

# UNITED STATES – AUSTRALIA FREE TRADE AGREEMENT

## Summary of the Agreement

This summary briefly describes key provisions of the United States – Australia Free Trade Agreement.

### **Preamble and Chapter One: Establishment of a Free Trade Area and Definitions**

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context to the provisions that follow. Chapter One sets out provisions establishing a free trade area. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Australia are party. Chapter One also includes definitions of certain terms that recur in various chapters of the Agreement.

### **Chapter Two: National Treatment and Market Access for Goods**

Chapter Two sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat goods from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter Five (Rules of Origin)) traded between the two Parties, and requires the elimination of a wide variety of non-tariff barriers that restrict or distort trade flows.

*Tariff Elimination.* Chapter Two provides rules for the elimination of customs duties on originating goods traded between the Parties. Duties on virtually all tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including in some cases the application of preferential tariff-rate quotas (TRQs). Annex 2-B (General Notes to the U.S. Tariff Schedule) includes detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The United States also has agreed not to apply its merchandise processing fee on imports of originating goods from Australia.

*Temporary Admission.* Chapter Two requires the Parties to provide duty-free temporary admission for certain goods without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

*Import/Export Restrictions, Fees, and Formalities.* The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered.

*Pharmaceuticals.* The Parties affirm their commitment to several basic principles related to their shared objective of facilitating high quality health care and improvements in public health. These principles are: (1) the important role played by innovative pharmaceutical products in delivering high quality health care; (2) the importance of research and development in the pharmaceutical industry and of appropriate government support, including through intellectual property protection and other policies; (3) the need to promote timely and affordable access to innovative pharmaceuticals through transparent, expeditious, and accountable procedures, without impeding a Party's ability to apply appropriate standards of quality, safety, and efficacy; and (4) the need to recognize the value of innovative pharmaceuticals through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical. When a Party takes the latter approach, it will ensure that its respective federal health care authorities maintain prompt and transparent procedures for listing pharmaceutical products for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under its federal health care programs.

Government procurement of pharmaceuticals by each Party is covered under Chapter Fifteen (Government Procurement) rather than under the pharmaceutical-specific provisions of the Agreement. Australia will establish and maintain procedures enhancing transparency and accountability in the listing and pricing of pharmaceuticals under its Pharmaceutical Benefits Scheme, including access to an independent review process for listing decisions. The Parties also will establish a Medicines Working Group, consisting of officials from their federal health agencies, to promote discussion and understanding of pharmaceutical issues. Finally, each Party confirms that it will allow pharmaceutical manufacturers to publish certain information regarding their products on the Internet.

### **Chapter Three: Agriculture**

Chapter Three sets out various provisions governing trade in agricultural goods between the Parties.

*Cooperation.* Chapter Three provides that the Parties will work together in WTO agriculture negotiations to: (1) improve market access; (2) reduce, with a view to phasing out, all forms of export subsidies; (3) develop disciplines eliminating state trading enterprises' monopoly export rights; and (4) substantially reduce trade-distorting domestic support. In addition, the Parties will establish a Committee on Agriculture that will meet at least once each year to promote trade, address barriers to bilateral trade in agricultural goods, and oversee implementation of this Chapter.

*Export Subsidies.* Each Party will eliminate export subsidies on agricultural goods destined for the other country. According to Article 3.3, neither Party may introduce or maintain a subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third country is subsidizing its exports to the other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting

Party must refrain from applying export subsidies to its exports of the good to the importing Party.

*Safeguards.* Chapter Three establishes safeguard procedures to aid domestic industries that are facing increased imports or imports below a price threshold of certain agricultural goods. The United States will apply safeguard measures (in the form of additional duties) according to Annex 3-A. Annex 3-A contains three distinct safeguard mechanisms: (1) a price-based safeguard for certain horticultural goods; (2) a quantity-based safeguard for certain beef goods (available in years 9 through 18 of the Agreement); and (3) a price-based safeguard for certain beef goods (available starting in year 19 of the Agreement). The United States has the discretion to forego imposing the beef safeguard measures.

The price-based horticultural safeguard consists of a schedule of eligible horticultural goods and their respective “trigger” prices, as well as a methodology for determining the amount of an additional safeguard duty. The U.S. horticulture schedule includes goods such as dried onion and garlic, canned fruit, processed tomato products, and various juices. In years 9 through 18 of the Agreement, the United States will impose a quantity-based safeguard measure on certain beef imports when such imports exceed an established volume “trigger”. The safeguard measure will remain in force until the end of the calendar year in which the measure applies. Starting in year 19 of the Agreement, the U.S. will impose a price-based safeguard on certain beef imports when the U.S. monthly average index price for beef falls below a trigger price that is calculated at 6.5 percent less than the average of the previous 24 monthly average index prices.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard under either Chapter Nine (Safeguards) of this Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, upon request, consult with the other Party concerning the application of the measure.

*Additional Provisions.* Chapter Three contains certain additional provisions designed to facilitate trade in agricultural goods. One such provision concerns the administration of TRQs. If an importing Party believes that an exporting Party has increased its imports of an agricultural good from a third country, thereby increasing its exports of a good subject to a TRQ administered by the importing Party, the exporting Party must immediately consult upon request to remedy the situation. A second provision relates to market access for dairy goods, establishing that, following year 20 of the Agreement, either Party may request consultations with the other Party to consider modifying market access commitments for dairy goods set out in Annex 2-B. The market access commitments on dairy can only be modified if both Parties agree to do so.

#### **Chapter Four: Textiles and Apparel**

Chapter Four sets out provisions addressing trade in textile and apparel goods, including a “safeguard” provision, special rules of origin, and customs cooperation provisions aimed at preventing circumvention.

*Safeguard Actions.* Under Chapter Two (National Treatment and Market Access for Goods), duties on all “originating” textile and apparel goods traded between the two countries will be eliminated either immediately or progressively, once the Agreement takes effect. To deal with emergency conditions resulting from such duty elimination or reduction, the Agreement includes a “safeguard” provision that permits the importing country temporarily to re-impose normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be imposed for up to two years (with the possibility of a two-year extension) for a period of ten years after duties on a good are eliminated under the Agreement.

While a Party may normally impose a safeguard action only after its authorities have determined that there is serious damage (or a threat of serious damage), in circumstances where delay would cause damage to a domestic industry that would be difficult to repair, a Party temporarily may impose a safeguard action, based on a preliminary determination that there is clear evidence that imports from the exporting Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports are causing serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good. Temporary relief may remain in effect for a maximum of 200 days. The duration of temporary relief is counted as part of the duration of any safeguard resulting from an investigation under this Chapter. A Party imposing a safeguard action must provide the other Party with mutually agreed compensation in the form of trade concessions that have substantially equivalent value to the increased duties caused by the action. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has substantially equivalent value to the increased duties resulting from the action.

*Rules of Origin and Related Matters.* Chapter Four includes special rules for determining whether a textile or apparel good is an “originating good,” including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

The annex to Chapter Four includes specific rules of origin for textile and apparel goods. A textile or apparel good will generally qualify as an “originating good” only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification under Annex 4-A.

*Customs Cooperation.* Chapter Four also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement’s rules governing textiles and apparel. The Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and in preventing circumvention of relevant international agreements. A Party may conduct site visits under certain conditions to verify that circumvention is not occurring, and the other Party must provide information necessary for the

visits. A Party may respond to circumvention and actions that impede a Party from detecting circumvention, including by denying preferential tariff treatment under the Agreement to imports of specific textile or apparel goods, or to all imports of textile or apparel goods from particular enterprises. Either Party may convene bilateral consultations to resolve technical or interpretive issues that arise under the article.

## **Chapter Five: Rules of Origin**

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an “originating good” under the rules of origin set out in Chapters Four (Textiles and Apparel) and Five and Annexes 4-A and 5-A. These rules ensure that the tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the two Parties’ territories.

*Key Concepts.* Chapter Five provides general criteria under which a good may qualify as an “originating good:”

- When the good is wholly obtained or produced in the territory of one or both of the Parties (*e.g.*, crops grown or minerals extracted in the United States); or
- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both of the Parties; (2) meets any applicable “regional value content” requirement (see below); and (3) satisfies all other requirements of Chapters Four and Five, including their annexes; or
- When the good is produced in one or both countries entirely from “originating” materials.

*De Minimis.* Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* requirement does not apply to certain agricultural and textile goods.

*Regional Value Content.* Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as “originating,” meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the “build-down method” (based on the value of non-originating materials used); and (2) the “build-up method” (based on the value of originating materials used). The regional value content of certain automotive goods specified in Annex 5-A, however, must be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

*Claims for Preferential Treatment.* Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing

Party's customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. Chapter Five also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed within one year of submission of the claim.

*Consultations.* Chapter Five calls for the Parties to work together to ensure the effective and uniform application of the Chapter. The Parties must meet within six months of the Agreement's entry into force to discuss the Chapter's implementation and application. They also must consult regularly to discuss possible amendments to the Chapter and Annex 5-A.

## **Chapter Six: Customs Administration**

Chapter Six establishes rules designed to encourage transparency, predictability, and efficiency in each Party's customs procedures. It also provides for cooperation between the Parties on customs matters.

*General Principles.* The United States and Australia will observe certain transparency requirements. The Parties must promptly publish their customs measures on the Internet or in print form and, where possible, solicit public comments before amending their customs regulations. Each Party also must provide written advance rulings, upon request, to its importers and to exporters of the other Party, regarding whether a good qualifies as an "originating good" under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments.

*Cooperation.* Chapter Six also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

## **Chapter Seven: Sanitary and Phytosanitary Measures**

Chapter Seven defines the Parties' obligations to one another regarding sanitary and phytosanitary (SPS) matters. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective.

*Key Concepts.* SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

*Cooperation.* Under Chapter Seven, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The Committee’s mandate includes: (1) enhancing each Party’s implementation of the SPS Agreement; (2) consulting on SPS matters that may affect trade between the Parties; and (3) consulting on issues, agendas and positions for meetings of certain international organizations. The Parties also will establish a standing working group on animal and plant health measures to facilitate trade by resolving specific SPS issues. Upon the request of a Party, the working group will develop “work plans” for technical and scientific matters relating to animal and plant health and the Parties’ trade and regulatory objectives.

*Dispute Settlement.* Neither Party may invoke the Agreement’s dispute settlement procedures for a matter arising under Chapter Seven. Instead, any SPS dispute between the Parties must be resolved under the applicable agreement(s) and rules of the WTO.

## **Chapter Eight: Technical Barriers to Trade**

Under Chapter Eight, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

*Key Concepts.* The term “technical barriers to trade” (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards (“technical regulations”), and procedures used to determine whether a particular good meets such standards, *i.e.*, “conformity assessment” procedures.

*International Standards.* The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Eight, the Parties will apply these principles and consult on pertinent matters under consideration by international or regional bodies.

*Cooperation.* Chapter Eight sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and provides for Chapter Coordinators responsible for facilitating this cooperation.

*Conformity Assessment.* Chapter Eight provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Chapter Eight further provides that, where a Party recognizes conformity assessment bodies in its own territory, it should recognize bodies in the territory of the other Party on the same terms.

*Transparency.* Chapter Eight contains various transparency obligations, including obligations to: (1) permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (2) transmit regulatory proposals notified under the TBT Agreement directly to the other Party; (3) describe in writing the objectives of and reasons for regulatory proposals; (4) accept and respond in writing to comments on regulatory proposals; and (5) provide information to regional (*i.e.*, state governments) to encourage their adherence to the Chapter, as appropriate.

## Chapter Nine: Safeguards

Chapter Nine establishes a bilateral safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect either government's rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Nine authorizes each Party to impose temporary duties on a good imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

Absent agreement by the other Party, a safeguard measure may be applied only during the Agreement's "transition period" (or as provided in Annex 2-B) for phasing out duties on bilateral trade. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. For customs duties that are applied to a good on a seasonal basis, the increase in the duty may not exceed the lesser of: (1) the level of the MFN/NTR duty rate in effect on the day immediately before the Agreement enters into effect; or (2) the MFN/NTR duty in effect for the immediately preceding season. In "critical circumstances," the importing Party may impose provisional relief for up to 200 days, based on a preliminary determination, while its investigation of the matter is underway. The duration of provisional relief is counted as part of the duration of any safeguard resulting from an investigation under this Chapter.

A bilateral safeguard measure may last for an initial period of two years. A Party may extend it for two more years if the Party determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Chapter Nine incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Nine requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on the amount or nature of the compensation, the Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the other Party.

*Global Safeguards.* Chapter Nine maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from the other Party from a global safeguard measure if such imports are not a substantial cause of serious injury or threat thereof. A Party may not impose a safeguard measure under Chapter Nine more than once on any good. Special safeguard provisions for certain agricultural goods are set out in Chapter Three (Agriculture) and for textile and apparel goods in Chapter Four (Textiles and Apparel).

## Chapter Ten: Cross-Border Trade in Services

Chapter Ten governs measures affecting cross-border trade in services between the United States and Australia. Certain of its provisions also apply to measures affecting investments to supply services. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

*Key Concepts.* Under the Agreement, cross-border trade in services covers the supply of a service:

- from the territory of one Party into the territory of the other (*e.g.*, electronic delivery of services from the United States to Australia);
- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, an Australian company provides services to U.S. visitors in Australia); and
- by a national of a Party in the territory of the other Party (*e.g.*, a U.S. lawyer provides legal services in Australia).

Chapter Ten should be read together with Chapter Eleven (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border.

*General Principles.* Among Chapter Ten's core obligations are requirements to provide national treatment and most-favored-nation (MFN) treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. Chapter provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

*Sectoral Coverage and Non-Conforming Measures.* Chapter Ten applies across virtually all services sectors. The Chapter excludes financial services, except that certain provisions of Chapter Ten apply to investments in unregulated financial services that are covered by Chapter Eleven (Investment). In addition, Chapter Ten does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the Chapter's core obligations. All existing state and local laws and regulations

are exempted from these core obligations. Once a Party, including a state or local government, liberalizes a measure that it has exempted, however, it must, in most cases, maintain the measure at least at that level of openness.

*Transparency and Domestic Regulation.* Provisions on transparency and domestic regulation complement the core rules of Chapter Ten. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

*Exclusions.* Chapter Ten excludes any service supplied "in the exercise of governmental authority," that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Ten also does not generally apply to government subsidies, although the Parties have undertaken a commitment relating to cross-subsidization of express delivery services.

## **Chapter Eleven: Investment**

Chapter Eleven establishes rules to protect investors from one Party against discriminatory and certain other restrictive government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contains several innovations that were incorporated in the free trade agreements (FTAs) with Chile and Singapore.

*Key Concepts.* Under Chapter Eleven, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both U.S. and Australian nationals as well as firms (including branches) established in one of the Parties.

*General Principles.* Chapter Eleven provides six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties (including where a Party takes measures to deal with armed conflict or civil strife in its territory); (2) a "minimum standard of treatment" in conformity with customary international law; (3) protection from expropriation other than in conformity with customary international law; (4) free transfer of funds related to an investment; (5) freedom from "performance requirements"; and (6) the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority or less of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

*Sectoral Coverage and Non-Conforming Measures.* With the exception of investments in or by regulated financial institutions (which are treated in Chapter Thirteen), Chapter Eleven generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's

rules relating to national treatment, MFN status, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make measures more restrictive.

*Investor-State Disputes.* In light of the unique circumstances of the Australian legal system, Chapter Eleven does not provide a separate dispute settlement mechanism for an investor of a Party to pursue a claim against the other Party. Among other things, Australia has an open economic environment and a legal system similar to that of the United States, U.S. investors have confidence in the fairness and integrity of Australia's legal system, and the United States has a long history of close commercial relations with Australia that has flourished largely without disputes of the type addressed by international investment provisions. There are few other countries in the world that are in similar circumstances.

If a Party believes, however, that there has been a change in circumstances such that one of its investors should be allowed to bring a claim against the other Party, the Party may request consultations with the other Party with a view towards establishing arbitral or other means of resolving the dispute. In addition, nothing precludes an aggrieved Party from using the dispute settlement procedures provided under Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). Finally, an investor or an investment of a Party may submit to arbitration a claim against the other Party, to the extent allowed by the other Party's law.

## **Chapter Twelve: Telecommunications**

Chapter Twelve includes disciplines beyond those imposed under Chapters Ten (Cross-Border Trade in Services) and Eleven (Investment) on regulatory measures affecting telecommunications trade and investment between the United States and Australia. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the other country. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Chapter Twelve also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

*Key Concepts.* Under Chapter Twelve, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of what are commonly known as "information services" (e.g., services that enable users to create, store, or process information over a network).

*Competition.* Both the U.S. and Australian regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter Twelve establishes rules that reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Australia must ensure that its public phone companies do not provide preferential access to Australian banks or Internet service providers, to the detriment of U.S. competitors);
- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;
- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;
- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and
- impose disciplines on the behavior of "major suppliers," *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

*Regulation.* The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;
- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;
- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and
- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

*Consultative Mechanisms.* The Parties will establish a consultative process for discussing telecommunications and information technology issues.

## **Chapter Thirteen: Financial Services**

Chapter Thirteen provides rules governing each Party's treatment of: (1) financial institutions of the other Party; (2) investors of the other Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

*Key Concepts.* The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

*General Principles.* Chapter Thirteen's core obligations parallel those in Chapters Ten (Cross-Border Trade in Services) and Eleven (Investment). Specifically, Chapter Thirteen imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis.

*Non-Conforming Measures.* Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Thirteen particular financial services measures for which it negotiated exemptions from the Chapter's core obligations. All existing U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes a measure that it has exempted, however, it must, in most cases, maintain the measure at least at that level of openness.

*Other Provisions.* Chapter Thirteen also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

*Relationship to other Chapters.* Measures that a Party applies to financial services suppliers of the other Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Eleven and certain provisions of Chapter Ten. In particular, the core obligations of the investment Chapter apply to such measures, as do the market access, transparency, and domestic regulation provisions of the services Chapter. Chapter Twelve incorporates by reference certain provisions of Chapter Eleven, such as those relating to transfers and expropriation.

## **Chapter Fourteen: Competition-Related Matters**

Recognizing that anticompetitive business conduct has the potential to restrict bilateral trade and investment, Chapter Fourteen calls for each government to proscribe such conduct. The Chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies as well as special rules covering state enterprises. Chapter Fourteen also contains provisions facilitating cooperation on cross-border consumer protection and the recognition and enforcement of certain monetary judgments obtained by each Party's relevant enforcement agencies.

*Competition Laws.* Chapter Fourteen requires each Party to adopt or maintain measures prohibiting anticompetitive business conduct and to take appropriate action with respect to such conduct. It also requires each Party to maintain authorities responsible for enforcing their national competition laws. Chapter Fourteen affirms that the enforcement policy of each Party's national competition authority does not discriminate on the basis of nationality. It also obligates the Parties to provide certain procedural protections for persons facing enforcement actions. Each Party will ensure that persons subject to sanctions or remedies for competition law violations will be provided a right to be heard and to present evidence, and to seek review by a court or independent tribunal.

*Designated Monopolies.* There are specific rules governing instances in which a Party gives a private or national government-owned entity the monopoly right to provide or purchase a good or service. In particular, the Party must ensure that the entity: (1) abides by the Party's obligations under the Agreement wherever it exercises authority delegated to it by the government in connection with the monopoly good or service; (2) purchases or sells the monopoly product in a manner consistent with commercial considerations; (3) does not discriminate against the other Party's investments, goods or service suppliers in the purchase or sale of the monopoly product; and (4) does not engage in anticompetitive practices in markets outside its monopoly mandate that harm the other Party's investments.

*State Enterprises.* Chapter Fourteen sets forth obligations regarding the Parties' responsibilities for "state enterprises," *i.e.*, enterprises owned or controlled by any level of government of a Party. Each Party must ensure that its state enterprises accord non-discriminatory treatment in the sale of their products to the other Party's companies. In addition, the United States will ensure that sub-federal state enterprises are not exempt from U.S. antitrust laws solely by virtue of their status as sub-federal enterprises, unless protected by the State Action Doctrine. For its part, Australia will take reasonable measures to ensure that its sub-federal governments do not provide a competitive advantage to government businesses simply because they are government-owned.

*Cooperation and Consultations.* Chapter Fourteen provides for bilateral cooperation in relation to the enforcement of competition laws and policy. In addition, the Parties will strengthen their cooperation and coordination among their respective consumer protection agencies.

*Recognition of Monetary Judgments.* Chapter Fourteen contains provisions supporting the mutual recognition and enforcement of monetary judgments obtained by the Federal Trade

Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and Australia's Securities and Investments Commission and Competition and Consumer Commission to provide restitution to consumers, investors or customers who suffered economic harm as a result of being deceived, defrauded or misled.

*Dispute Settlement.* Many of the Chapter's provisions are not subject to the Agreement's dispute settlement procedures, including the provisions requiring a Party to adopt and enforce measures prohibiting anticompetitive business conduct and the provisions governing cooperation and consultations. The Chapter's rules addressing designated monopolies and state enterprises, however, may be enforced through the Agreement's State-to-State dispute settlement mechanism.

## **Chapter Fifteen: Government Procurement**

Chapter Fifteen provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other country. While Australia is not a party to the WTO Agreement on Government Procurement, the rules of Chapter Fifteen are broadly based on WTO procurement rules.

*General Principles.* Chapter Fifteen establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other country in a manner that is "no less favorable" than the domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Fifteen also provides rules aimed at ensuring a fair and transparent procurement process.

*Coverage and Thresholds.* Chapter Fifteen applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. The Chapter applies to procurements by listed "central" (*i.e.*, Australian Commonwealth or U.S. Federal) government agencies of goods and services valued at US\$58,550 or more and construction services valued at US\$6,725,000 or more. The equivalent thresholds for purchases by "sub-central" government entities (*i.e.*, Australian state and territory government agencies and U.S. state government agencies) are US\$477,000 and US\$6,725,000, for goods and services and construction services, respectively. The Chapter's thresholds for listed "government enterprises" are either US\$292,751 or US\$538,000 for goods and services, and US\$6,725,000 for construction services. All thresholds are subject to adjustment for inflation.

*Transparency.* Chapter Fifteen establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

*Tendering Rules.* Chapter Fifteen provides rules for setting deadlines on “tendering” (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Fifteen provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out rules that procuring entities must follow when they use limited tendering, *i.e.*, limit the set of suppliers that may participate in a procurement.

*Award Rules.* Chapter Fifteen requires that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Fifteen also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

*Additional Provisions.* Chapter Fifteen is designed to provide integrity in each Party’s procurement practices, including by requiring the Parties to maintain laws that make bribery of procurement officials a criminal or administrative offense. It establishes procedures under which a Party may change the extent to which the Chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor. Finally, the Parties agree to jointly promote liberalization of government procurement markets in the context of the WTO and Asia Pacific Economic Cooperation (APEC) forum.

## **Chapter Sixteen: Electronic Commerce**

Chapter Sixteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The Chapter represents a major advance over previous international understandings on this subject.

*Customs Duties.* Chapter Sixteen provides that a Party may not impose customs duties on digital products of the other Party regardless of whether they are fixed on a carrier medium or transmitted electronically.

*Non-Discrimination.* Chapter Sixteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products. Thus, a Party may not discriminate against electronically transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of

persons of the other Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten and Eleven or to the extent they are inconsistent with Chapter Seventeen.

*Additional Provisions.* Chapter Sixteen contains additional provisions relating to authentication and digital certificates, online consumer protection, and paperless trade administration. This Chapter is the first to contain these new initiatives related to electronic commerce.

## **Chapter Seventeen: Intellectual Property**

Chapter Seventeen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

*General Provisions.* The Parties affirm that they have ratified or acceded to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. Australia will also ratify or accede to the WIPO Internet treaties (consisting of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty). The United States is already a Party to these Agreements. National treatment requirements apply broadly.

*Trademarks and Geographical Indications.* Chapter Seventeen establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. It sets out rules with respect to the registration of marks and geographical indications. Each Party must provide protection for marks and geographical indications, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Chapter requires that the Parties provide efficient and transparent procedures governing the application for protection of marks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

*Copyright and Related Rights.* Chapter Seventeen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, Chapter Seventeen requires the governments to use only legitimate computer software, setting an example for the private sector. The Chapter also includes

provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Seventeen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Seventeen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

*Patents.* Chapter Seventeen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. The Chapter provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Chapter requires patent term adjustments to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

*Certain Regulated Products.* Chapter Seventeen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. It also requires measures to prevent the marketing of pharmaceutical products that infringe patents.

*Enforcement Provisions.* Chapter Seventeen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), at the option of the right holder or alternatively additional damages in cases involving copyright infringement

Chapter Seventeen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Seventeen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Seventeen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

*Transition Periods.* All obligations in the Chapter take effect upon the Agreement's entry into force, with the exception of copyright anti-circumvention provisions that are subject to a two-year transition.

## **Chapter Eighteen: Labor**

Chapter Eighteen sets out the Parties' commitments and undertakings regarding trade-related labor rights. As with our other recent FTAs, this Chapter draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Jordan Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Chile Free Trade Agreement.

*General Principles.* Under Chapter Eighteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the Chapter. Each Party also must strive to ensure it does not derogate from or waive the protections of its labor laws to encourage trade with or investment from the other Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. While committing each Party to effective labor law enforcement, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

*Effective Enforcement.* In Chapter Eighteen each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to wages, hours, and occupational safety and health.

The U.S. commitment includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws. Since Australia's states and territories share responsibility with the Commonwealth government with respect to the rights and principles set out in the Chapter, Australia's commitment covers laws enacted by the Commonwealth and the states and territories.

*Dispute Settlement.* Chapter Eighteen provides for consultations if a Party believes that the other Party is not complying with the commitments in this Chapter. If the matter concerns a Party's compliance with the Chapter's labor law enforcement provision, the complaining Party may choose to pursue consultations under this Chapter or Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). If a Party chooses to request consultations under Article 21.5, consultations under Chapter Eighteen on the same matter cease. In addition, after 60 days of consultations under Chapter Eighteen, the Parties may agree to refer the matter directly to the Agreement's ministerial-level Joint Committee for resolution under the dispute settlement Chapter.

*Cooperation.* The Joint Committee may establish a subcommittee to oversee the Chapter's operation. Each Party will designate a contact point for communications with the other Party and

the public regarding operation of the Chapter. Additionally, the Parties agree to cooperate on labor matters of mutual interest and explore ways to further advance labor standards on a bilateral, regional, and multilateral basis.

## **Chapter Nineteen: Environment**

Chapter Nineteen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Nineteen draws on, but does not replicate, the North American Agreement on Environmental Cooperation and the environmental provisions of the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Jordan Free Trade Agreement.

*General Principles.* In Chapter Nineteen each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage bilateral trade or investment. Chapter Nineteen further includes commitments to enhance bilateral cooperation in environmental matters and to provide certain procedural and public awareness guarantees and encourages the Parties to develop voluntary, market-based mechanisms for sustaining high levels of environmental protection.

*Effective Enforcement.* The U.S. commitment on enforcement of environmental laws applies to federal environmental statutes and regulations enforceable by the federal government. The Australian commitment applies to Commonwealth, state and territory environmental statutes and regulations. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources.

*Dispute Settlement.* If a Party believes that the other Party is not complying with its obligations, Chapter Nineteen provides for consultations to resolve disputes. If the matter concerns a Party's compliance with the Chapter's environmental law enforcement provision, the complaining Party may choose to pursue consultations under this Chapter or Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). If a Party chooses to request consultations under Article 21.5, consultations under Chapter Nineteen on the same matter cease. In addition, after 60 days of consultations under Chapter Nineteen, the Parties may agree to refer the matter directly to the Joint Committee for resolution under the dispute settlement Chapter.

*Cooperation.* Chapter Nineteen includes a commitment by the Parties to cooperate on environmental issues through a joint statement on environmental cooperation. The Joint Committee also may establish a subcommittee to oversee the Chapter's operation. In addition, the Parties will consult on negotiations in the WTO regarding multilateral environmental agreements.

## **Chapter Twenty: Transparency**

Chapter Twenty sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Twenty also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

## **Chapter Twenty-One: Institutional Arrangements and Dispute Settlement**

Chapter Twenty-One creates a Joint Committee to supervise implementation and the overall operation of the Agreement, assist in the resolution of any disputes that may arise under the Agreement, and consider and adopt amendments to the Agreement. The Committee will be chaired by each government's trade minister and will convene at least once a year.

Chapter Twenty-One also sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO agreements), the complaining government may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

*Consultations.* Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. After requesting or receiving a request for consultations, each Party must solicit the views of the public on the matter. If the Parties cannot resolve the matter through consultations within 60 days, a Party may refer the matter to the Joint Committee, which shall attempt to resolve the dispute.

*Panel Procedures.* If the Joint Committee cannot resolve the dispute within 60 days after delivery of the request, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a

determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

*Suspension of Benefits.* In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform with the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

*Labor and Environment Disputes.* Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment or to establish an escrow for paying such an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

*Compliance Review Mechanism.* If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining

Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

## **Chapter Twenty-Two: General Provisions and Exceptions**

Chapter Twenty-Two sets out general provisions that apply to the entire Agreement with the following exception. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*, and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Ten (Cross Border Trade in Services), Twelve (Telecommunications), and Sixteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of this Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

*Essential Security.* Chapter Twenty-Two allows each Party to take actions it considers necessary to protect its essential security interests.

*Taxation.* An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

*Disclosure of Information.* The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises. In cases where a Party provides written information, pursuant to a request or requirement of the Agreement, that the Party believes it could have withheld from disclosure, use of that information is limited.

*Corrupt Practices.* Under Chapter Twenty-Two, the Parties pledge to continue to combat bribery and corruption in international business transactions, to work together on anti-corruption issues, and to support relevant initiatives in international fora.

## **Chapter Twenty-Three: Final Provisions**

Chapter Twenty-Three provides that the annexes are part of the Agreement and that the Parties may amend the Agreement subject to applicable domestic procedures. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Three establishes that any other country or group of countries may accede to this agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. The Chapter also permits non-application of the agreement between a Party and a newly acceding country or group of countries. Finally, the Chapter provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.