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Economic Cooperation**

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## **UK-Australia FTA Chapter 28: Transparency and Anti-Corruption**

Submitted by: Australia



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## **CHAPTER 28**

### **TRANSPARENCY AND ANTI-CORRUPTION**

#### **Article 28.1 Definitions**

For the purposes of this Chapter:

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“administrative rulings of general application” means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct, but does not include:

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

...

#### **Section A Transparency**

#### **Article 28.2 Publication**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published, including on the internet where feasible, or otherwise made available in a manner that enables interested persons and the other Party to become acquainted with them.
2. With respect to any measure referred to in paragraph 1 that a Party proposes to adopt, each Party shall, to the extent it considers appropriate:
  - (a) publish in advance the proposed measure or information concerning the nature of the proposed measure; and
  - (b) provide interested persons and the other Party with a reasonable opportunity to comment on the proposed measure or information.

3. To the extent possible, when introducing or changing the laws, regulations, or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations, or procedures, proposed or final, in accordance with its legal system, are made publicly available and the date when they enter into force.
4. Each Party shall, with respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1:
  - (a) promptly publish the regulation on a single official website or in an official journal of domestic circulation; and
  - (b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

### **Article 28.3 Administrative Proceedings**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are administered in a consistent, impartial, and reasonable manner.
2. With a view to administering in a consistent, impartial, and reasonable manner the measures referred to in paragraph 1 with respect to any matter covered by this Agreement, each Party shall ensure in its administrative proceedings applying these measures to a particular person, good, or service of the other Party in specific cases, that:
  - (a) whenever possible, a person of the other Party that is directly affected by a proceeding is provided with reasonable notice, in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issue in question;
  - (b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
  - (c) it follows its domestic procedures in accordance with its laws.

**Article 28.4**  
**Review and Appeal<sup>1</sup>**

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and
  - (b) a decision based on the evidence and submissions of record or, where required by its laws and regulations, the record compiled by the relevant authority.
3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic laws and regulations, that the decision referred to in paragraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

**Article 28.5**  
**Provision of Information**

1. If a Party considers that any proposed or actual measure may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, it shall, to the extent possible, inform the other Party of the proposed or actual measure.
2. On request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.
3. A Party may convey any request or provide information under this Article to the other Party through their contact points.

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<sup>1</sup>For greater certainty, review need not include merits (*de novo*) review, and may take the form of common law judicial review. The correction of final administrative actions may include a referral back to the body that took that action.

4. Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

**Article 28.6**  
**Accessible and Open Government**

To the extent possible, each Party shall endeavour to ensure that information published by its central level of government with respect to any matter covered by this Agreement is accessible in open, machine-readable formats.

## *Example extracts of chapter-specific transparency provisions*

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### CHAPTER 2

#### TRADE IN GOODS

##### Article 2.8

##### **Technical Consultations on Non-Tariff Measures**

1. Subject to paragraph 2, a Party **may request technical consultations** with the other Party on a non-tariff measure covered by Article 2.7 (Application of Non-Tariff Measures) **where it considers the non-tariff measure to be adversely affecting its trade**. The request shall be in writing and shall clearly identify the non-tariff measure, explain how the non-tariff measure adversely affects trade between the Parties, and, if possible, provide suggested solutions.

##### Article 2.10

##### **Import Licensing**

4. At the request of a Party, the other Party shall, with regard to any import licensing procedures that it has adopted or maintains, or changes to existing import licensing procedures:
  - (a) **promptly provide the information** specified in Article 5(2) of the Import Licensing Agreement, where that information has not been notified to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement; and
  - (b) promptly and to the extent possible provide any other relevant information.

##### Article 2.11

##### **Administrative Fees and Formalities**

3. Each Party shall **make publicly available online** a current list of the fees and charges it imposes in connection with importation or exportation, including any updates or changes to such fees and charges. An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them including the reason for such fees and charges, the responsible authority, and when and how payment is to be made, has been published.

## CHAPTER 5

### CUSTOMS PROCEDURES AND TRADE FACILITATION

#### Article 5.5 Transparency and Publication

1. Further to Article 28.2 (Publication – Transparency and Anti-Corruption), each Party shall **promptly publish**, including online:
  - (a) importation, exportation, and transit procedures (including port, airport, and other entry point procedures) and required forms and documents;
  - (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
  - (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
  - (d) rules for the classification or valuation of products for customs purposes;
  - (e) laws, regulations, and administrative rulings of general application relating to rules of origin;
  - (f) import, export or transit restrictions or prohibitions;
  - (g) penalty provisions against breaches of import, export or transit formalities;
  - (h) procedures for appeal or review;
  - (i) agreements or parts thereof with any country or countries relating to importation, exportation or transit;
  - (j) procedures relating to the administration of tariff quotas;
  - (k) hours of operation services provided by customs offices at ports and border crossing points; and
  - (l) points of contact for information enquiries.
2. Each Party shall establish or maintain one or more enquiry points to address enquiries of interested parties or persons concerning customs and other trade facilitation issues and shall make information concerning the procedures for

making those enquiries publicly available online. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request.

#### **Article 5.10 Advance Rulings**

1. Each Party shall issue, prior to the importation of a good of the other Party into its territory, a **written advance ruling** at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party<sup>2</sup>, each an "applicant", with regard to:
  - (a) **tariff classification**;
  - (b) **whether a good is originating** in accordance with Chapter 4 (Rules of Origin and Origin Procedures); and
  - (c) **other matters** as the Party may decide....
8. Each Party shall **publish online**, at least:
  - (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
  - (b) the time period by which it will issue an advance ruling; and
  - (c) the length of time for which the advance ruling is valid.

### **CHAPTER 6**

#### **SANITARY AND PHYTOSANITARY MEASURES**

##### **Article 6.8 Trade Conditions**

1. The importing Party **shall make publicly available its general SPS import requirements** and, upon request, make available to the exporting Party all SPS import requirements relating to the import of specific goods unless such information is publicly available.

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<sup>2</sup> For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.



2. For the purpose of establishing specific SPS import conditions, the exporting Party shall, at the request of the importing Party, **provide all relevant information** required by the importing Party

## CHAPTER 7

### TECHNICAL BARRIERS TO TRADE

#### Article 7.9 Transparency

1. Each Party **shall allow persons of the other Party to participate in the development** of its technical regulations, standards, and conformity assessment procedures, subject to its laws and regulations, or administrative arrangements, on terms no less favourable than those accorded to its own persons.
2. As appropriate, each Party shall **encourage non-governmental bodies in its territory to observe paragraph 1** in relation to consultation procedures on standards and voluntary conformity assessment procedures which are available to the general public.
3. On request of the other Party, a Party shall provide the other Party with **information** regarding the objective of, and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

## CHAPTER 8

### CROSS-BORDER TRADE IN SERVICES

#### Article 8.11 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.<sup>3</sup>
2. If a Party does not provide advance notice and opportunity for comment pursuant to paragraph 2 of Article 28.2 (Publication – Transparency and Anti-Corruption) with respect to regulations that relate to the subject matter in this Chapter, it shall, to the extent practicable, **provide in writing or otherwise notify interested persons of the reasons for not doing so.**
3. To the extent possible, each Party shall **allow reasonable time between publication** of final regulations and the date when they enter into effect.

## CHAPTER 9

### FINANCIAL SERVICES

#### Article 9.11 Transparency

1. Articles 26.2 (General Provisions – Good Regulatory Practice), 26.6 (Public Consultation – Good Regulatory Practice), 26.10 (Regulatory Cooperation – Good Regulatory Practice), and 26.11 (Contact Points – Good Regulatory Practice) and **Articles 28.2 (Publication – Transparency and Anti-Corruption), 28.3 (Administrative Proceedings – Transparency and Anti-Corruption), and 28.5 (Provision of Information – Transparency and Anti-Corruption) do not apply** to a measure covered by this Chapter.
2. The Parties recognise that transparent measures governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

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<sup>3</sup> The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

3. Each Party shall:
  - (a) ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner;
  - (b) ensure that its laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies are promptly published or made available in a manner that enables an interested person and the other Party to become acquainted with them;
  - (c) to the extent practicable, ensure advance publication of any laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies that it proposes to adopt and their purpose, and provide an interested person and the other Party a reasonable opportunity to comment on them;
  - (d) maintain or establish appropriate mechanisms to respond, within a reasonable period of time, to an inquiry or a request for information from an interested person and the other Party regarding measures of general application to which this Chapter applies;
  - (e) allow, to the extent practicable, a reasonable period of time between the publication of a final law or regulation of general application to which this Chapter applies and the date when it enters into effect; and
  - (f) ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party, to which this Chapter applies, are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.
  
4. In developing a new law or regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its law and regulations, **comments regarding how the proposed law or regulation of general application may affect the operations of financial service suppliers, including financial service suppliers of the Party or the other Party.** These comments may include:
  - (a) submissions to a Party by the other Party regarding its regulatory measures that are related to the objectives of the proposed law or regulation of general application; or
  - (b) submissions to a Party by interested persons, including the other Party or financial service suppliers of the other Party, with regard to the potential effects of the proposed law or regulation of general application.

5. Before the competent authority of a Party adopts a final law or regulation of general application, a Party shall, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed law or regulation of general application.<sup>4</sup>
6. If a Party adopts or maintains measures relating to authorisation for the supply of a service, the Party shall ensure that:
  - (a) the competent authority reaches and administers its decisions in a manner independent from any supplier of the services for which authorisation is required;<sup>5</sup>
  - (b) those measures are based on objective and transparent criteria;<sup>6</sup>
  - (c) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if those requirements exist;
  - (d) the procedures do not in themselves unjustifiably prevent fulfilment of requirements; and
  - (e) those measures do not discriminate on the basis of gender.<sup>7</sup>
7. **If a Party requires authorisation for the supply of a financial service**, the competent authorities of the Party shall:
  - (a) make publicly available the information necessary for financial service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending, and renewing that authorisation.

Where it exists, that information shall include:

- (i) fees;
- (ii) contact information of competent authorities;
- (iii) procedures for appeal or review of decisions concerning applications;

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<sup>4</sup> For greater certainty, a Party may address those comments collectively on an official website.

<sup>5</sup> For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

<sup>6</sup> Those criteria may include competence and the ability to supply a service, including to do so in a manner consistent with a Party's regulatory requirements. Competent authorities may assess the weight to be given to each criterion.

<sup>7</sup> Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Parties of temporary special measures aimed at accelerating de facto equality across all genders, shall not be considered discrimination for the purposes of this provision.

- (iv) procedures for monitoring or enforcing compliance with the terms and conditions of licences;
  - (v) opportunities for public involvement, such as through hearings or comments;
  - (vi) indicative timeframes for processing of an application; and
  - (vii) any other relevant requirements and procedures;
- (b) avoid, to the extent practicable, requiring an applicant to approach more than one competent authority for each application for authorisation. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required;
  - (c) permit, to the extent practicable, submission of an application at any time throughout the year.<sup>8</sup> If a specific time period for applying exists, the Party shall ensure that the regulatory authorities allow a reasonable period for the submission of an application;
  - (d) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;
  - (e) accept copies of documents, that are authenticated in accordance with the Party's laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process;
  - (f) ensure that the authorisation fees charged by its competent authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant service;
  - (g) make an administrative decision on a complete application of a financial service supplier of the other Party, relating to the supply of a financial service within a reasonable period of time, in line with each Party's law. An application is not considered complete until the competent authority has received all necessary information and all relevant hearings, if any, have been held;
  - (h) **on request of an applicant, inform the applicant of the status of their application without undue delay;**

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<sup>8</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

- (i) if they require additional information from the applicant, notify the applicant without undue delay;<sup>9</sup>
- (j) promptly notify the applicant of the outcome of their application,<sup>10</sup> to the extent possible, in writing;<sup>11</sup>
- (k) before rejecting an application for authorisation, notify the applicant with the relevant reasons and give the applicant the opportunity to make representations in support of the application;
- (l) on request of an unsuccessful applicant, to the extent possible, inform the applicant of the reasons for denial of the application and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application<sup>12</sup> solely on the basis that an application had been previously rejected; and
- (m) ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.<sup>13</sup>

## CHAPTER 11

### TEMPORARY ENTRY FOR BUSINESS PERSONS

#### Article 11.5 Provision of Information

1. Further to Article 28.2 (Publication – Transparency and Anti-Corruption) and Article 28.5 (Provision of Information – Transparency and Anti-Corruption), each Party **shall make publicly available information relating to current requirements for the temporary entry by business persons of the other Party**, specified in paragraph 1 of Article 11.2 (Scope).
2. The information referred to in paragraph 1 shall include, where applicable, the following:
  - (a) categories of immigration formality;

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<sup>9</sup> Competent authorities are not required to provide an extension of the deadline where an applicant is provided with the opportunity to provide additional information.

<sup>10</sup> Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application or rejection of the application.

<sup>11</sup> "In writing" may include in electronic form.

<sup>12</sup> Competent authorities may require that the content of that application has been revised.

<sup>13</sup> Competent authorities are not responsible for delays due to reasons outside their competence.

- (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 category of immigration formality;
  - (f) conditions for any available extension or renewal;
  - (g) rules regarding accompanying dependants; and
  - (h) available review or appeal procedures.
3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly make publicly available and inform the other Party, through existing mechanisms, of the introduction of any significant new requirements and procedures or of the changes in any requirements and procedures that affect the effective application for the grant of entry into, and where applicable, permission to work in its territory.

## CHAPTER 12

### TELECOMMUNICATIONS

#### Article 12.10

##### Interconnection with Major Suppliers

4. Each Party shall ensure that the **applicable procedures for interconnection negotiations with major suppliers** in its territory are made **publicly available**.
5. Each Party shall ensure that major suppliers in its territory make publicly available either their **interconnection agreements or a reference interconnection offer**.

#### Article 12.13

##### International Mobile Roaming

3. Each Party shall ensure that suppliers of public telecommunications services in its territory, or its telecommunications regulatory authority, **make publicly available information on retail rates for international mobile roaming**



**services** for voice, data, and text messages offered to consumers when visiting the territory of the other Party.

**Article 12.18**  
**Scarce Resources**

2. Each Party shall **make publicly available the current state of allocated frequency bands**, but detailed identification of radio spectrum that is allocated or assigned for specific government uses is not required.

**Article 12.20**  
**Resolution of Telecommunications Disputes**

Each Party shall ensure that:

- (a) suppliers of public telecommunications networks or services of the other Party have **timely recourse to a telecommunications regulatory authority or judicial authority of the Party** to consider and, to the extent provided for in its laws and regulations, to resolve a dispute regarding the Party's measures relating to the obligations contained in this Chapter;
- (b) in the event of a dispute referred to in subparagraph (a), the telecommunications regulatory authority or judicial authority of the Party:
  - (i) issues a binding decision to resolve a dispute;
  - (ii) **provides a supplier that is a party to the dispute with the reasons for its decision**; and
  - (iii) make its **decision publicly available** to the extent provided for in its laws and regulations;
- (c) notwithstanding subparagraph (b), if the telecommunications regulatory authority of the Party declines to initiate an action on a request to resolve a dispute, it provides the supplier of the other Party that is a party to the dispute with the reasons for its decision;
- (d) a supplier of public telecommunications networks or services of the other Party aggrieved by a decision of the telecommunications regulatory authority has the right to appeal that decision to a judicial authority. That appeal shall not constitute grounds for noncompliance by that supplier with the decision, unless its relevant authority determines otherwise.
- (e) in the hearing of an appeal by a judicial authority referred to in subparagraph (d):

- (i) a supplier that is a party to the appeal has a reasonable opportunity to obtain sufficient information to form informed views on the issues to be determined in the appeal and to provide those views to the judicial authority;
  - (ii) the judicial authority takes into account views provided by that supplier; and
  - (iii) the judicial authority makes available to that supplier its decision and the reasons on which the decision is based; and
- (f) a supplier of public telecommunications services of the other Party that has requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period of time after the supplier requests interconnection, by its telecommunications regulatory authority to resolve a dispute regarding the terms, conditions, and rates for interconnection with that major supplier.

#### **Article 12.21 Transparency**

1. Further to Chapter 28 (Transparency and Anti-Corruption), each Party shall endeavour to ensure that:
  - (a) telecommunications service suppliers are provided with **adequate advance notice** of, and opportunity to comment on, a regulatory decision of general application that its telecommunications regulatory authority proposes; and
  - (b) suppliers of public telecommunications networks or services of the other Party are, on request, provided with a clear and detailed explanation of the reasons for a decision to deny access of the kind specified in Article 12.5 (Access to Essential Facilities and Unbundled Network Elements) and Article 12.10 (Interconnection with Major Suppliers) where that decision is made, approved, endorsed, or authorised by the Party.
  
2. Further to Chapter 28 (Transparency and Anti-Corruption), each Party shall ensure that its **measures relating to public telecommunications networks or services are made publicly available**, including:
  - (a) tariffs and other terms and conditions of service;
  - (b) specifications of technical interfaces;

- (c) conditions for attaching terminal or other equipment to the public telecommunications network;
- (d) notification, permit, registration, or licensing requirements, if any;
- (e) general procedures relating to resolution of telecommunications disputes provided for in Article 12.20 (Resolution of Telecommunications Disputes); and
- (f) information on bodies responsible for preparing, amending, and adopting standards-related measures.

## CHAPTER 14

### DIGITAL TRADE

#### Article 14.5

##### Conclusion of Contracts by Electronic Means

1. Except in circumstances otherwise provided for in its law, each Party shall ensure that:
  - (a) its legal framework allows for contracts to be concluded by electronic means; and
  - (b) its law neither creates obstacles for the use of electronic contracts nor results in electronic contracts being deprived of legal effect, enforceability, or validity, solely on the ground that the contract has been made by electronic means.
2. The Parties recognise the importance of transparency for minimising barriers to the use of electronic contracts in digital trade. To that end, each Party shall:
  - (a) **promptly publish the circumstances referred to in paragraph 1 on a single official website hosted by the central level of government;** and
  - (b) review these circumstances with a view to reducing them over time.

#### Article 14.16

##### Online Consumer Protection

1. The Parties recognise the importance of **transparent and effective measures that enhance consumer confidence and trust in digital trade.**
2. Each Party shall maintain consumer protection laws and regulations that proscribe:

- (a) misleading, deceptive, and fraudulent commercial practices; and
  - (b) unconscionable conduct or unfair commercial practices,
- that cause harm, or potential harm, to consumers engaged in digital trade.<sup>14</sup>

3. The Parties recognise the importance of, and where appropriate shall promote, cooperation between their respective domestic consumer protection agencies or other relevant bodies on activities aimed at online consumer protection.<sup>15</sup>
4. The Parties further recognise the importance of improving awareness of and providing access to consumer redress mechanisms to protect consumers engaged in digital trade, including for consumers of a Party transacting with suppliers of the other Party.
5. The Parties recognise the benefits of dispute resolution mechanisms in facilitating the resolution of disputes regarding electronic commerce transactions, including alternative dispute resolution mechanisms.

#### **Article 14. 20 Cybersecurity**

3. Given the evolving nature of cybersecurity threats, the Parties recognise that risk-based approaches may be more effective than prescriptive approaches in addressing those threats. Accordingly, where appropriate, each Party shall endeavour to employ, and shall encourage enterprises within its jurisdiction to use, risk-based approaches **that rely on open and transparent cybersecurity standards** and risk management best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events.

### **CHAPTER 15**

#### **INTELLECTUAL PROPERTY**

#### **Article 15.9 Transparency**

1. Each Party shall endeavour to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

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<sup>14</sup> For the purposes of this Article, the term “engaged” includes the pre-transaction phase of online commercial activities.

<sup>15</sup> To this end, the Parties affirm that cooperation under Article 17.6 (Cooperation on Competition Policy and Consumer Protection – Competition Policy and Consumer Protection) includes cooperation with respect to online commercial activities.

2. Each Party shall, subject to its law, endeavour to **publish online information that it makes public concerning applications for trade marks, geographical indications, registered designs, patents, and plant variety rights.**<sup>16, 17</sup>
3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trade marks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.<sup>18</sup>

#### **Article 15.31**

##### **Procedures for the Recognition and Protection of Geographical Indications**

2. In providing recognition and protection for geographical indications each Party shall:
  - (d) **publish the geographical indication proposed for recognition and protection;**

#### **Article 15.44**

##### **Publication of Patent Applications**

1. Recognising the benefits of transparency in the patent system, each Party shall **publish unpublished pending patent applications promptly** after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.
2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.
3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

#### **Article 15.45**

##### **Information Relating to Published Patent Applications and Granted Patents**

For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least

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<sup>16</sup> For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 15.27 (Electronic Trade Marks Systems).

<sup>17</sup> For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.

<sup>18</sup> For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted intellectual property right.

the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:

- (a) search and examination results, including details of, or information related to, relevant prior art searches;
- (b) as appropriate, non-confidential communications from applicants; and
- (c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

## CHAPTER 16

### GOVERNMENT PROCUREMENT

#### Article 16.5

#### Information on the Procurement System

1. Each Party shall:
  - (a) **promptly publish** any law, regulation, **judicial decision**, administrative ruling of general application, **standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedures regarding covered procurement**, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
  - (b) provide an explanation thereof to the other Party, on request.
2. Each Party shall list in Section I of its Schedule to Annex 16A:
  - (a) the electronic or paper media in which the Party publishes the information described in paragraph 1; and
  - (b) the electronic media in which the Party publishes the notices required by Article 16.6 (Notices), paragraph 8 of Article 16.8 (Qualification of Suppliers), and paragraph 2 of Article 16.15 (Transparency of Procurement Information).

## **Article 16.6 Notices**

### *Electronic Publication of Procurement Notices*

1. For covered procurement, **notices of intended procurement and notices of planned procurement shall be directly accessible by electronic means, free of charge:**
  - (a) for central government entities that are covered under Annex 16A, through a single point of access, as listed in Section I of its Schedule to Annex 16A; and
  - (b) for sub-central government entities and other entities covered under Annex 16A, at least, through links in a single electronic portal, as listed in Section I of its Schedule to Annex 16A. If a Party maintains multiple points of access, it shall limit the number of points of access to the extent possible.

### *Notice of Intended Procurement*

2. For each covered procurement, except in the circumstances described in Article 16.12 (Limited Tendering), a procuring entity **shall publish a notice of intended procurement**. The notice shall remain readily accessible to the public, until at least the expiration of the time period indicated in the notice.

## **CHAPTER 17**

### **COMPETITION POLICY AND CONSUMER PROTECTION**

#### **Article 17.4 Transparency**

1. The Parties recognise the value of making their competition enforcement policies as transparent as possible.
2. On request of a Party, **the other Party shall make available to the requesting Party public information concerning:**
  - (a) its domestic competition law enforcement **policies and practices;** and
  - (b) exemptions and immunities to its domestic competition laws.
3. Each Party shall ensure that a **final decision pursuant to its domestic competition law 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.

4. Each Party shall further ensure that a final decision referred to in paragraph 3 and any order implementing that decision are published, or if publication is not practicable, are otherwise made available to the public. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its law.