b) be co-chaired, at an appropriate level, by representatives of the Parties;

   (c) hold their meetings alternately in the European Union or the United Kingdom, or by any other appropriate means of communication as agreed between the representatives of the Parties to the working groups;

(d) agree on their meeting schedules and set their agenda by consensus; and

(e) take all decisions and make recommendations by consensus either by meeting in person or in writing.

3. The working groups may adopt their own rules of procedure. As long as they do not adopt such rules of procedure, the rules of procedure of the Joint Committee apply *mutatis mutandis*.

4. The working groups shall inform the relevant specialised committees or the Joint Committee, as appropriate, of their schedule and agenda sufficiently in advance of their meetings. They shall report on their activities at each meeting of the relevant specialised committees or the Joint Committee, as appropriate.

5. The existence of a working group shall not prevent a Party from bringing any matter directly to the Joint Committee or the relevant specialised committees.

Article 20.5: Work of specialised committees, working groups and other bodies

1. In carrying out their functions, the specialised committees, working groups and other bodies established under this Agreement shall avoid unnecessary duplication of their work.

Comments

1. This sets up the Joint Committee/Sub-committee structure which is the structural part of the agreement. This type of structure is normal for modern FTAs.

CHAPTER 21
NATIONAL SECURITY AND OTHER OVERRIDING EXCEPTIONS

Article 21.1: National Security Exceptions

1. Nothing in this Agreement shall be construed as:

   (a) requiring a Party to provide any information the disclosure of which it considers contrary to its essential security interests;

   (b) preventing a Party from taking any action which it considers necessary for the protection of its essential security interests:

      i. Relating to fissionable and fusionable materials or the materials from which they are derived;

      ii. Relating to the production of or trade in arms, ammunition and implements of war as well as to the production of or trade in other goods and materials as carried out directly or indirectly for the purpose of supplying a military establishment;

      iii. Relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment; or

      iv. Taken in time of war or other emergency in international relations; or

   (c) preventing a Party from taking any action in pursuance of its obligations under the Charter of the United Nations or the North Atlantic Treaty Organisation for the purpose of maintaining international peace and security.

Article 21.2: Public Policy and Other Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on the supply of goods or the establishment or cross-border supply of services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by either Party of measures necessary to :

(a) protect public security, public morals and public safety or to maintain public order;

(b) protect human, animal or plant life or health;

(c) conserve exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;

(d) protect national treasures of artistic, historic or archaeological value;

(e) secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

   (i) the prevention of deceptive and fraudulent practices;

   (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and

   (iii) ensuring compliance with orders or judgements in juridical or administrative proceedings.

(f) protect the environment both on a global basis and within the national territories of both parties.

Article 21.3: Movement of Natural Persons and Immigration

1. Unless expressly stated to the contrary, this Agreement does not apply to measures affecting natural persons of a Party seeking residence nor to measures regarding nationality or citizenship or employment on a permanent basis.

2. This Agreement shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Agreement The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits accrued under this Agreement.

Article 21.4: Temporary safeguard measures with regard to capital movements and payments

1. Where, in exceptional circumstances, capital movements and payments, including transfers, cause or threaten to cause serious difficulties for the operation of the economic and monetary union of either Party, that Party may impose safeguard measures that are strictly necessary to address such difficulties for a period not to exceed 180 days.

2. Such measures imposed under Paragraph 1 shall not constitute a means of arbitrary or unjustifiable discrimination in respect of either Party or its investors compared to a third country or its investors.

3. Both Parties, in the event that such circumstances emerge shall inform the other forthwith and present, as soon as possible, a schedule for the removal of such measures.

Article 21.5: Restrictions in case of serious balance of payments and external financial difficulties

1. Where either Party, including a Member State of the European Union that is not a member of the European Monetary Union, experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements or payments, including transfers.

2. Measures referred to in paragraph 1 shall:

   (a) not treat a Party less favourably than a third country in like situations;

   (b) be consistent with the Articles of Agreement of the International Monetary Fund, done at Bretton Woods on 22 July 1944, as applicable;

   (c) avoid unnecessary damage to the commercial, economic and financial interests of a Party;

   (d) be temporary and phased out progressively as the situation specified in paragraph 1 improves and shall not exceed 180 days. If extremely exceptional circumstances arise such that a Party seeks to extend such measures beyond a period of 180 days, it will consult in advance with the other Party regarding the implementation of any proposed extension.

3. In the case of trade in goods, a Party may adopt restrictive measures in order to safeguard its balance-of-payments or external financial position. Such measures shall be in accordance with the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement.

4. In the case of trade in services, a Party may adopt restrictive measures in order to safeguard its balance-of- payments or external financial position. Such measures shall be in accordance with the GATS.

5. A Party that adopts or maintains a measure referred to in paragraph 1 shall promptly notify the other Party and provide, as soon as possible, a schedule for its removal.

6. Where the restrictions are adopted or maintained under this Article, consultations between the Parties shall be held promptly in the Joint Committee, if such consultations are not otherwise taking place in a forum outside of this Agreement. The consultations held under this paragraph shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, among other things, such factors as:

   (a) the nature and extent of the difficulties;

   (b) the external economic and trading environment; or

   (c) the availability of alternative corrective measures.

7. The consultations pursuant to paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 through 4. The Parties shall accept all findings of statistical and other facts presented by the International Monetary Fund ('IMF') relating to foreign exchange, monetary reserves, balance-of-payments, and their conclusions shall be based on the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

Article 21.6: Taxation

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure that distinguishes between persons who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure aimed at preventing the avoidance or evasion of taxes pursuant to its tax laws or tax conventions.

3. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of inconsistency between this Agreement and a tax convention, that convention prevails to the extent of the inconsistency.

4. Nothing in this Agreement or in any arrangement adopted under this Agreement shall apply to a taxation measure of a Party that:

(a) provides a more favourable tax treatment to a corporation, or to a shareholder of a corporation, on the basis that the corporation is wholly or partly owned or controlled, directly or indirectly, by one or more investors who are residents of that Party;

(b) provides an advantage relating to the contributions made to, or income of, an arrangement providing for the deferral of, or exemption from, tax for pension, retirement, savings, education, health, disability or other similar purposes, conditional on a requirement that that Party maintains continuous jurisdiction over such arrangement;

(c) provides an advantage relating to the purchase or consumption of a particular service, conditional on a requirement that the service be provided in the territory of that Party;

(d) is aimed at ensuring the equitable and effective imposition or collection of taxes, including a measure that is taken by a Party in order to ensure compliance with the Party's taxation system;

(e) provides an advantage to a government, a part of a government, or a person that is directly or indirectly owned, controlled or established by a government;

(f) relates to an existing non-conforming taxation measure not otherwise covered in paragraphs 1, 2 and 4(a) through (e), to the continuation or prompt renewal of such a measure, or an amendment of such a measure, provided that the amendment does not decrease its conformity with the provisions of this Agreement as it existed immediately before the amendment.

CHAPTER 22
FINAL PROVISIONS

Article 22.1: Amendments

1. This Agreement may be amended by agreement between the Parties.

2. Such amendments shall enter into force on the first day of the second month, or on such later date as may be agreed by the Parties, following the date on which the Parties notify each other that their respective applicable legal requirements and procedures for entry into force of such amendments have been completed. The Parties shall make such notification through an exchange of diplomatic notes between the European Union and the Government of the United Kingdom.

3. In accordance with the respective domestic legal procedures of the Parties, the Joint Committee may adopt decisions to amend this Agreement. Notwithstanding paragraph 2, such amendments shall be confirmed by and enter into force upon the exchange of diplomatic notes between the European Union and the Government of the United Kingdom, unless otherwise agreed by the Parties.

Article 22.2: Entry into force

1. This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that their respective applicable legal requirements and procedures for entry into force of this Agreement have been completed, unless the Parties agree otherwise. The Parties shall make such notification through an exchange of diplomatic notes between the European Union and the Government of the United Kingdom.

Article 22.3: Termination

1. This Agreement shall remain in force unless terminated pursuant to Article 22.2.

2. Either Party may notify in writing the other Party of its intention to terminate this Agreement. The termination shall take effect six months after the date of receipt by the other Party of the notification, unless the Parties otherwise agree.

Article 22.4: No direct effect on persons

1. Unless expressly stated to the contrary, nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, without prejudice to the rights and obligations of persons under other public international law.

Article 22.5: Annexes, appendices and footnotes

1. The Annexes and Appendices to this Agreement shall form an integral part of this Agreement. For greater certainty, the footnotes shall also form an integral part of this Agreement.

Article 22.6: Future accessions to the European Union

1. The European Union shall notify the United Kingdom of any request for accession of a third country to the European Union.

2. During the negotiations between the European Union and a third country referred to in paragraph 1, the European Union shall:

   (a) on request of the United Kingdom and, to the extent possible, provide any information regarding any matter covered by this Agreement; and

   (b) take into account any concerns expressed by the United Kingdom.

3. The Joint Committee shall examine any effects of accession of a third country to the European Union on this Agreement sufficiently in advance of the date of such accession.

4. To the extent necessary, the Parties shall, before the entry into force of the agreement on the accession of a third country to the European Union:

   (a) amend this Agreement in accordance with Article 22.1; or

   (b) put in place by decision of the Joint Committee any other necessary adjustments or transitional arrangements regarding this Agreement.

Article 22.7: Authentic texts

1. This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish languages, all texts being equally authentic.

2. In case of any divergence of interpretation, the text of the language in which this Agreement was negotiated shall prevail.

IN WITNESS WHEREOF, the undersigned, duly authorised to this effect, have signed this Agreement.

List of Committees and Sub-Committees