INSTITUTE FOR FREE TRADE

Improving the UK-MOROCCO RELATIONSHIP

Unlocking Untapped Potential

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Executive Summary

Most people know that England's oldest ally is Portugal. Fewer know that its second-oldest is Morocco. Elizabeth I contracted a treaty of friendship with Sultan Ahmad al-Mansur, scandalising European opinion. While their treaty was primarily military, it also provided for generous terms of trade. England sent manufactured goods, notably textiles and muskets, to the North African kingdom, and received sugar, saltpetre and ostrich plumes in return.

Since Brexit came into effect in 2020, we have had a unique opportunity to renew and deepen our ties. Over the past two decades, Morocco has opened its economy and developed advanced manufacturing industries, notably in car-making and aeronautics. It has created, outside Tangier, a state-of-the art port – the largest, not just in Africa, but in the Mediterranean. It is seeking to diversity beyond the Francophone world, and in particular to use its geographical position as a gateway to West Africa, including the Commonwealth countries there. It has been hammering at Britain's door since Brexit, puzzled by our reluctance to move beyond the relatively limited trade arrangements we inherited from Brussels.

This paper proposes immediate, practical enhancements in the economic ties between our two kingdoms. It shows why Morocco is not just a potential logistics superhub, but an obvious investment destination, notably for the electro-voltaic, hydrogen, and automotive sectors.

In an ideal world, we would already have signed a full-fat free-trade agreement (FTA). But, given constraints of time and resources, this paper focuses on quick wins such as:

- Accessing existing value-intensive supply chains and development hubs in the construction, aerospace and automotive sectors
- Lowering technical barriers to trade, especially sanitary and phytosanitary rules (SPS)
- Removing market distortions and enhancing regulatory coherence
- Allowing British exporters to take full advantage of UK Export Finance by treating the Western Sahara like the rest of Morocco's customs territory
- Taking advantage of special economic zones reserved for British investors
- Creating a UK-Morocco business club and easing visa rules for business travellers
- Removing restrictions on Moroccan food exports that are not produced in Britain

This last is symbolic of our wider failure to take advantage of the commercial freedoms provided by Brexit. During February and March 2023, Western Europe suffered a tomato shortage, caused by a combination of cold weather and high energy costs. Yet, even as our supermarket shelves lay empty, we continued to apply tariffs and quotas to tomatoes from Morocco, our chief supplier. Given that Britain's tomato season runs roughly from June to September, and Morocco's from October to April, there is not even a protectionist case for these barriers, which were designed to benefit Spanish growers, and which we have kept in place fully four years after leaving the EU.

Tomatoes may not be the most significant part of a modern economy, but they perfectly illustrate our failure to make even the most uncontroversial improvements in our post-EU terms of trade. Never has the phrase "low-hanging fruit" applied so aptly.

The proposals in this paper could be enacted in days They do not require FTA talks, and they do not require parliamentary legislation. We show how to do it in the annexes.

It is appropriate to start with our oldest non-European ally. But this paper is a model for how to improve all our rollover deals. We have, in short, an opportunity to ameliorate our terms of trade with dozens of countries immediately and uncomplicatedly. Let's not waste any more time.

The Lord Hannan of Kingsclere
President of IFT

Key Proposals

1. Taking full advantage of Morocco's role in the developing Western Corridor
    - Proposal for a Digital Trade Corridor (DTC) linking Morocco and the UK
    - Use of extensive customs and trade facilitations to accelerate trade, especially agricultural trade.
2. Building on the Morocco-UK Association Agreement by eliminating tariffs and quotas (including TRQs) on vegetable products from Morocco that do not compete with UK production.
3. Strengthening energy collaboration between the UK and Morocco through production of energy and projects like the Xlinks project to solve the UK's energy generation deficit and reduce the high market price of energy in the UK.
4. Build on existing Special Economic Zones such as Tangier-Med and also new developments such as the postal prosperity zone (PPZ) of the Universal Postal Union to generate trade hubs and that can service as acceleration points for international trade on developing new trade routes as nations move away from dependence on trade chokepoints such as Suez.
5. Connect UK traders with the Trans Africa Network and developing India-Middle East-Europe networks to ensure diversification of trade routes and supply chains.
6. Eliminating barriers between Morocco and the UK especially in regulatory areas which are hangovers from the EU-Morocco Association Agreement which no longer protect any UK interests, especially Sanitary and Phytosanitary (SPS) rules.
7. Work with partners to ensure maximum possible cumulation across UK, EU and Morocco to ensure supply chains can be made as efficient as possible.
8. Develop disciplines to deal with market distortions inside borders that enable any anticompetitive effects of state-owned enterprises to be subject to disciplines as opposed to disciplining them merely because they are state-owned.
9. Allowing UK Export Finance (UKEF) to provide assistance to British investments in the Western Sahara region, already recognised in the UK as part of Morocco's customs territory, a region endowed with the hydrogen and solar resources necessary to drive down high UK energy costs and boost British competitiveness.

CHAPTER 1

The Governing Geostrategic Principle

As noted in the seminal article by Karlsson, Singham and Gottschald in the World Customs Journal, the world is developing trade superhighways between nodes where trade flows are accelerated because processes are made simpler and traders are trusted by governments. Increasingly, knowledge of supply chains is also becoming critical for both governments and the private sector. Countries that sit on these trade corridors or economic neural networks as they are sometimes called will benefit significantly, but countries that do not sit on these networks will not. The test of success for countries and regions in the 21st century will increasingly be determined by relevance to global supply chains. Morocco's geography is its destiny. From the days of Ibn Batuta's voyages to the East, Morocco has been a trading hub. It is now a place where developing and developed countries meet, where Africa meets Europe. It is a regional trading hub. The geostrategic principle that governs Morocco's role in the world and its particular USP must be related to and advance these natural advantages.

Morocco is also in a unique position having association agreements with both the UK and EU and critical relationships with the rest of Africa and also the US.

Development of Western Corridor

Morocco is a potential beneficiary of the development of a new Western Corridor. This new trade route arises because of new trade developments such as the UK leaving the EU, Morocco's association agreements with the EU and UK, and the nuances of the Windsor Framework. These developments serve to create an opportunity to use Special Economic Zones for pre-clearance of goods into the UK and EU, and we advocate that the UK take advantage of this opportunity to facilitate trade. Already ferry companies such as Stenaline are developing routes along the Western Corridor.

> As the world's biggest ferry operator we are seeing the development of an exciting new trade corridor from the Irish Sea through the West of EU to Morocco. This corridor also includes Morocco trade with Gibraltar and Spain, and Spain trade north into the Irish Sea. Both Morocco and the UK stand to benefit from this development.
>
> *- **Ian Hampton**, UK CEO, Stenaline*

The Development of Atlantic Access for the Sahel Countries: Morocco as a bridge between Europe and Africa

HM King Mohammed VI, King of Morocco has launched an Initiative to Enhance Atlantic Ocean Access for Sahel Countries.

There is no doubt that the Sahel faces economic challenges. However, it is also an area of untapped opportunity. The goal of the Moroccan initiative is to work on:

- Investments that generate lasting, shared wealth.
- Structured, mutually beneficial projects rather than basic assistance.
- Empowering and educating people, in addition to security measures.

The initiative is a pivotal element in Morocco's strategy for African engagement, emphasising South-South cooperation and win-win partnerships. It reflects Morocco's vision of a robust, influential Africa and seeks to catalyse regional growth and development, addressing challenges such as terrorism and separatism.

Morocco's commitment under this initiative extends to humanitarian and sustainable development efforts across the Sahel, evident in:

- The construction of healthcare and educational facilities.
- Debt relief for underdeveloped African countries.
- Significant investments in nations like Mali, Niger, Burkina Faso, and Chad.
- Training hundreds of imams from Sahel countries for religious understanding and cooperation.
- Proactive responses to climate change, including the establishment of a Climate Commission for the Sahel.

King Mohammed VI's Initiative embodies a comprehensive approach to tackling the challenges in the Sahel, with development, education, and environmental sustainability as its pillars. This initiative not only aims to unlock the region's potential but also solidifies Morocco's role as a key player in African development and cooperation.

The Sahel initiative is an example of the attempt to reach out to other Africa countries and position itself as a bridge between Europe and Africa.

Key Policy Elements Necessary to Realise Vision

The UK has successfully rolled over the FTA which the EU had with Morocco (into the UK-Morocco Association Agreement). However, we do see opportunities to improve the FTA and deepen the liberalisation between the two countries. We also see some early harvest opportunities where UK and Moroccan objectives align, and some initiatives would be possible starting immediately and would not need to wait for a full FTA. We make specific proposals and recommendations for the text of an improved UK-Morocco Association Agreement in Chapter 2.

However, there are two broad areas where significant initial steps could be taken that do not require a full FTA.

First, Morocco has developed a number of Special Economic Zones, and there is certainly the scope for new zones to act as nodes on developing trade superhighways as outlined by Karlsson, Singham and Gottschald in their seminal article for the World Customs Journal (see footnote 1 above). In particular, as a result of the UK leaving the EU, and the position of Morocco with comprehensive agreements with both the UK and EU, there is real scope for the development of an Irish Sea Western Corridor trade route, involving Morocco, Gibraltar, ports in Ireland and Wales to service the Ireland and the UK. The UPU is also developing a special economic zone in Morocco specifically for the movement of parcels (which can now be containerised) from China and the Indo-Pacific into Europe. All these initiatives also join the effort to develop an alternative to China's Belt and Road Initiative in Africa by the G7 (the Trans Africa Network).

Second, digital trade corridors are being developed and trialled (most recently along the Central Corridor between Dublin and Holyhead) and these could also be applied to trade between Morocco and the UK (including on the Western Corridor described above). These digital trade corridors expedite trade flows by making it easier for traders to input the data they need in order to fulfil customs processes. They also enable better use of trusted trader platforms to expedite trade flows. This is crucial in order to ensure that customs authorities only need to focus on traders and transactions that are less well known and understood. For those well known, and highly trusted traders, more flexibility can be applied to ensure that trade can flow.

The Digital Trade Corridor (DTC) concept enables seamless trade between two areas using digital supervision of pre-approved trusted operators, supervising trusted trade lanes.

> A DTC can be used to connect **trusted trade streams** on pre-defined routes with agreed entry and end points, while connecting these trade streams with **Safe Zones** (Freeports, Freezones, Prosperity Zones), warehouses, border posts and/or approved consignors and consignees. Newly established prosperity zones and postal prosperity zones (like UPU Morocco) connected with a DTC set-up offers enables previously unprecedented opportunities to build new or connect with existing, multi transport mode trusted trade lanes, for moving goods seamlessly between various market and regions.
>
> Two new DTC connected projects of interest are, (i) Rijeka Gateway in Croatia connecting Asia with Europe through the Red Sea transport route and the Silk Route transport route (EU, Balkans, Central Asia), and (ii) Tanger-Med/Morocco, connecting Asia with UK, Gibraltar, EU (Ireland) and EU (Spain).
>
> An interesting future opportunity would be to connect Morocco Gateway with the Croatia Gateway into a network, exploring a future DTC supervised ecosystem of trust.
>
> - ***Lars Karlsson**, Head of Customs, Maersk*

Morocco's Customs Territory includes the Western Sahara

The British High Court's decision in 2023, in line with the London Administrative Court, plays a crucial role in shaping UK-Morocco relations. This decision emerged from a legal challenge against the Morocco-UK Association Agreement, specifically regarding the disputed territory of Western Sahara. A UK-based campaign group argued that regulations extending preferential rates of import duty to goods from Western Sahara were problematic. However, the London Court of Appeal rejected this challenge, thereby upholding continuity to the UK-Morocco trade agreement signed in October 2019.

This ruling has profound implications. It solidifies the UK's post-Brexit trade relations with Morocco, especially concerning the Western Sahara, and implicitly supports Morocco's territorial claims in Western Sahara. By recognising the tariff preferences of the FTA to apply to products coming from the Western Sahara, the court has recognised that this area is part of Morocco's customs territory. Such a decision underscores the strategic and trade partnership between the UK and Morocco, recognising the importance of the Western Sahara in this bilateral relationship.

In light of this decision, it is important for UK Export Finance (UKEF) to ensure that its assistance is accessible to British companies operating throughout Morocco, including the Western Sahara.

In parallel, Morocco's commitment to the Western Sahara is evident through its significant investment over the years. The New Development Model for the Southern Provinces, initiated by King Mohammed VI in 2015, is a prime example. The plan aims to elevate the region's socio-economic status through a comprehensive development approach. The project has a substantial budget of $8 billion, almost 10% of Morocco's GDP, and encompasses over 700 distinct projects. It is significant that in line with UK development policy, this is based on trade and encouraging private sector economic activity, not merely grants and loans.

The primary goal of this development model is to boost the GDP of the Western Sahara from MAD 10 billion ($988 million) to MAD 22.5 billion ($2.2 billion) by 2025. This represents a massive investment in infrastructure, economic growth, and other developmental areas and could be transformative for the region, offering a dramatic modernisation and improvement in living standards. With UK support, there is an opportunity to make this region one of the most developed across the region and exploit its untapped potential.

The strategic and trade partnership between the UK and Morocco, particularly regarding the Western Sahara, offers significant opportunities for British businesses. The UK-Africa Investment Summit, initially scheduled for April 2024, could be a pivotal moment for enhancing UK companies' participation in Moroccan public procurement and investment opportunities , provided Moroccan public procurement is as open and transparent as possible.

Despite the potential, British investment in Morocco remains comparatively low, accounting for only 5% of foreign investment in the Moroccan economy. This presents a substantial opportunity for growth, especially in light of the Association Agreement between Morocco and the UK, and the improvements we are suggesting in this paper. The Western Sahara region is increasingly being highlighted as an emerging gateway for British businesses into Africa. The total African population is expected to be in excess of 2bn by 2050, making it a vital market for UK businesses. As we note in chapter two below, UK exports to Morocco are also relatively low and stagnant.

Morocco has been actively promoting investment in the Western Sahara, showcasing the region as a growing hub for various economic activities. The area offers a wide range of investment opportunities, including international and regional trade, travel, leisure, and tourism. The development of these sectors in the Southern Provinces could be a stepping stone towards broader investment across the African continent.

While the EU courts have not gone as far as the UK courts, the EU does have a process in place which ensures that trade preferences available to Morocco under the Association Agreement with the EU are available to products coming from the Western Sahara.

Further Geostrategic Considerations; Morocco as a Gateway to Africa for UK Firms: The Dual Node Approach

Morocco's geography is its destiny. In the North Tanger-Med lies on the major sea route from the Indo-Pacific through the Suez Canal and the Mediterranean Sea. Even in the case of conflict in the Bab Al Mandeb, the sea route round Africa takes ships past Morocco. There is some value in having an additional Special Economic Zone in the South of Morocco. UK firms would benefit from using both of these nodes for access to Africa.

Morocco as Connector between the Trans Africa Network and EU/US

As a response to China's One Belt One Road project, Morocco could serve as a connector between the Trans Africa Network and the UK, EU and US. It is important for the UK, EU and US that nodes in Africa that connect in to trade corridors are sustainable economic generators and will countervail the investment which China and Russia are making in the African continent as a whole. The G7's India Middle East Europe Corridor and the Trans Africa network are G7 attempts to deal with these issues.

Benefits of C4 Access to Morocco and Atlantic

There is some overlap between the Sahel and the C4 cotton countries. The Sahel consists of Senegal on the Atlantic coast, through parts of Mauritania, Mali, Burkina Faso, Niger, Nigeria, Chad and Sudan to Eritrea. The C4 countries consists of Benin, Burkina Faso, Mali, and Chad, and could benefit from exporting into special economic zones for the development of textiles and clothing which could then be exported from these zones into Europe, the UK, and US.

Critical Sectoral Strengths of Morocco and Opportunities for UK-Morocco Collaboration: Diversification and Resilience in Supply Chains

This is a major goal of the UK government, and it should also be a goal of the Moroccan government. The UK is very dependent on agrifood imports from the EU and could certainly benefit from buying more tomatoes and oranges from Morocco (see chapter two below). Similarly, Morocco could diversify its investment portfolio by increasing the amount of UK investment.

Recent developments in the Panama Canal, and the conflict in the Red Sea at the Bab Al Mandeb put a premium on the need to find alternative trade routes and diversification of supply chains.

Enablers to help companies take advantage of trade

> Trade deals are like the motorway. It's fantastic, you get them built, but if cars aren't going back and forth, then you might as well not have built them. The going back and forth are exports and investments.
>
> - ***Kemi Badenoch**, UK Secretary of State for Business and Trade.*

Many traders do not take full advantage of tariff benefits arising from trade agreements. This is typically the case where rules of origin are hard to comply with or hard to understand. Even trade agreements with relatively liberal rules of origin (such as the originally negotiated NAFTA from 1994) only have 60% or so of traders who take advantage of the preferential tariff rate. The more difficult the rules of origin are to understand the lower the percentage of traders who take advantage of the preferential rate of the FTA. By improving rules of origin provisions in the agreement, and also by eliminating the direct transport rule, and having the UK join the PEM convention we can minimise the difficulties associated with establishing origin, thus increasing the beneficiaries of the agreement and "putting more cars on the motorway".

Ensuring UK Exporters can take full advantage of UK Export Finance

UK exporters should be able to take full advantage of UKEF funding for all of Morocco's Customs Territory as has been accepted by the UK courts. As noted in this document, UK courts have now accepted that Morocco's customs territory includes the Western Sahara, and therefore UKEF funding should be available for exports into that region as well as the rest of Morocco. If UKEF does not provide that type of export financing, UK exporters could lose out valuable business opportunities.

Strategic Opportunities

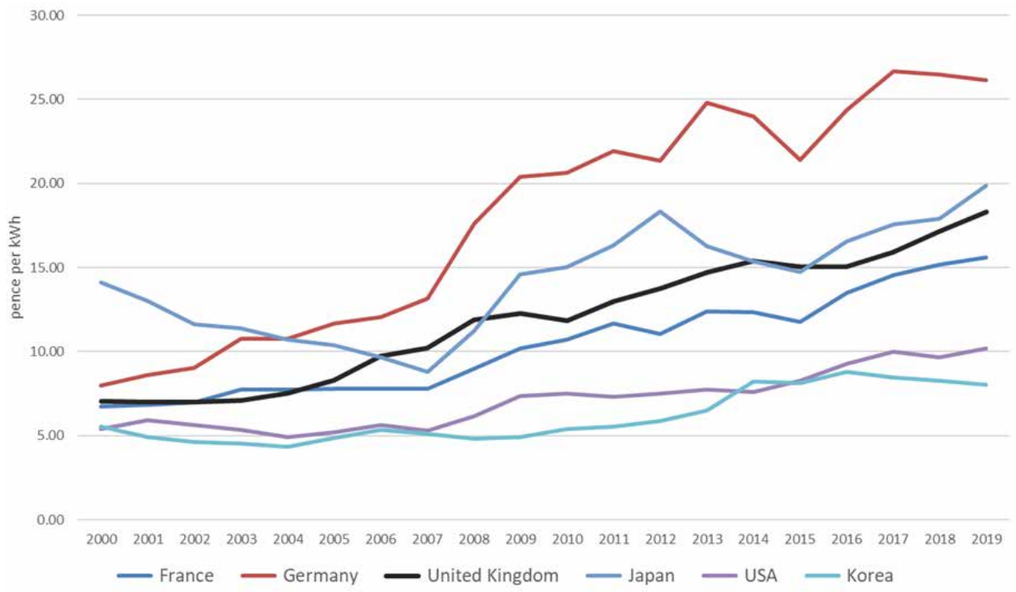
The Windsor Framework and unique relationships in Northern Ireland and also Gibraltar and the need to have dual access with GB and EU for these regions creates a role for Morocco to play. We have noted the need to use Morocco as s stopping off point for the regulatory checks necessary to get product into GB, NI and IE using the developing Western Corridor. This will resolve the issues associated with the prohibition of triangular trade into NI from ROW products that enter GB in free circulation. These products are prohibited from entry into NI, but if the UK and EU were to agree in the context of the Morocco Association agreements that inspections in Morocco would satisfy UK and EU regulatory requirement, product could move in a more logistically cost effective manner. Much of the RoW products from the Indo-Pacific are shipped past Morocco in any event, and could be checked and broken down in its Special Economic Zones for ease of movement into GB and NI/IE.

Morocco also allows diversification of trade routes. Faced with undue reliance on Panama and Suez and the geopolitical risks associated with trade in the Red Sea, large shipping companies are looking for alternative routes. Almost all of these alternatives involve land bridges that could involve Morocco.

Strengthening Energy Collaboration

The XLinks solar and wind energy interconnector with the UK (between the facility in Guelmin Oued Noun and Devon) is very important as energy costs are very high in the UK. Any further generation capacity, especially zero carbon emission energy production will be welcome. The differential energy costs between the UK and other G7 countries is described in the following graph below.

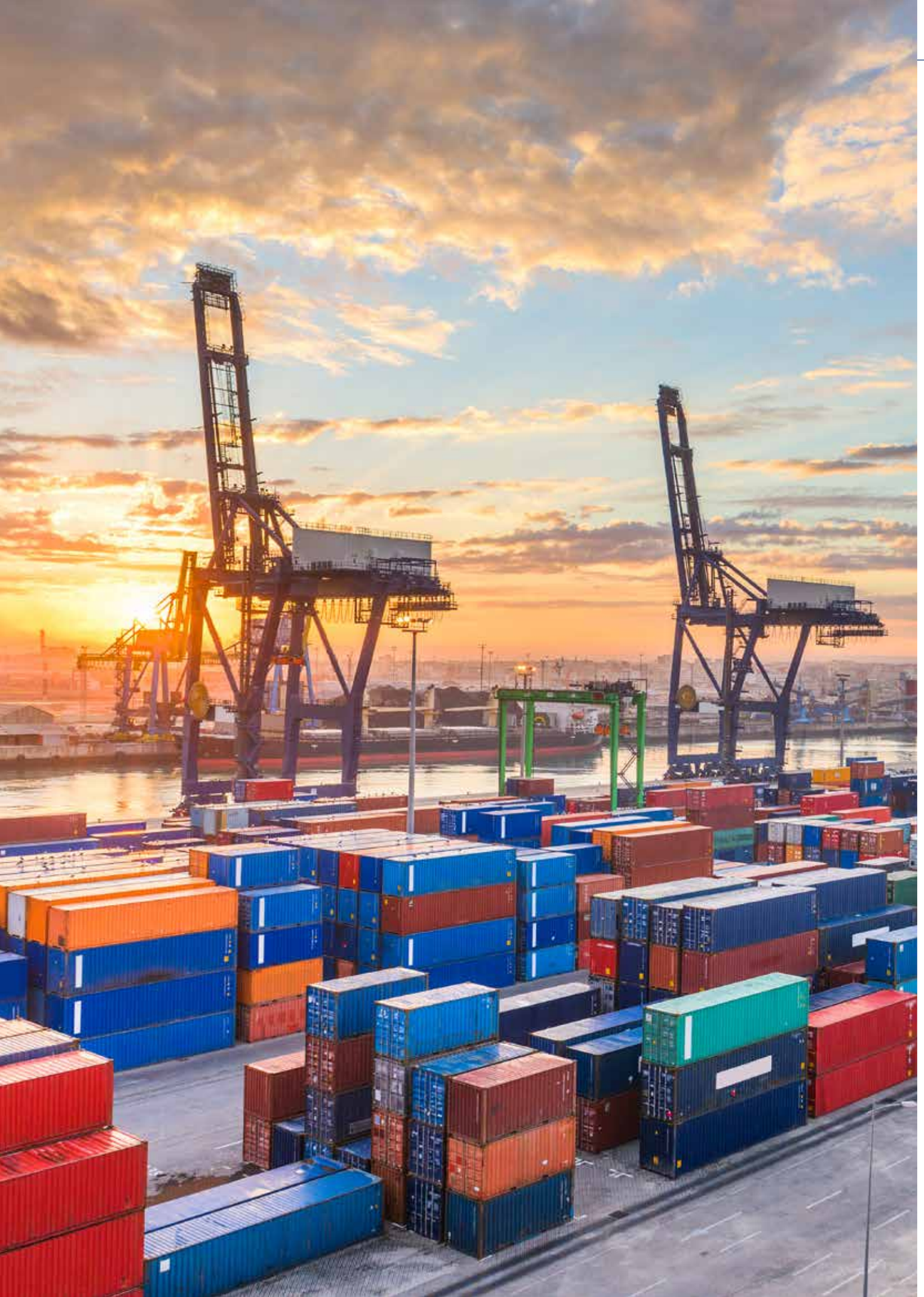
Comparative Energy Cost per country/G7



This illustrates the problem of high cost of energy in the UK. The Xlinks project is estimated once fully operational to provide 3.5 GW of energy into the UK electricity grid, and will generate a total of 11.5 GW. As noted in the Growth Commission Budget in November 2023, the reason for high energy cost in the UK is complex. Some of this stems from the legacy privatisation process where there was insufficient competition in generation (see also Shanker Singham, Market Distortions in Privatisation Processes (Routledge, 2022), as well as from anti-competitive interconnection policies, and environmental taxes and levies. The Xlinks project is important as it addresses the first of these problems by significantly and quickly increasing generation capacity.

Strengthening Business Links

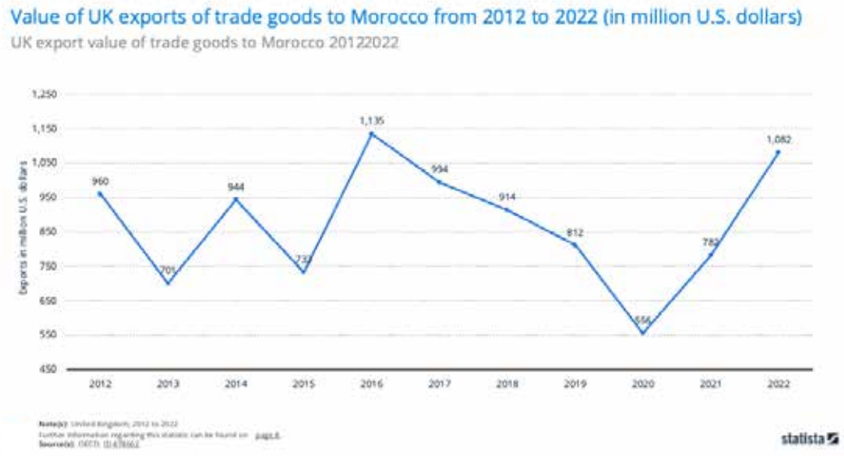
We advocate the creation of a UK/Morocco Business Club. We also recommend the implementation of a visa waiver programme for Moroccan business people travelling to the UK. The services chapter of an Improved Association Agreement could provide for greater movement of business persons in its Mode 4 provisions. The UK/Morocco business club could identify sectors for mutual collaboration, create a forum for the establishment of joint ventures, and support the work of the Association Agreement Joint Committees. Two powerful examples of similar business engagement at the highest (CEO level) were the Transatlantic Business Council (TABD) that paved the way for the Transatlantic Trade and Investment Partnership negotiations between the EU and US. Sir Leon Brittan, then EU Trade Commissioner noted that there where businesses agreed on something in the TABD, it was incumbent of officials to deliver it to explain clearly why it was not being delivered. Similarly and largely modelled on the TABD, the Americas' Business Forum provided the collective Americas' wide business community input into the Free Trade Area of the Americas negotiations. The author has had direct experience of both business input mechanisms and can attest to their effectiveness. In the case of the ABF, businesses met together in the different sectoral chapters of the FTA and debated specific provisions. This proved invaluable to negotiators.



CHAPTER 2

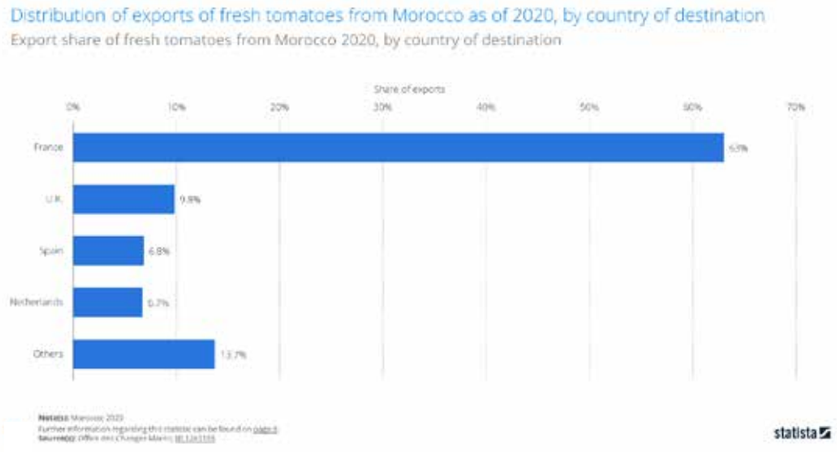
The UK-Morocco Trade Picture

UK exports to Morocco have been fairly stagnant for some time, as can be seen from the table below.

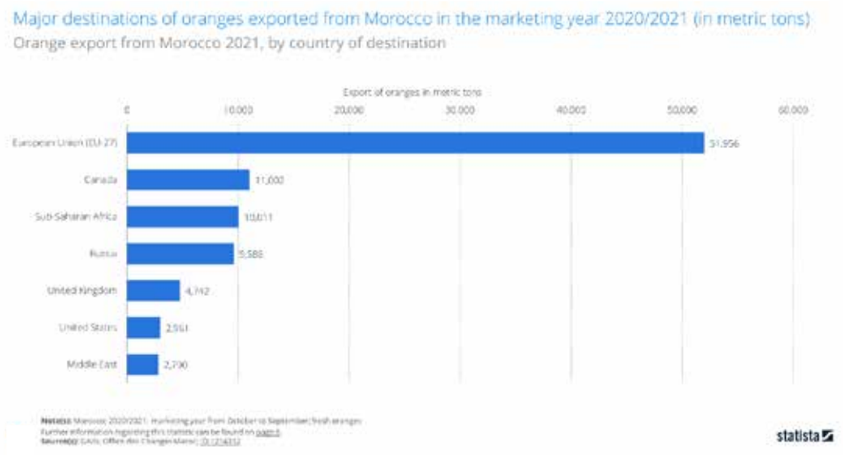


Even allowing for the Covid lock down decline, we can see a reduction in overall UK exports from 2016 to 2022.

We also see that for significant agricultural products where Morocco could export more to the UK, the country of destination is still dominated by France.



The UK also significantly underperforms in imports of oranges from Morocco compared with other markets (see below).



The three graphs above illustrate that there is untapped potential both for UK general exports to Morocco and for Moroccan exports of tomatoes and oranges to the UK (as an example). We believe this untapped potential can be realised through a modern and advanced free trade agreement between the two countries which improves considerably on the current UK-Morocco Association Agreement.

Improving the UK-Morocco Association Agreement: UK-Morocco Association Agreement

The UK and Morocco have negotiated an association agreement as part of the roll-over of the EU-Morocco Association Agreement (the "Association Agreement"). The Association Agreement provides for regular meetings of the Association Council to review arrangements. There is an opportunity to improve the terms of the Association Agreement for both Parties and we suggest what both the UK and Moroccan side would like to see from the new improved Association Agreement (the "Improved Association Agreement"). This next section refers to a series of Annexes in which specific proposed text can be included to deliver an advanced, state of the art FTA which will significantly increase trade and investment flows between the two countries.

UK changes that would benefit Morocco

The UK maintains a number of tariff, non-tariff and regulatory barriers that negatively affect Moroccan trade. These include:

Sanitary and Phytosanitary Rules

There are a number of SPS rules that the UK applies (essentially the corpus of EU retained law) which arguably violate the WTO SPS agreement, specifically its requirement that SPS rules be based on sound science. The UK should commit to compliance with WTO rules, but could go farther by ensuring that its application of the precautionary principle is as least restrictive of trade as possible consistent with legitimate regulatory goals. While the SPS agreement allows the use of the precautionary principle, it is not a carte blanche that enables a country to completely disregard science.

We recommend the draft SPS chapter in the attached Annex 1 for the Improved Association Agreement.

Below we highlight some of the key developments and innovative recommendations of the proposed draft chapter.

Key Elements of Draft SPS Chapter

1. The key points of the SPS chapter are to ensure that the UK applies sound science in its SPS regime, complies with WTO rules and also applies risk assessment in its approach to import controls regarding SPS products from Morocco. We also suggest maximum mutual recognition at all levels.

2. Article x.8 builds on what recent trade agreements have already included, for example the CETA agreement on deemed equivalence in other contexts as described below. This is the key theme that underpins the SPS chapter. Article x.8 provisions are from CETA also incorporating Annexes 5-D and 5-E. We believe the UK and Morocco should be able to agree this.

3. Article x:19: This article is a key UK ask in order to ensure that UK and Moroccan farmers have access to modern technology.

4. Modern trade agreements such as CETA have underlying product regulation equivalence at Article 5.6 and Annex 5-D and 5-E. 5-D provides for a maintenance of equivalence regime that is not unlike what we have proposed here, based on the WTO SPS rules which cover underlying product regulation.

5. NZ-EU Meat Products Agreement provides for recognition of underlying SPS measures. The parties agree the legislation, standards, and procedures, as well as structure of the regulatory bodies, and the performance of the regulatory bodies. This is the gold standard for equivalence other than the Australia-NZ agreements. We have built on this in the chapter attached.

6. Under the NZ-EU agreement, different attestations are given to different health certificates on the basis of those areas where equivalence is agreed, where it is agreed in principle, where equivalence takes the form of compliance with importing country's requirements, and where there is no equivalence.

7. The Draft chapter includes provisions that both Parties will consider trusted trader schemes in the SPS area to ensure trade can be expedited. This can be applied specifically to the Digital Trade Corridor discussed in this document. The UK DEFRA is trialling such a scheme (the ATTS scheme). Moroccan agricultural exporters could be on these trials as part of the Digital Trade Corridor initiative.

Trade quotas

The current terms of Morocco-United Kingdom Agreement provides for the elimination of customs duties for agricultural products and processed agricultural products, fish and fishery products originating in Morocco, except for a limited list of products (Tomatoes, cucumber, etc) whose customs exemption remains conditional on compliance with quotas and/or schedules. Given the low risk of direct competition between Moroccan and British producers, we recommend removing these quotas.

In particular, Moroccan tomato exports have been increasing, but are still subject to TRQs paying no duty if inside the quota but paying 3.5% during the off season and 5.7% after May. The purpose of the TRQs which were merely rolled over in the translation of the EU-Morocco Association Agreement into the UK-Morocco Association agreement was to protect southern European farmers of these products. Now that the UK has left the EU, there is no longer any reason to give differential benefits to European tomato exporters (who face no tariff or quota) over and above Moroccan exporters. We advise the UK to remove these TRQs to allow cheaper Moroccan products to compete for the UK market. Solving this issue could go a long way to seeing increased exports of tomatoes into the UK (see Moroccan tomato exports above) and ensuring the UK consumer can benefit.

Elimination of these costly TRQs will given an instant benefit to UK consumers lowering prices in a cost of living crisis.

Export of poultry meat products to the UK:

Morocco is not able to export these products to the UK due to the ongoing ban imposed by the UK on poultry products from Morocco. Morocco is not currently one of the countries approved for the export of poultry meat to the UK following EU Regulation 798/2008, a regulation the UK ported over to its statute book as part of the European Union (Withdrawal Agreement) Act, 2020 when it left the EU. However, the European Trade Commission issued an amendment legislation on 29 June 2022 that places Morocco on the list of countries authorised to export poultry products to EU member countries after ensuring that Morocco's poultry products conformed to the EU health regulation. Given this, the UK should move quickly to approve the export of Moroccan poultry to the UK.

The draft SPS chapter would include disciplines to ensure the UK acts to allow Moroccan poultry into the UK under its terms (see Annex 1, and the summary above).

The rule on direct transport

The preferential regime provided for by the agreement applies only to products and materials which are transported directly between Morocco and the UK without entering any other country (the principle of cumulation is not applicable). Transit through third countries with possible transhipment or storage could affect the originating status of the products. Ongoing discussions must be concluded to find derogations to this rule of direct transport which represents a constraint for Moroccan exporters. We address the issues of rule of origin with a more comprehensive solution that also factors in the EU-Morocco Association Agreement, including by reference to the PEM Convention's non-manipulation rule which takes effect in January 2025. As is the case in the new PEM Convention principles, initially the UK should provide that products that are transported via third countries (in transit) do not lose origin for the purposes of the Association Agreement. In addition, we believe that if the UK were to be a member of the PEM Convention (which Morocco is) this would be advantageous to both Morocco and the UK (see specific language on the PEM Convention).

Suggestions for an Improved Association Agreement

Investment Chapter

The Association Agreement should provide for investor protection rules as is commonly found in modern trade agreements, but also specific investor facilitation provisions to accompany trade facilitation provisions.

The Investment Chapter could have a special annex on Investor facilitation which would be innovative for a trade agreement. This would support the requirements and disciplines of the Investment Chapter. The investment facilitation chapter would recognise both the UK and Morocco's leadership roles in the provision of low carbon energy in general and renewables in particular. Examples of what the investment facilitation chapter might include are set out below.

Strategic Sector Investment

The UK and Morocco could prioritise the following investment plans:

- Supporting investment in key sectors as outlined in industrial public policies of both signatories, including electric mobility, renewable energy, chemicals, pharmaceuticals, critical materials, electric and electronics, and other agreed sectors. Focus on developing Small and Medium-sized Enterprises (SMEs).

- Morocco's recent moves to establish a "gigafactory" for electric vehicle (EV) battery production places it as a leader in green mobility in the MENA region. This aligns with the Western focus on shortening supply chains and utilising renewable energy sources for EV production.

- The automotive manufacturing ecosystem in Morocco, capable of producing over 700,000 vehicles annually, is set to increase to 1 million vehicles per year by 2025, many of which will be EVs. This expansion includes local manufacturing of Li-ion batteries, a significant cost component of EVs.

- Automotive Industry Expansion: Morocco's automotive sector, leading in exports and hosting major manufacturers like Renault and Groupe PSA, has rapidly developed with a strong production capacity and substantial employment generation.

- Future Prospects in Automotive Manufacturing: Morocco plans to expand production capacity to 1 million vehicles per year and diversification in manufacturing a wide array of automotive products signal a mature, evolving industry with potential for further growth.

- Investing in research and innovation, particularly in green industries and manufacturing, is crucial. Morocco's solar and wind energy advancements, exemplified by the Noor Ouarzazate complex and the Tarfaya wind farm, showcase its commitment to renewable energy, as does the Xlinks project referred to above.

- Morocco aims to increase its renewable energy capacity to 52% by 2030, indicating significant potential for green industry development.

- Morocco's large phosphate reserves are essential for producing cost-effective and safer lithium iron phosphate (LFP) batteries, providing a competitive edge in the green industry, particularly for EV battery production.

- Morocco is poised to become a leading player in the green hydrogen and Power-To-X industry. The country has set ambitious targets for renewable energy production, aiming for 10 gigawatts by 2030, which could support the production of up to 1 million tonnes of green hydrogen per year, having set aside around 1.5 million hectares of public land - almost as much land as Kuwait - to accommodate "eight green hydrogen and ammonia production sites".

- The Moroccan Ministry of Energy, Mines and Environment's roadmap on green hydrogen aims to meet a demand of up to 30 TWh by 2030 and 307 TWh by 2050, requiring significant investment in renewable energy sources.

- Morocco's geographic advantages, high solar irradiation, and constant wind make it an ideal location for green hydrogen production, which can be utilised in existing industries like ammonia and steel production, as well as in developing new renewable energy-based industries.

Other initiatives that could form part of an investor facilitation chapter and ongoing work stream includes:

Establishment of a UK-Dedicated Industrial Zone

In addition to being able to avail themselves of the benefits of the developing special zones in Morocco, we propose the establishment of a dedicated UK industrial zone in the south of the country to complement initiatives in Tanger-Med (both the existing zone and the developing UPU Postal Prosperity Zone). There is some value in having an additional Special Economic Zone in the South of Morocco. UK firms would benefit from using both of these nodes for access to Africa. As noted above, there is a need for diversification in international trade routes, and UK firms will need multiple options in their African trade routes.

Our experience of working on some 80 Special Economic Zones around the world is that global capital moves into these zones mainly where the domestic regulatory framework maximises open trade, competitive regulation and domestic property rights protection as this has been proven to generate the most economic activity into the area. The economic impact of these three fundamental drivers have also been extensively described by Singham and Abbott in Trade, Competition and Domestic Regulatory Policy; Trade Liberalisation and Competitive Markets (Routledge, 2023). These factors are motivating the development of the Postal Prosperity Zone (see below) but must also drive the Southern Zone. Our experience in 80+ SEZs around the world is that tax benefits and special incentives while useful at the margins do not generally drive the decisions of global capital. However sustainable long term trade openness and competition based regulatory frameworks do.

Postal Prosperity Zone

The Universal Postal Union (UPU) is the UN institution that coordinates postal policies among its 192 member countries while facilitating a uniform worldwide postal system.

UPU has developed and is running a new concept for UPU Postal Prosperity Zones, where administrations and supply chain stakeholders can cooperate to ensure rapid flow of express delivery goods and parcels from the Far East into the EU and US. This new concept makes it possible to create digital trade corridors and trusted trade lanes for postal goods by connecting authorised postal prosperity zones as digital, safe and secure, logistic hubs.

This project has huge potential for Morocco, being the first test pilot, to grow its position as a trading nation an important hub in global trade.

There are as many as forty applicant countries for this concept to be connected into the network during 2024. Morocco will gain a huge benefit from being the first, test-bed.

> In this new model, Postal Prosperity Zones (PPZ) become nodes and engines of new transparent trusted trade superhighways.
>
> The first pilot test will take place in Morocco, starting quarter 1, 2024. The idea is to test a new faster and more resilient model for consolidated trusted trade flows for Northern Africa, Europe and any other geography connecting with the hub. A second pilot when UPU is expanding and rolling out this concept is to connect various areas and regions. This is being developed by Lars Karlsson (Maersk) and Shanker Singham (Competere) so there is definitely the possibility that the United Kingdom, including the Irish Sea Western Corridor could form part of the testing. The Digital Trade Corridor could also be applied to routes involving the UPU project.
>
> - ***Lars Karlsson**, Head of Customs, Maersk, Former Director, World Customs Organisation and former Head of Swedish Customs.*

Aerospace Industry

- Morocco's Aerospace Industry: Positioned as an aeronautical hub due to its strategic location and government support, Morocco has a skilled workforce and partnerships with major aerospace companies, enhancing its competitiveness in aircraft maintenance and technological advancements.
- Aircraft Maintenance and Technological Growth: With a focus on Maintenance, Repair, and Overhaul (MRO) services, Morocco is leveraging infrastructures like Casablanca Technopark and embracing advanced technologies like augmented reality for maintenance, offering significant investment opportunities.
- The Moroccan aerospace sector, with its strategic location and government support, offers opportunities for partnerships with UK aerospace companies. Morocco's partnerships with global aerospace leaders like Boeing and Airbus demonstrate its capacity for collaborative ventures.

A sample investment chapter drawn from FTA best practice is set out in Annex 2, attached. This Investment Chapter would give maximum protection to the investments facilitated between the two countries and could lead to significant investment flows.

The key elements listed above could be included as an Appendix to the Investment Chapter we have drafted.

Facilitating Trade and Commerce

Trade facilitation is a crucial part of a modern trade agreement. We include below some ideas regarding a potential chapter in a trade agreement on this issue.

Customs and Trade Facilitation

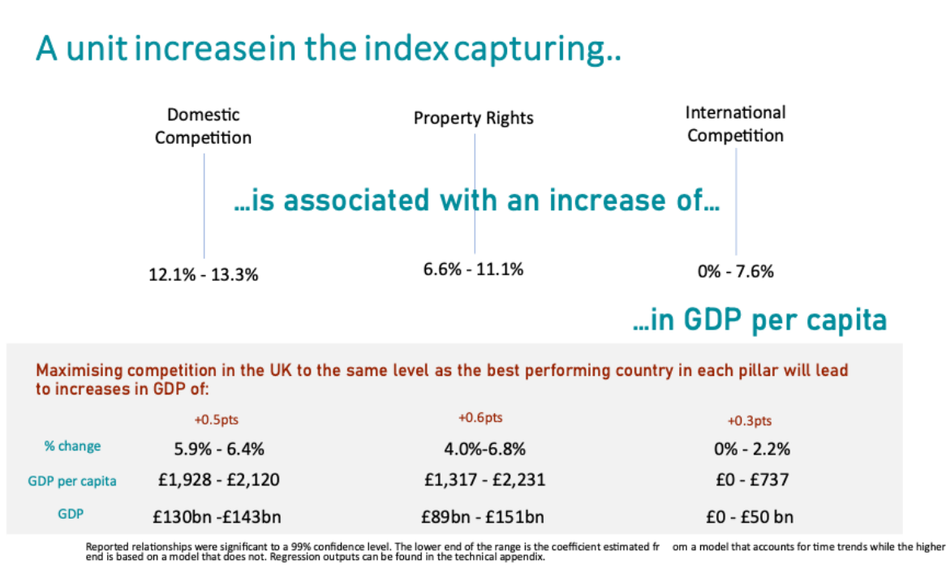
The work of the Growth Commission[1] has shown that trade facilitation is a significant contributor to GDP per capita growth for countries that embrace it. The Growth Commission Micro (or ACMD) model correlates GDP per capita movements of some 118 countries (panel data over a ten year sampling period) with changes in three different dimensions – trade, competition and property rights protection. Each pillar or dimension consists of a series of variables and sub variables drawn from a number of recognised indexes such as the World Bank Doing Business Index and so on. The Slide below illustrates the ACMD model's approach to the trade dimension.

International Competition Index

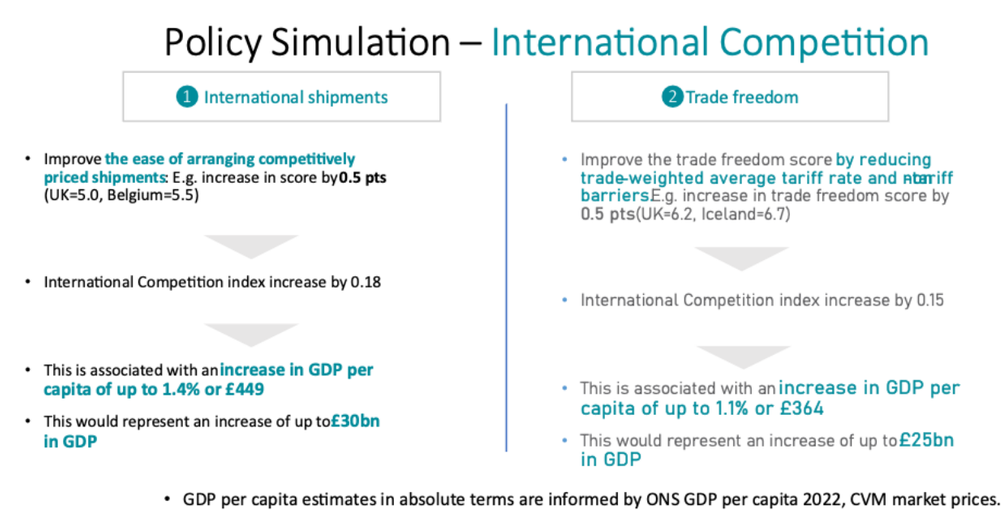
Sub component	Source	Weights
LPI timeliness indicator	Logistics Performance Index	11%
LPI international shipment indicator	Logistics Performance Index	36%
LPI customs indicator	Logistics Performance Index	10%
Trade Freedom score	Index of Economic Freedom	29%
Freedom of foreigners to visit	Human Freedom Index	8%
Freedom to own foreign currency	Human Freedom Index	4%
Capital controls	Human Freedom Index	1%

The above weightings (which arise from the application of a STATA model to the dimension variables) show that trade facilitation has double the impact of more conventional trade barriers (as measured by trade freedoms). The model also shows that an increase in the trade dimension score leads to significant GDP per capita increases. The box below illustrates the analysis for the UK as an example. It is likely that trade openness for a developing country will have larger effects.

1 See www.growth-commission.com



We can also see how certain policy changes in the trade dimension can lead to gains (modelled again on the UK).



Facilitations along the lines above, and tariff reductions thus lead to significant GDP per capita gains for both parties.

Many of the ideas identified above such as the Digital Trade Corridor, Single Window arrangements and so on could be specifically provided for in the Improved Association Agreement. We include below sample language which could be used in a Customs and Trade Facilitation Chapter of an Improved Association Agreement drawn from the sample Chapter included at Annex 3.

Annex x.1 Existing Simplifications and Facilitations

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

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

- All customs clearance-related declarations should be carried out and completed in digital format using IT platforms whenever possible, and where Digital Trade Corridors are used, the Parties shall consider the elimination of the export declaration requirement for trade between themselves.
- Goods may be presented at private storage facilities once or permanently approved or designated by customs authorities for customs controls.
- Service providers may have multiple loading and unloading locations approved.
- Declarations may have a full or a simplified dataset.
- Declarations should be submitted prior to arrival.
- Enhancement of specific declaration data at later time.
- Waivers for presentation of goods.
- Full or partial automation of declarations for repetitive shipments.
- Centralised management of clearances.
- Notification of AEO certified companies of a selected control on imports prior to arrival.
- Entry into The Declarant Record (EIDR), whereby a declaration per shipment is replaced by a fully automated monthly declaration.
- Integration of declarations in supply chain IT-systems.
- Where sealing is required to ensure the identification of goods, seals of special types can be used.

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

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

- Inward and outward processing relief to prevent paying unnecessary duties

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

A sample Customs and Trade Facilitation Chapter is included at Annex 3. In addition to the simplifications above, it also provides for the application of tiered trusted trader schemes, digital trade corridors, the use of single windows to facilitate trade, and many other facilitations designed to make trade flow faster. This will be particularly important for trade between Morocco and the UK along the developing Western Corridor.

Standards, TBT and Good Regulatory Practices

A significant barrier to trade is the area of standards, TBT and regulatory practices. Often what can be gained through border barrier reductions can be lost through domestic regulatory practices which may differ significantly between the Parties and damage trade. Ensuring that these regulatory barriers are reduced is a critical part of a modern FTA. The overall goal of such a chapter should be to enshrine the principle that where regulatory objectives are objectively the same (even where the specific regulation differs), then the Parties should grant mutual recognition to each other. The most basic level of mutual recognition relates to market surveillance and conformity assessment (or testing), but some of the most advanced trade agreements also provide for mutual recognition of underlying product regulation on the basis suggested above.

We have included a sample TBT Chapter, see Annex 4, attached, that could be used in an Improved Association Agreement.

TBT Chapter Comments – The Need to Consider the Impact of EU-Morocco and UK-EU TCA

1. The goal of this chapter is to make sure that one Party does use technical regulation to block imports of products from the other Party.

2. Both Morocco and the UK will need to consider the impact of their arrangements with the EU in the context of their arrangements inter se. This is particularly relevant in the case of standards as we see below.

3. The starting point is mutual recognition of underlying product regulation, standards and conformity assessment. The challenge in negotiating changes between the UK and Morocco, is that we must also consider the relevance and impact of the UK-EU TCA and the EU-Morocco Association agreement. Morocco and the UK should be able to participate in European standard setting bodies, CEN/CENELEC and ETSI to help influence the direction of EU standards as both Parties have Trade Agreements with the EU, but there should be the possibility of Morocco and the UK agreeing pro-competitive standards inter se.

4. The UK starting point is as follows. There are three categories of technical regulation. First, all technical regulations which are deemed equivalent on day 1. Second, regulations where there has been some divergence but equivalence has not been withdrawn. Third, where there has been divergence and equivalence has been withdrawn and therefore the Parties are seeking to agree disciplines relating to those products. The bulk of the chapter deals with the rules that will underpin this third category.

5. Need for encouraging, on request of a Party, the exchange of information between the Parties regarding specific technical regulations, standards and conformity assessment procedures of non-Parties as well as systemic issues, with a view to fostering a common approach.

6. Article x.6: EU will object to allowing UK participation in CEN/CENELEC/ETSI as a third country participant. This has been a major point of contention with the US and other trading partners. However, if the UK continues to remain in CEN/CENELEC and ETSI, this will have a significant negative impact on the possibility of achieving trade agreements with other major parties. However, the EU is likely to be pushing Morocco to EU standard setting bodies and EU standards at the same time.

7. Article x.7:(g): The Conformity Assessment language is drawn from the EU-Japan agreement, but it is noteworthy that it is not in Transatlantic Trade and Investment Partnership early drafts, perhaps because EU producers were adversely affected by Japanese practices, and this was an offensive ask by the EU. Either way, it would be useful in this agreement.

8. Article x.7: The EU accepted this in EU-Japan but had a footnote which disapplies this paragraph to the conformity assessment activities performed by a Party itself where that Party retains final decision-making authority regarding the conformity of a product, i.e. the EU.

The sample chapter ensures that both countries will commit to compliance with the WTO TBT chapter as it has been interpreted and will build on best practices in good regulatory practices and regulatory cooperation. Both parties should commit to maximum possible

mutual recognition of standards and underlying product market regulation along the lines of the Aus-NZ FTA.

The Parties should commit to work together on standardisation and regulatory issues to align and simplify procedures.

In particular there are key strategic sectors where recognition should be prioritised such as:

- Morocco's strategic industrial planning and foreign partnerships have advanced its automotive manufacturing sector, supported by infrastructure developments like Tanger-Med Port and the Al-Boraq rail line. Such developments are conducive to aligning with international standards and regulations.

Regulatory Cooperation/Good Regulatory Practice Chapter

We advocate a regulatory cooperation and good regulatory practice chapter in the UK-Morocco FTA. This would subject both sides to disciplines to ensure good regulatory practice are promulgated by both sides. It would also create a mechanism where those regulatory practices can be mutually recognised by each party. We believe there is an opportunity for the UK and Morocco to agree one of the most advanced mutual recognition agreements that applies not only to testing, but also to underlying product market regulation (as is the case in the Australia-NZ mutual recognition agreement).

A sample Good Regulatory Practices/Regulatory Coherence chapter is set out In Annex 5, attached.

Comments on Sample Good Regulatory Practices/Regulatory Coherence Chapter

1. This is an important chapter for the Improved Association Agreement. It builds on best practice in all international trade agreements and recognises that the these provisions have been agreed in certain agreements such as CPTPP, UK-Japan, EU-Japan, USMCA and so on. These provisions do go further, and instil impact analysis which covers impact on trade and competition of domestic regulatory choices.

2. Many of the provisions build on what has been agreed in the CPTPP (one of the most advanced FTAs in the area of regulatory cooperation) and the proposed TTIP offers made by the EU and US.

3. This set of arrangements also ensures that the Parties will both move towards procompetitive regulation that is least trade and market distortive.

Rules of Origin

One area where there could be significant gains would be in introducing more liberal rules of origin.

Rules of origin can also limit the applicability of the preferential benefits of FTAs. The UK and Morocco could agree rules of origin that prevent trade restrictions affecting their terms of trade negatively. The Parties should:

- Support ongoing discussions on the potential and practicality of enhancing rules of origin to bolster bilateral trade, through the use of PEM diagonal and full cumulation, and the suspension of the direct transport rule as discussed below.

- Reflecting on the increasing production capabilities in Morocco, such as in the EV sector, liberalising rules of origin could further promote bilateral trade, ensuring that products manufactured in Morocco meet the necessary criteria for preferential trade agreements.

One valuable addition to the rules of origin is to allow cumulation between Morocco and other countries the UK has FTAs with. Allowing PEM cumulation between the PEM convention countries as well as the UK (diagonal cumulation) will help UK and Moroccan firms take advantage of supply chains. Relevant in the potential PEM diagonal cumulation discussion is the EU's view of the territory of Morocco, and despite an ECJ ruling to the contrary, the EU does extend PEM treatment (preferences thereunder) to all of Morocco including producers in the Western Sahara. There is significant trade of products produced in the Western Sahara and the UK and EU (see EU report on the impact of this trade on jobs and investment in Morocco at TAXUD-2023-00033-00-00-EN-TRA-00.DOCX.pdf (europa.eu). It is clearly important that any PEM beneficiaries should include the entirety of the Moroccan customs territory as recognised by the UK court and including Western Sahara. Article 12 of the PEM Convention (the Direct Transport rule) means that to benefit from the Convention the goods must move through the territories of the contracting parties. The Direct Transport rule does allow consignments to move in transit through the non-contracting party (under UK customs control). The PEM Convention at Article 14 also provides that duty drawback is prohibited for non-originating parts that make up a final product. In other words if non-originating material is used in, for example a freeport customs site in the UK, and is then re-exported into a PEM convention country, the duty suspension in the FTZ could not be taken advantage of. These provisions could be damaging to the advantages Morocco could gain from interacting with UK freeports. However if non-originating parts are de minimis, then trade into a freeport and out by transit where the source and destination countries are both PEM countries would be achievable.

It is worth noting that the PEM Convention will significantly liberalise these rules of origin in 2025, by introducing a "non-manipulation" rule. This will build on the diagonal and full

cumulation offered in the PEM Convention, and enable logistics chains to function more effectively. This allows goods to transit through third countries without losing PEM status, and even for consignments to be split as long as that is under customs control (i.e. in a temporary storage facility or a customs site in a freeport for example) in the third country. In addition PEM simplifications include an easier method for traders to prove origin (EUR.1 movement certificate).

Dealing with Market Distortions and State-Owned Enterprises

Concerns have been raised by many countries regarding state-owned companies and their impact on international trade. For example, the US has imposed countervailing duty measures on exports of Moroccan state phosphate company, OCP. However, the real target of concerns about SOEs are China's SOEs and their network of Anti-Competitive Market Distortions ("ACMDs"). We therefore suggest the sort of Market Distortions chapter that actually addresses the problem which the UK and US have prioritised. OCP has been swept into a general attack on China SOEs and a chapter along the lines below would ensure that actual anti-competitive effect and harm in a relevant global market would actually be considered, as opposed to Moroccan SOEs being targeted by blanket tariffs as they have been in the US.

The sample chapter addresses the actual concerns about SOEs. The chapter is agnostic about whether a country has an SOE or not, but does discipline where the SOE has a damaging effect on competition, by having its costs artificially reduced. If the Parties agree to the sample market distortions chapter set out in Annex 6, attached, then there would be no need to maintain and anti-dumping and countervailing duty regime in place (as any tariffication would take effect as a result of the market distortions chapter itself. This would facilitate trade significantly.

Comments on Market Distortions and State-Owned Enterprise Chapter

1. It is clear that there is a focus on the impact of SOEs on international trade by the US, UK, and G7 in general. It is important that this discussion take into account the actual impact of the SOE on trade and competition, and not become a restriction on SOEs simply because they are owned by government. The purpose of this chapter is to focus attention on the effects of SOEs in global markets and not just the SOEs themselves.

2. This chapter does a lot of heavy lifting in the areas of SOEs, state aids and government distortions. This is not only important for both parties, but it also aligns both parties around the developing global consensus in the OECD ad other venues to deal with the problem of market distortions. A high level agreement on these points should be possible between the UK and Morocco and could be a template for dealing with these problems in China and other highly distorted markets which are the primary targets for these sorts of trade provisions.

3. These provisions are based on existing modern trade agreements, but we have drawn in language on state owned enterprises from other FTAs, as well competition language in the OECD Regulatory Toolkit and Competition Assessment.

4. The Competition Provisions also discuss market distortions which have been raised by the EU, US, and Japan in the WTO Declaration in Buenos Aires, December, 2017. Here the trilateral group is seeking to lower market distortions in third countries.

5. These provisions are very important since the issues of SOEs is very much a focus of the G7. The real target is China, but we need to make clear that it is the effect of distortions on trade and competition that is the concern not the manner in which a government organises its economy per se.

Additional measures could be found in the following disciplines on state aids and ACMDs. If the UK and Morocco agree, there could be dual application of this chapter and the Subsidies provisions (as opposed to these provisions replacing subsidies provisions). In that case, the Improved Association Agreement could have provisions on subsidies that are typically found in FTAs, but do not go as far as the market distortions provisions above, and could include the following language.

Article x.8: State Aids and Disciplines on Anti-Competitive Market Distortions

1. The Parties recognise that the provisions of Article x.12 (Market Distortions Chapter) are to be read as additional commitments above and beyond the subsidy commitments in the Subsidies Chapter of this Agreement.

If the UK and Morocco agreed market distortions disciplines to replace subsidy measures, this would be a strongly trade facilitating approach and a significant innovation in international trade. Only in the Canada-Chile FTA were Anti-Dumping and Countervailing Duty measures set aside for trade under the FTA. At the time this was considered a strongly innovative and trade liberalising measure. Here we could replace the subsidies measures with market distortion provisions which does at least give Parties an alternative which specifically addresses the problem of distortions.

General UK Concerns

Firms in the UK have raised a number of issues with respect to Morocco, most of which related to process, rather than too many matters of substance.

Morocco's trading partners have noted that their firms have cited irregularities with regard to certain government procedures, including a lack of clear and accessible information about new regulations and certifications relating to imports into the country, as among the greatest

obstacles to trade and investment with Morocco. In particular, companies have pointed to difficulties they encounter in processes for obtaining permits, land use approvals, and other government permissions. Companies also have noted the challenges created by rigid protocols and excessive bureaucracy, which can lead to long wait times for decisions and permissions, particularly when dealing with public sector entities. Morocco's employment regimes and property registration procedures also continue to impede business.[2] While these issues have been raised specifically in the National Trade Estimate by US firms, these barriers obviously affect all firms, and are not unique concerns only of US firms. Most countries do not publish similar indices of foreign country trade barriers, but the EU does inventory its trade barriers with foreign markets and the EU's trade barrier inventory for Morocco is markedly similar to the US's NTE. For example, administrative and customs restrictions, standards restrictions and the application of TRQs and import licensing mechanisms have all been cited by European firms.[3] Restrictions on access to government procurement and local content rules have also been cited by EU firms. Many of the issues raised above are dealt with in the specific chapters of a proposed improved Association Agreement above.

It is also noteworthy that many of the issues related to trade facilitation can be addressed through some of the trade facilitation initiatives such as the Digital Trade Corridor discussed above.

Other than these procedural issues, foreign firms do complain about the level of state ownership in the wheat and phosphate sectors (which, for example has led to a US tariff on phosphates), and the application of local content rules.

However, it is worth recognising that Morocco has taken proactive steps to improve the business environment by implementing a new investment charter. This charter reflects the country's commitment to fostering a more favourable atmosphere for both national and international businesses, and this initiative should be capitalised on.

Additionally, Morocco has established institutions such as AMDIE (Moroccan agency for investment and export Development), Casa Finance City (CFC), and Morocco's Competition Council. These institutions play a crucial role in facilitating and supporting business activities and contributing to the ease of doing business in the country.

Many of the concerns raised by UK firms could be solved through the trade facilitation provisions discussed above. Some of the other concerns raised by UK firms could be solved through the investment and other provisions of the trade agreement set out above.

2 For examples, See National Trade Estimate, USTR (2023) available at 2023 NTE Report.pdf (ustr.gov)

3 Inventory of Moroccan Trade Barriers to EU firms available at Barriers page | Access2Markets (europa.eu)

Specific UK Concerns

The UK and Morocco could and should agree provisions in the financial services chapter that remove insurance restrictions for UK firms.

There are at present restrictions on prepayment for imports to 30% of value, which UK firms would like to see removed. The UK would like to see no prepayment requirements for imports. Any payments should be subject to contractual terms and the traders' agreement only.

The UK would also like to see removal of VAT on certain food items to which it is presently attached.

Conclusion

For the UK-Morocco relationship, geography is destiny. Both countries stand at the edge of an opportunity to cement a geo-strategically important relationship for the world. We have set out the key areas where the relationship could be improved, and importantly including specific text that shows how these developments can be embedded into language for an Improved Association Agreement. This text reflects the most advanced, modern free trade agreement that includes innovative and novel provisions that will greatly increase trade flows and generate GDP per capita gains for both the UK and Morocco, at a time when economic growth is increasingly hard to come by. We commend these recommendations to policymakers and negotiators in Morocco and the UK.

February 2023

ANNEX 1

Sanitary or Phytosanitary

Article x.1

Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis.

2. In addition, for the purposes of this Chapter:

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

   b. "**area**" shall have the meaning ascribed to that term by the OIE when used in relation to animal health, and shall have the meaning ascribed to that term by the IPPC when used in relation to plant health;

   c. "**competent authority**" means the authorities in both Parties responsible for measures and matters referred to in this Chapter;

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

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

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

   g. "**import check**" means any inspections, examinations, sampling, review of documentation, tests or procedures, including laboratory, organoleptic and identity, conducted at the border by an importing Party or its representative

to determine if a consignment complies[4] with the sanitary and phytosanitary requirements of the importing Party;

h. "**import programme**" means mandatory sanitary or phytosanitary policies, procedures or requirements of an importing Party that govern the importation of goods;

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

j. "**low-level presence**" means the inadvertent low-level presence in a shipment of plants or plant products of rDNA plant material that is authorised for use in at least one country, but not in the importing country;

k. "**modern technology**" means any new technology which has been developed over the last [insert] years;

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

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

n. "**relevant international organisation**" means:

   i. with respect to food safety, the Codex Alimentarius Commission; ii. with respect to animal health and zoonoses, the World Animal Health Organization; and

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

o. "**risk analysis**" means the process that consists of three components: risk assessment; risk management; and risk communication;

p. "**risk assessment**" shall have the same meaning ascribed to the term in the WTO SPS Agreement;

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

4 For greater certainty, the Parties recognise that import checks are one of many tools available to assess compliance with an importing Party's sanitary and phytosanitary measures.

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

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

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

Article x.2

Objectives

1. The objectives of this Chapter are to:

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

   b. reinforce and build on the SPS Agreement;

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

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

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

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

   g. Encourage the maximum deemed equivalence between the Parties on the basis that their regulatory systems are identical on the day of the departure of the United Kingdom from the European Union.

Article x.3

Scope

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

Article x.4

General Provisions

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

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

Article x.5

Sub-Committee on Sanitary and Phytosanitary Measures

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

2. The functions of the Sub-Committee shall include:

   a. consulting on issues and positions related to the meetings and work of the WTO SPS Committee, the International Plant Protection Convention (hereinafter "IPPC"), World

   b. Animal Health Organization (hereinafter "OIE"), and the Codex Alimentarius Commission (hereinafter "Codex");

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

   d. referring issues to technical working groups in support of work that the Committee considers to be a priority, establishing additional technical working groups;

   e. approving any modifications to the Annexes of this Chapter; and

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

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

4. The Sub-Committee:

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

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

   c. shall exchange information on the implementation of this Chapter;

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

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

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

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

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

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

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

Article x.6

Competent Authorities and Contact Points

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

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

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

      ii. a point of contact within each authority; and

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

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

Article x.7

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

1. Both Parties recognises that adaption of SPS measures to regional pest or disease conditions can facilitate trade. Both Parties shall provide that such adaption may be made on the basis of an area or zone, place of production, or subpopulation. {not limited to animal products}

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

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

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

5. When an importing Party commences an assessment of a request for a determination of regional conditions under Article 12.7.4, that Party shall promptly, on request of the exporting Party, explain its process for making the determination of regional conditions.

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

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

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

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

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

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

12. The competent authorities of both Parties shall work together to establish the risk management measures that would apply to trade between the Parties in the event either Party has made any change with respect to disease or pest status of a demarcation in its territory but [not limited to animal products].

13. Both Parties shall normally recognise the demarcations of the other Party located in the other Party's territory but not limited to animal products.

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

    a. decisions of the WTO SPS Committee;

    b. the work of the relevant international organisations; and

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

15. Both Parties shall follow the procedures set forth in Annex 12.1 with respect to a request from the other Party to determine that a particular demarcation is free of a particular pest or disease.

16. The importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measure:

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

    b. has the same effect in achieving the objective as the importing Party's measure.[5]

Article x.8
Equivalence

1. The Parties shall grant equivalence to each other for specific SPS goods provided that the SPS regulation at issue is objectively satisfying the same or similar regulatory objective.

2. One Party may not unreasonably remove equivalence provided that the other Party's regulation (the "New Regulation") has regulatory goals which remain the same as the Party from whom the other Party is diverging, that the New Regulation objectively achieves those goals, and that the New Regulation is the least trade restrictive and anti-competitive consistent with a clearly stated and legitimate regulatory goal.

3. The provisions of Paragraph 4 above that relate to the New Regulation being the least trade restrictive and anti-competitive are to be read to be consistent with best practices as set forth in the OECD Competition Assessment, the SPS Agreement and the TBT Agreement.

5 No Party shall have recourse to dispute settlement under Chapter 16 (Dispute Settlement) for this Article.

4. Upon the coming into effect of this Agreement, the Parties shall undertake an equivalence assessment over as much of the other Parties' SPS regime as feasible.

    a. If a Party intends to adopt, modify or repeal an SPS measure in an area where there has been a recognition of equivalence as set out above, that Party should:

        i. Evaluate whether the adoption, modification or repeal of that SPS measure may effect the recognition; and

        ii. Notify the other Party of its intention to adopt, modify, or repeal that SPS measure, and of the evaluation under a) above. This notification should take place at an early appropriate stage, when amendments can still be introduced and comments taken into account.

    b. If a Party adopts, modifies or repeals an SPS measure in an area for which it has made a recognition, the importing Party should continue to accept the recognition of equivalence as set out in Annex [insert] or the recognition described in Annex [insert] in that area until it has communicated to the exporting Party whether special conditions must be met, and if so, provided the special conditions to the exporting Party. The importing Party should consult with the exporting Party to develop these special conditions.

    c. If a Party modifies an SPS measure, the modified SPS measure applies to imports from the other Party, taken into account (ii) above.

    d. If an importing Party determines that a special condition listed in this Annex is no longer necessary, that Party shall notify the other Party in accordance with [notification provisions] that it will no longer apply that special condition to imports from the other Party.

    e. For greater certainty, an SPS measure of an importing Party that is not otherwise referenced in this Annex or a measure of an importing Party that is not an SPS measure applies, as appropriate, to imports from the other Party.

5. The conditions and procedures for the purpose of the establishment of facilities are as follows:

    a. The import of the product has been authorised, if so required by the competent authority of the importing Party;

    b. The establishment or facility concerned has been approved by the competent authority of the exporting Party;

c. The competent authority of the exporting Party has the authority to suspend or withdraw the approval of the establishment or facility; and

d. The exporting party has provided relevant information requested by the importing Party.

e. The Parties are deemed to approve all facilities in either Party as of the date of the coming into effect of this Agreement.

6. If the EU or UK change the existing SPS acquis in any way, then either Party shall request an equivalence assessment from the other Party, which shall be granted as much as possible on a system-wide basis, but may be granted on a group of measures or single measure basis.

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

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

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

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

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

a. decisions of the WTO SPS Committee;

b. the work of the relevant international organisations;

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

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

12. Both Parties shall follow the process set forth in Annex 12.3 with respect to determinations of equivalence.

Article x.9

Science and Risk

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

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

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

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

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

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

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

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

c. how the assessment takes into account any risk assessment techniques developed by the relevant international organisations.

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

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

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

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

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

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

6. Where a regulatory authority of a Party submits a proposal for an SPS measure for approval by the Sub-Committee and:

a. the Sub-Committee rejects or modifies the proposal; or

b. the regulatory authority of a Party modifies the proposal in response to feedback, including any rejection, from the Sub-Committee each member of the Sub-Committee or the regulatory authority of the Party, as the case might be, shall make publicly available an explanation of the basis for rejecting or modifying the proposal, including the extent to which it is supported by relevant scientific evidence and technical information and analysis, including any risk assessment.

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

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

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

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

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

Article x.10

Audits[6]

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

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

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

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

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

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

6 For greater certainty, nothing in this Article prevents an importing Party from performing an inspection of a facility for the purposes of determining if the facility conforms with the importing Party's sanitary or phytosanitary requirements or conforms with sanitary or phytosanitary requirements that the importing Party has determined to be equivalent to its sanitary or phytosanitary requirements.

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

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

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

Article x.11

Import Checks

1. Both Parties shall ensure that its import programmes are based on the risks associated with importations, and the import checks are carried out without undue delay.[7]

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

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

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

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

7 For greater certainty, nothing in this Article prohibits a Party from performing import checks to obtain information to assess risk or to determine the need for, develop or periodically review a risk-based import programme. Article 12.11 is to be read in conjunction with Chapter 3 (Customs and Trade Facilitation).

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

7. When providing the notification, the Party shall:

   a. include in the notification:

      i. the reason for the prohibition or restriction;

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

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

   b. provide the notification as soon as possible and normally not later than 10 days[8] after the date it prohibits or restricts the importation of the goods unless the goods are seized by a customs authority of the Party.

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

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

8. Where a Party that has prohibited or restricted the importation of a good of the other party on the basis of an adverse result of an import check it shall provide an opportunity for a review of the decision and consider any relevant information submitted to assist in the review. The review request and information should be submitted to the importing Party within a reasonable period of time.[9]

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

8 For the purposes of this Article, the term "days" does not include national holidays of the importing Party.

9 For greater certainty, nothing in this Article prevents an importing Party from disposing of goods which are found to have an infectious pathogen or pest that, if urgent action is not taken, can spread and cause damage to human, animal or plant life or health in the Party's territory.

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

11. The Parties will consider the feasibility of using SPS Trusted Trader schemes to expedite trade flows and to complement their existing trusted trader schemes.

Article x.12

Certification

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

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

   b. are adapted to recognise the competent authorities of the other Party and facilitate their ability to make the requested certifications; and

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

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

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

Article x.13

Transparency

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

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

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

4. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade-facilitating nature, a Party shall normally allow at least 60 days for interested persons and other Parties to provide written comments on the proposed measure after it makes the notification under Article 12.11.6. If feasible and appropriate, the Party should allow more than 60 days. The Party shall consider any reasonable request from an interested person or the other party to extend the comment period. On request of the other party, the Party shall respond to the written comments of the other Party in an appropriate manner.

5. During the time period described when a regulatory authority of a Party is developing an SPS regulation, it shall, under normal circumstances[10], make publicly available on the Internet:

   a. the text of the regulation it is developing;

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

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

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

6 Both Parties shall make publicly available the information described in Paragraph 5:

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

10 Note: Specific exceptional circumstances to be discussed.

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

7. Where a regulatory authority of a Party is developing an SPS regulation and makes publicly available the information described in Paragraph 5, the Party shall ensure that any person, regardless of domicile, has an opportunity, on no less favourable terms than any person of the Party, to submit comments on the regulation, including by providing written comments and other input with respect to the information described in Paragraph 5, to the regulatory authority. The Party shall promptly make publicly available any comments it receives on the regulation, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content, in which case the Party shall ensure it makes publicly available a version that redacts such information or a summary of the comment that does not contain such information.

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

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

a. the text of the regulation;

b. an explanation of the regulation, including its objectives, and how the regulation achieves those objectives, and the rationale for the material features of the regulation;

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

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

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

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

12. Both Parties shall publish, in print or electronically, all final SPS regulations in a single official journal or website. Both Parties shall publish in this single official journal or website the text of any SPS regulation it is developing and that should be made publicly available in accordance with Paragraphs 5 and 6.

13. Both Parties shall notify the other Parties of final sanitary or phytosanitary measures through the WTO SPS notification submission system. Both Parties shall ensure that the text or the notice of a final sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure. A Party shall also make available to the other party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, significant written comments and relevant documentation considered to support the measure that were received during the comment period.

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

a. the objective and rationale of the measure and how the measure advances that objective and rationale; and

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

15. An exporting Party shall notify the importing Party through the contact points referred to in Article 6 (Competent Authorities and Contact Points) in a timely and appropriate manner:

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

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

c. of significant changes in the status of a regionalised pest or disease;

d. of new scientific findings of importance which affect the respect to food safety, pests or diseases; and

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

17. If feasible and appropriate, a Party should provide an interval of more than six months between the date it publishes a final sanitary or phytosanitary measure and the date on which the measure takes effect, unless the measure is intended to address an urgent problem of human, animal or plant life or health protection or the measure is of a trade-facilitating nature.

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

Article x.14

Emergency Measures

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

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

Article x.15

Cooperation

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

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

Article x.16

Information Exchange

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

Article x.17

Cooperative Technical Consultations to Resolve SPS Trade Concerns

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

   a. the measure at issue;

   b. the provisions of this Chapter or the SPS Agreement to which the concerns relate; and

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

2. A Party shall deliver its request to the representative of the other Party identified in Article 6.1 (b) and, where the measure is under discussion by a technical working group or the working group on modern agricultural technologies, to the chairs of the relevant working group.

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

4. Prior to the meeting of the Parties provided for in Article 12.5 or within [15] days thereafter, either Party may request an expert to serve as a facilitator to resolve the concerns identified in the request for cooperative technical consultations. The other Party shall respond to the request within [7] days of the date it receives it. If the Parties agree to use a facilitator, the Parties shall try to agree on an individual to serve as facilitator.

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

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

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

6. A facilitator shall be deemed to be appointed on the date the Parties receive written notification from the individual that he or she agrees to serve as the facilitator and confirms the he or she agrees to abide by the requirements set out in Article 12.17.7. The Parties shall meet with the facilitator, in person or by electronic means, within {30] days of the date the facilitator is appointed.

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

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

b. not have a financial interest in the matter;

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

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

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

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

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

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

iv. not serve as an arbitrator or expert in any dispute concerning the matter.

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

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

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

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

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

Article x.18

Dispute Settlement

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

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

Article x.19

Regulatory Approvals for Products of Modern Technology

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

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

a. a description of the processes it applies to accept, consider, and decide applications for approval or authorisation;

b. the competent authorities responsible for receiving and deciding applications for approval or authorisation;

c. the timelines for completion of any steps or procedures in the approval or authorisation processes;

d. any documentation, information, or actions it requires from applicants as part of its approval or authorisation processes; and

e. under normal circumstances[11] both Parties shall promptly make publicly available any risk assessment it conducts as part of an approval or authorisation process for a product of modern agricultural technology.

3. Both Parties shall endeavour to meet applicable timelines for all steps in its approval or authorisation processes for products of modern agricultural technology. Where a Party does not meet the timeline for a step in an approval or authorisation process, upon request of the other Party, the Party shall provide a timely notification to the other Party explaining why the timeline for that step was not met and identify and update the timeline for all remaining steps in the approval or authorisation process.

4. Both Parties shall avoid unnecessary duplication and burdens with respect to:

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

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

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

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

11 Note: Specific exceptional circumstances to be discussed.

a. information on the status of its application for approval or authorisation;

b. answers to questions regarding the approval or authorisation processes and regulatory requirements for approval;

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

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

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

7. For products covered by this Article, both Parties shall participate in the Global Low Level Presence Initiative to develop an approach or set of approaches to manage low-level presence of unapproved substances in order to reduce unnecessary disruptions affecting trade.

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

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

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

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

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

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

Article x.20

Technical Working Groups

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

   a. animal health;

   b. plant health; and

   c. food safety.

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

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

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

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

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

   d. seek to resolve specific trade concerns; and

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

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

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

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

Article x.21

Specific Provisions Related to Import Requirements for Plant Health

1. If the Parties jointly identify a specific commodity as a priority, the Parties will establish a preliminary list of pests and notify the International Plant Protection Convention ("IPPC") IPPC Secretariat.

2. Any preliminary list of pests established by either Party must be shared with the IPPC Secretariat

Article x.22

Sub-Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Measures is established (the 'SPS Sub-Committee") comprising representatives of each Party which will report to the overall Joint Committee set out in Articles 20.1 and 20.2 of this Agreement.

2. The SPS Sub-Committee shall consider any matter arising under this Chapter.

3. The SPS Sub-Committee' functions in relation to this Chapter shall include:

   a. Supporting the Parties in implementing this Chapter;

   b. Providing an information exchange function as described;

   c. Support any technical groups referred to in Article 12.20

Article x.23

Procedure, Representatives and Powers of the SPS Sub-Committee

1. The SPS Sub-Committee:

   a. will follow the same procedural rules and representation requirements as those established for the Sub-Committee for Trade in Goods and shall meet as regularly as required by the Parties;

b. will abide by the same provisions regarding the representation of the Parties as those established by the Sub-Committee for Trade in Goods.

c. will exercise the same powers as those conferred on the Sub-Committee for Goods mutatis mutandis.

ANNEX 2

Investment

Article x.1

Definitions

For purposes of this Chapter:

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

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

1. Establishment of an enterprise;
2. shares, stock, and other forms of equity participation in an enterprise;
3. bonds, debentures, other debt instruments, and loans[12];
4. futures, options, and other derivatives;
5. turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
6. intellectual property rights;
7. licenses, authorisations, permits, and similar rights conferred pursuant to domestic law[13][14];

12 Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

13 Whether a particular type of license, authorisation, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorisations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorisation, permit, or similar instrument has the characteristics of an investment.

14 The term "investment" does not include an order or judgment entered in a judicial or administrative action.

8. other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges[15].

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

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

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

Article x.2

Scope and Coverage

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

   a. investors of the other Party; and

   b. covered investments.

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

   a. central, regional, or local governments and authorities; and

   b. non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

Article x.3

Non-Discrimination

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

15 For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

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

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

Article x.4

Expropriation and Compensation[16]

1. Neither Party may expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation) or through actions tantamount to expropriation or nationalisation, except:

   a. for a public purpose;

   b. in a non-discriminatory manner;

   c. on payment of prompt, adequate, and effective compensation; and

   d. in accordance with due process of law.

1. The compensation referred to in paragraph 1(c) shall:

   a. be paid without delay;

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

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

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

16 Interpreted in accordance with Annex 8.

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

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

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

Article x.5

Transfers

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

   a. contributions to capital, including the initial contribution;

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

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

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

   e. payments arising out of a dispute.

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

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

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

   a. bankruptcy, insolvency, or the protection of the rights of creditors;

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

   c. criminal or penal offences;

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

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

Article x.6

Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking[17]:

   a. to export a given level or percentage of goods or services;

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

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

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

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

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

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

17 For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “commitment or undertaking” for purposes of paragraph 1.

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

   a. to achieve a given level or percentage of domestic content;

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

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

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

3. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory[18].

   a. Paragraph 1(f) of this Article does not apply:

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

      ii. when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.[19]

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

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

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

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

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

   d. Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b) of this Article do not apply to government procurement.

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

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

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

Article x.7
Senior Management and Boards of Directors

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

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

18 For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided that such activity is consistent with paragraph 1 (f).

19 The Parties recognise that a patent does not necessarily confer market power.

Article x.8

Denial of Benefits

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

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

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

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

Annex x.1

Understanding on Expropriation

The Parties confirm their shared understanding that:

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

2. Article x.4.1 addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or seizure.

3. The second situation addressed by Article x.4.1 is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation or is an action tantamount to an expropriation without formal transfer of title or outright seizure.

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

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

      ii. the extent to which the government action interferes with distinct, reasonable investment-backed expectations[20]; and

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

20 For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations may be reasonable if they rely on an existing regulatory structures.

ANNEX 3

Trade Facilitation

Article x.1

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

Article x.2

Unless otherwise agreed, the Parties agree that their respective customs provisions and procedures including the use of electronic information technology pursuant to Article x.7 and the development of data requirements pursuant to Article x.9, shall be based upon international instruments and standards applicable in the area of customs and trade, which the respective Parties have accepted, including the substantive elements of the Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, the WCO International Convention on the Harmonised Commodity Description and Coding System, and the Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as "SAFE Framework"), the WCO Data Model and related WCO recommendations, the Agreement on Trade Facilitation and the SPS Agreement.

Article x.15

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

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

a. Security arrangements regarding persons and goods crossing the borders.

Article x.16

1. The Parties agree that additional cooperation in customs clearance and control procedures will be based on both Parties' continued use of existing IT systems, in each instance as updated or replaced from time to time, to include full utilisation of concepts that deliver Digital Trade Corridors, simplified and facilitated customs clearance processes.

Article x.17

To establish and prove the origin of goods originating from the territory of either Party, the Parties commit to invest in the further development of the IT systems that can be used by traders to determine origin, and to promote their use and implement the system as soon as possible after the commencement of this Agreement.

Article x.18

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

Article x.19

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

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

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

Article x.20

Each Party shall ensure that these simplified procedures:

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

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

c. permit an importer of record, its agent or declarant to remove goods from customs' control prior to the final determination and payment of customs duties,

taxes, and fees. Before releasing the goods, a Party may require that an importer provide sufficient guarantees in the form of a surety, a deposit, or some other appropriate instrument.

Article x.21

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

Article x.22

Both Parties shall ensure that:

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

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

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

Article x.23

Each Party shall:

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

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

Article x.24

Each Party shall ensure that:

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

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

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

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

Article x.25

Each Party shall:

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

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

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

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

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

Article x.26

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

Article x.27

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

Article x.28

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

Article x.30

The Parties acknowledge that the Parties, are contracting parties to Conventions relating to goods in transit and recognise that traffic in transit between their respective territories should be afforded special treatment and additional facilitations.

Article x.31

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

Article x.32

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

a. inland customs offices;

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

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

d. Premises that are deemed to be authorised consignee locations by the relevant customs authority;

Article x.33

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

Article x.34

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

Article x.35

Both Parties acknowledge that there will be a need from a perspective of legal, IT and physical infrastructure, to adapt the present customs clearance procedures and systems in both Parties.

Article x.36

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

Article x.37

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

Article x.38

Both Parties acknowledge that within their respective customs legislation, there are multiple existing simplifications to facilitate trade. Both Parties will use these simplifications to the fullest extent possible to facilitate trade as set out in Annex x.x of this Chapter (Existing Simplifications and Facilitations).

Article x.39

Both Parties seek to achieve maximum trade facilitation based on mutual trust in each others' competent customs authorities.

Article x.40

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

Article x.

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

Article x.43

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

Article x.44

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

Article x.45

Both Parties commit to adapting existing IT-systems customs procedures to facilitate further simplifications for goods imported from the other. The Parties agree to adopt trials of Digital Trade Corridors for trade between themselves.

Article x.46

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

Article x.47

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

Article x.48

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

Article x.49

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

Article x.50

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

Article x.51

In addition to the commitments undertaken in Article x.39, each Party shall promote and encourage, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be reimported with total or partial

exemption from import duties and taxes in accordance with the Member's laws and regulations. Parties shall ensure that Inward Processing and Outward Processing Relief is made as easy as possible for users and provide special mechanisms to promote frictionless trade for certain industrial sectors.

Article x.52

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

Article x.53

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

Article x.54

The Parties:

a. undertake to set up and apply to the import and export of goods to and from third countries the customs security measures set out in Annex x.2 (Security Measures) and thus to ensure an equivalent level of security at their external borders;

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

c. shall consult prior to the conclusion of any agreement with a third country in the areas covered by this Chapter in order to ensure consistency with this Chapter , particularly if the proposed agreement includes provisions that derogate from the customs security measures set out in Annex x.2 (Security Measures).

Article x.55

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

1. Goods brought into the customs territories of the Parties from third countries shall be covered by an entry declaration for the purposes of security with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory.

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

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

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

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

Article x.56

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

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

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

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

Article x.57

1. A Sub-Committee will be established under this Chapter which shall determine how the Parties are to monitor the implementation of this Chapter and to verify compliance with its provisions.

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

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

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

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

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

Article x.58

Rebalancing Measures

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

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

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

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

Article x.59

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

Article x.60

Review and Appeals

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

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

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

Article x.61

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

Article 3.62

Administrative Assistance

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

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

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

Article x.63

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

Article x.64

Oversight by the Sub-Committee on Trade in Goods

1. The Sub-Committee established under this chapter is authorised to work on:

a. Ensuring the uniform administration of this Chapter;

a. technical, interpretative, or administrative matters relating to this Chapter; and

a. the priorities in relation to the implementation of this Chapter.

ANNEX 4

TBT

Article x.1
Definitions

1. The definitions of the terms used in this Chapter contained in Annex 1 of the TBT Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis.

2. In addition, for the purposes of this Chapter:

   a. "**central government body**"[21] has the meaning assigned to that term in Annex 1 of the TBT Agreement;

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

   c. "**covered body**" means a central government body of a Party or a body of the EU, its ministries, and departments or any body subject to its control;

   d. "**local government body**" has the meaning assigned to that term in Annex 1 of the TBT Agreement;

   e. "**marketing authorisation**" means the process or processes by which a Party approves or registers a product in order to authorise its marketing, distribution or sale in the Party's territory. The process or processes may be described in a Party's laws or regulations in various ways, including "marketing authorisation", "authorisation", "approval", "registration", "sanitary authorisation", "sanitary registration" and "sanitary approval" for a product. Marketing authorisation does not include notification procedures;

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

   g. "**mutual recognition arrangement**" means an international or regional arrangement (including a multilateral recognition arrangement) between nations on underlying product regulation, standards and accreditation bodies recognising the equivalence of accreditation systems (based on peer review) or between conformity assessment bodies recognising the results of conformity assessment; post-market surveillance means procedures taken by a Party after a product has been placed on its market to enable the Party to monitor or address compliance with the Party's domestic requirements for products;

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

   i. "**standard**" has the meaning assigned to that term in Annex 1 of the TBT Agreement;

   j. "**TBT Agreement**" means the WTO Agreement on Technical Barriers to Trade, as may be amended;

   k. "**technical regulation**" has the meaning assigned to that term in Annex 1 of the TBT Agreement; and

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

21 A non-governmental entity that a Party has requested or directed to prepare, adopt, or apply standards, technical regulations, or conformity assessment procedures on its behalf or for use in connection with compliance with the Party's domestic requirements, shall be considered a body subject to the control of a covered body for purposes of this Chapter in respect of such activity.

Article x.2

Objective

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

Article x.3

Scope

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

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

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

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

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

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

7. Recognising that the Parties' technical regulations, and standards are identical on the day of the departure of the United Kingdom from the European Union, the Parties shall deem that their technical regulations are equivalent on this day.

8. The Parties agree a management of differences mechanism where they notify each other of any changes to technical regulations and agree that equivalence shall not be unreasonably withdrawn provided that their regulations have a clearly stated and legitimate regulatory objective, the proposed changed regulation objectively satisfies that objective and does so in the least trade restrictive and anti-competitive manner possible, consistent with that regulatory goal.

9. The provisions of the rest of this TBT Chapter shall then apply to those technical barriers arising from non-recognition of the equivalence of technical regulation.

Article x.4

Incorporation of Certain Provisions of the TBT Agreement

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

1. Articles 2.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 2.12;

2. Articles 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9; and

3. paragraphs D, E and F of Annex 3.

Article x.5

International Standards, Guides and Recommendations

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

2. In this respect, and further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, to determine whether there is an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, both parties shall apply the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.12), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall cooperate with each other, when feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

Article x.6

Standards

1. Both parties shall apply the Decision of the TBT Committee on Principles for the Development of the International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the TBT Agreement (the "**Committee Decision**"), issued by the WTO Committee on Technical Barriers to Trade (G/TBT/1Rev.10) in determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement or Article 13.5 of this Chapter exists.

2. Both parties shall treat any standard, guide or recommendation that is developed in accordance with the principles set forth in the Committee Decision as an international standard, guide, or recommendation for purposes of Articles 2, 5 and Annex 3 of the TBT Agreement. Accordingly, neither Party shall refuse to treat a standard as an international standard based on:

   a. the domicile of the body that developed the standard;

   b. whether the body that developed the standard is an intergovernmental body; or

   c. whether the body that developed the standard provides for participation in its standards activities through national delegations or limits participation in its standards activities to persons affiliated with a government.

3. Where a Party requests or directs a body or bodies to prepare a standard with a view to mandating that a product comply with that standard, establishing a generally applicable presumption that a product complies with a technical regulation or conformity assessment procedure if it conforms to that standard, or otherwise allowing the standard to be used as a basis for or in support of compliance with technical regulation or conformity assessment procedure it shall observe, mutatis mutandis, the obligations set out in Articles 2.9.1. through 2.9.4 and 5.6.1 through 5.6.4 of the TBT Agreement and this Chapter.

4. A Party shall carry out the steps set out in Articles 2.9.1 through 2.9.4 and 5.6.1 through 5.6.4 of the TBT Agreement and this Chapter with respect to any document in which the Party requests or directs a body or bodies to develop the standard and any related documents describing the standard to be developed. For greater certainty, the Party shall ensure that it allows any request or direction to develop a standard to be amended to take into account any discussions or comments received.

5. Where a Party requests a body to develop a standard that may be used for purposes of complying in whole or part with technical regulation or conformity assessment procedure, the Party shall specify in the request that the body shall:

   a. allow persons of the other Party with relevant technical expertise to participate in any of its technical bodies, including by accessing working documents, attending meetings, submitting technical proposals and advice concerning development of the standard, and ensuring prompt consideration of any such proposals and advice;

   b. not impose conditions on such participation that impede persons of the other Party with relevant technical expertise from participating, such as obligations to adopt or implement the standard, to withdraw an existing standard, to be affiliated with a national standards body or other entity that includes persons of the Party, or represent a national position or view;

   c. make publicly available, at least upon request, a list of persons and their affiliations that are participating or have participated in the development of the standard; and

   d. consider any relevant standard developed in accordance with the Committee Decision, as the basis for the standard it is requested to develop.

6 Prior to adopting any standard developed by a body in response to a request subject to Article x.6.3, the Party shall verify that the body complied with the requirements of the request as specified in Article x.10 when it developed the standard.

7. If a Party systematically gives preference, for purposes of complying with technical regulations and conformity assessment procedures, to standards that are developed through processes that do not allow persons of the other Party to participate on terms no less favourable than persons of the Party or that do not consider using as a basis for the standard any relevant standard developed in accordance with the Committee, the Party shall:

   a. maintain a process for persons of the other Party to submit an assessment to the Party that a standard other than the standard given preference for purposes of complying with the technical regulation or conformity assessment procedure fulfils the relevant requirements of that technical regulation or conformity assessment procedure; and

   b. no later than [30] days from the date it receives an assessment under Article 13.7:

      i. decide whether to accept the assessment based on whether the standard fulfils the relevant requirements of the technical regulation or conformity assessment procedure and notify the person of its decision and the reasons therefor; and

ii. publish its decision, including its reasons therefor, and transmit instructions to its customs and market surveillance authorities that any product from any supplier that conforms to the standard, or for which a conformity assessment procedure was performed in accordance with the standard, shall be presumed to be in conformity with the relevant requirements of the technical regulation or conformity assessment procedure.

8. For purposes of Article x.7, a Party:

   a. may require that an assessment contain supporting documentation adequate to make the decision provided for in Article x.7.11;

   b. shall permit an assessment to be conducted by any of the following: a producer, independent expert, or body that developed the standard.

9. Where an administrative authority of a Party incorporates by direct reference a standard in a technical regulation or conformity assessment procedure, it shall:

   a. prior to incorporating the standard into the technical regulation or conformity assessment procedure, consider whether additional standards raised in comments on the proposed technical regulation or conformity assessment procedure could fulfil relevant requirements and therefore also be incorporated or otherwise allowed for purposes of complying with the technical regulation or conformity assessment procedure; and

   b. after adopting the technical regulation or conformity assessment procedure, provide for the consideration of petitions for a rulemaking or a retrospective review to amend the technical regulation or conformity assessment procedure to allow the use of a standard other than the one referenced in the original regulation for purposes of compliance with the regulation.

Article x.7

Conformity Assessment

1. Further to Article 6.4 of the TBT Agreement, if a Party maintains procedures, criteria or other conditions as set out in this Article requires test results, certifications or inspections as positive assurance that a product conforms to a technical regulation or standard, the Party:

   a. shall not require the conformity assessment body that tests or certifies the product, or the conformity assessment body conducting an inspection, to be located within its territory;

   b. shall not require a conformity assessment body to be located within its territory as a condition to accredit, approve, license or otherwise recognise the conformity assessment body;

   c. shall not impose requirements on conformity assessment bodies located outside its territory that would effectively require those conformity assessment bodies to operate an office in that Party's territory;

   d. shall permit conformity assessment bodies in other Parties' territories to apply to the Party for a determination that they comply with any procedures, criteria and other conditions the Party requires to deem them competent or to otherwise approve them to test or certify the product or conduct an inspection;

   e. shall apply no less favourable procedures, criteria or other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the other Party's territory as it applies to accredit, approve, license or otherwise recognise conformity assessment bodies located in its territory, including by permitting conformity assessment bodies located in the other Party's territory to apply to be accredited, approved, licensed or otherwise recognised by a body located in the Party's territory;

   f. shall permit any conformity assessment body located in the territory of the other Party to apply to the Party, or any body that it has recognised or approved for this purpose, to be accredited, approved, licensed or otherwise recognised under any procedures, criteria and other conditions the Party applies to accredit, approve, license or otherwise recognise conformity assessment bodies; and shall, whenever possible and in accordance with its laws and regulations, accept a manufacturer's or supplier's declaration of conformity as assurance of conformity with the applicable technical regulations.

2. Paragraph 1 shall not preclude a Party from undertaking conformity assessment in relation to a specific product solely within specified government bodies located in its own territory or in the other party's territory, in a manner consistent with its obligations under the TBT Agreement, nor from limiting recognition of conformity assessment bodies in relation to specific products to specified government bodies of the Party located within the Party's territory or the territory of the other Party.

3. If a Party undertakes conformity assessment under Paragraph 1 and further to Articles 5.2 and 5.4 of the TBT Agreement concerning limitation on information requirements, the protection of legitimate commercial interests and the adequacy of review procedures, the Party shall, on the request of the other party, explain:

a. how the information required is necessary to assess conformity and determine fees;

b. how the Party ensures that the confidentiality of the information required is respected in a manner that ensures legitimate commercial interests are protected; and

c. the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

4. Where a Party does not accept the results of a conformity assessment procedure conducted by a conformity assessment body located in the territory of the other Party, it shall, upon request of the other Party, provide the person that submitted the results, and the requesting Party, with an explanation of the reasons for not accepting the results.

5 Paragraph 1 shall not preclude a Party from using mutual recognition agreements to accredit, approve, license or otherwise recognise conformity assessment bodies located outside its territory.

6. Where a Party refuses to accredit, approve, license, or otherwise recognise a conformity assessment body located in the territory of the other Party, it shall inform the other Party. In addition, the Party shall provide the conformity assessment body, and upon request, the other Party, with an explanation of the reasons for its refusal. Furthermore, the Party shall ensure a procedure exists to review complaints regarding the refusal and to take corrective action when a complaint regarding the refusal is justified.

7. Nothing in Paragraphs 1, 2 or 6 precludes a Party from verifying the results of conformity assessment procedures undertaken by conformity assessment bodies located outside its territory.

8. In relation to any technical regulation or standard for which a Party requires third-party conformity assessment, both parties shall make publicly available a list of the bodies that it has accredited, approved, licensed or otherwise recognised to perform such conformity assessment and relevant information on the scope of each such body's accreditation, approval, license or recognition.

9. In order to enhance confidence in the continued reliability of conformity assessment results from the Parties' respective territories, a Party may request information on matters pertaining to conformity assessment bodies located outside its territory.

10. Where a Party undertakes conformity assessment in relation to specific products within specified government bodies located in its own territory or the other Party's territory, the Party shall, upon the request of the other Party or the applicant, explain: the order in which conformity assessment procedures are undertaken and completed;

a. how fees for its conformity assessment procedures are calculated;

b. how the information it requires is necessary to assess conformity and determine fees;

c. how the Party ensures that the confidentiality of the information is respected in a manner that ensures the protection of legitimate commercial interests; and the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

11. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement.[22] The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

12. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation or standard, it shall not prohibit a conformity assessment body from using subcontractors, or refuse to accept the results of conformity assessment on account of the conformity assessment body using subcontractors, to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party. For greater certainty, nothing in this Paragraph shall be construed to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself.

13. Further to Article 9.2 of the TBT Agreement neither Party shall refuse to accept conformity assessment results from a conformity assessment body or take actions that have the effect of, directly or indirectly, requiring or encouraging the other party or person to refuse to accept conformity assessment results from a conformity assessment body because the accreditation body that accredited the conformity assessment body:

22 The committee shall be responsible for developing and maintaining a list of such arrangements.

a. operates in the territory of a Party where there is more than one accreditation body;

b. is a non-governmental body;

c. is domiciled in the territory of a Party that does not maintain a procedure for recognising accreditation bodies, provided that the accreditation body is recognised internationally, consistent with the provisions in Article 7.12;

d. does not operate an office in the Party's territory; or

e. is a for-profit entity.

14. Nothing in this Article prohibits a Party from refusing to accept conformity assessment results from a conformity assessment body on grounds other than those set out in Article x.13 if that Party can substantiate those grounds for the refusal, and that refusal is not inconsistent with the TBT Agreement and this Chapter.

15. Both parties shall issue guidance to encourage its authorities to rely on international accreditation agreements or arrangements to accredit, approve, license or otherwise recognise conformity assessment bodies where effective and appropriate to fulfill the Party's legitimate objectives, and shall ensure that the Party's authorities have the discretion to adopt procedures to do so.

16. A Party shall publish, preferably by electronic means, any procedures, criteria and other conditions that it may use as the basis for determining whether conformity assessment bodies are competent to receive accreditation, approval, licensing or other recognition, including accreditation, approval, licensing or other recognition granted pursuant to a mutual recognition agreement.

17. If a Party:

a. accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory, and refuses to accredit, approve, license or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other party; or

b. declines to use a mutual recognition arrangement,

it shall, on request of the other Party, explain the reasons for its decision.

18. Both Parties shall ensure where it accredits, or entrusts, or directs a non-governmental body to accredit a conformity assessment body located in its territory to conduct conformity assessment procedures in its territory, it recognises that accreditation throughout the Party's territory.

19. The Parties recognise that the choice of conformity assessment procedures in relation to a specific product covered by a technical regulation or standard should include an evaluation of the risks involved, the need to adopt procedures to address those risks, relevant scientific and technical information, incidence of non-compliant products and possible alternative approaches.

20. Further to Article 6.3 of the TBT Agreement, if a Party declines the request of the other party to enter into negotiations to conclude an agreement for mutual recognition of the results of each other's conformity assessment procedures, it shall, on request of that other Party, explain the reasons for its decision.

21. Further to Article 5.2.5 of the TBT Agreement any conformity assessment fees imposed by a Party shall be limited to the approximate cost of services rendered.

22. Upon the request of an applicant for conformity assessment, both parties shall explain how any fee it imposes fur such conformity assessment are limited in amount to the approximate cost of services rendered.

23. Neither Party shall require consular transactions, including related fees and charges, in connection with conformity assessment,[23] nor as a condition of marketing, distribution, or sale of the product in the Party's territory.

24. Neither Party shall apply a new or modified conformity assessment fee until the fee and the method for assessing the fee is published. Both parties shall provide an opportunity for interested persons to comment on its proposed introduction or modification of a conformity assessment fee.

25. Neither Party shall require that a product be accompanied by a certificate of free sale as a condition of marketing, distribution, or sale of the product in the Party's territory.

Article x.8
Market Surveillance

1. Market surveillance is a public authority function separate from and carried out after conformity assessment procedures, and means activities conducted and measures taken by public authorities on the basis of procedures of a Party to enable that Party

23 For greater certainty, this paragraph shall not apply to a Party verifying conformity assessment documents during a marketing authorisation or reauthorisation process.

to monitor or address compliance of products with the requirements set out in its laws and regulations.

2. Each Party shall, inter alia:

   a. exchange information with the other Party on market surveillance and enforcement activities, for example on the authorities responsible for market surveillance and enforcement, or on measures taken against dangerous products;

   b. nsure the independence of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest; and

   c. Ensure that there are no conflicts of interest between market surveillance authorities and the persons concerned, subject to control or supervision, including the manufacturer, the importer and the distributor.

Article x.9
Marking and Labelling Regulation

1. The Parties note that a technical regulation can include a marking or labelling regulation, and that such regulations may not be prepared, adopted or applied with the effect of restricting trade or competition in accordance with Article 2.2 of the TBT Agreement

2. If a Party requires marking or labelling of a product in the form of a technical regulation:

   a. Then any information required for such purposes shall be limited to what is relevant for consumers or users of the product to indicate the product's compliance with regulatory requirements;

   b. Neither Party may require prior approval, registration or certification of markings or the labels of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless necessary to fulfil its legitimate objective;

   c. If a Party requires the use of a unique identification number for marking or labelling of products, it shall issue such number to all persons concerned without delay and in a nondiscriminatory fashion;

   d. A Party shall permit the following in relation to any labelling or marking requirement Information in other languages in addition to the language of the country of destination; Internationally accepted nomenclature, symbols, pictograms or graphics; and

   e. Information in addition to that required in the country of destination of the goods Parties shall accept that labelling and corrections to labelling may take place in customs warehouses at the point of import as an alternative to labelling in the exporting Party unless such labelling is required to be carried out by approved persons for reasons of public health and safety; and

   f. The Party shall, unless it considers that legitimate objectives under the TBT Agreement are compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

Article x.10
Transparency

1. Both parties shall allow persons of the other Party to participate in the development of technical regulations, standards and conformity assessment procedures by its central government bodies[24] or covered bodies. Both parties shall permit persons of the other Party to participate in the development of these measures on terms no less favourable than those that it accords to its own persons.[25]

2. Both parties are encouraged to consider methods to provide additional transparency in the development of technical regulations, standards and conformity assessment procedures, including through the use of electronic tools and public outreach or consultations.

3. If appropriate, both parties shall encourage non-governmental bodies in its territory to observe the obligations in developing standards and voluntary conformity assessment procedures.

4. Both parties shall publish all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies.

5. For purposes of implementing Articles 2.9 and 5.6 of the TBT Agreement and Article x.13 of this Chapter, both parties shall:

24 A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and taking those comments into account in the development of the measure.

25 A Party shall comply with this obligation with respect to technical regulations and conformity assessment procedures by complying with the obligations contained in paragraph 6 of this Article. A Party may satisfy this obligation with respect to standards, by, for example, providing persons of the other Party with an opportunity to submit comments on the standard to the body preparing the standard at a point when that body may still revise the measure, and by ensuring that the body takes those comments into account in revising the measure or deciding not to revise the measure.

a. comply with the obligation in this Article to notify proposed technical regulations and conformity assessment procedures at an early appropriate stage, when amendments can still be introduced and comments taken into account, by ensuring that it notifies the measure when the body responsible for proposing the measure has sufficient time to review any comments received and is able to revise the measure to take into account such comments;

b. include with its notifications an explanation of the objectives of the proposed technical regulation or conformity assessment procedure and how the measure would address those objectives; and

c. include with its notifications a copy of the proposed technical regulation or conformity assessment procedure or an Internet address where the proposed measure may be viewed.

6. A Party may determine the form of proposals for technical regulations and conformity assessment procedures, which may take the form of: policy proposals; discussion documents; summaries of proposed technical regulations and conformity assessment procedures; or the draft text of proposed technical regulations and conformity assessment procedures. Both parties shall ensure that its proposals contain sufficient detail about the likely content of the proposed technical regulations and conformity assessment procedures to adequately inform interested persons and the other Party about whether and how their trade interests might be affected.

7. Where a Party prepares or proposes to adopt a technical regulation or conformity assessment procedure, it shall:

a. publish, in print or electronically, the proposed technical regulation or conformity assessment procedure;

b. allow any person to comment in writing on the proposed technical regulation or conformity assessment procedure;

c. publish and allow for comment on the proposed technical regulation or conformity assessment procedure in accordance with Articles x.10.7(a) and x.10.7(b) when the body proposing the measure has had sufficient time to review any comments received from the other party or any person of a Party and is able to revise the measure to take into account such comments;

d. review and consider comments it receives on the proposed technical regulation or conformity assessment procedure and do so on no less favourable terms with respect to persons of the other Party than it accords its own persons; and

e. publish, in print or electronically, any written comments it receives on the proposed

f. technical regulation or conformity assessment procedure.[26]

8. Both parties shall take such reasonable measures as may be available to it to ensure that all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of regional or local governments, as the case may be, on the level directly below that of the central level of government, are published.

9. No later than the date of publication of a final technical regulation or conformity assessment procedures, both parties shall make publicly available, preferably by electronic means:

a. an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;

b. a description of alternative approaches that the Party considered in developing the final technical regulation or conformity assessment procedure, if any, and the merits of the approach that the Party selected;

c. the Party's evaluation of significant issues raised in comments it received from persons of the other Party, or evaluation of the substantive issues presented in those comments; and

d. an explanation of any significant revisions that the Party made to the proposal for a technical regulation or conformity assessment procedure, including those made in response to comments.

10. Both Parties shall notify proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations, if any, and that may have a significant effect on trade, according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

11. Notwithstanding the provisions of this Article, if urgent problems of safety, health, environmental protection or national security arise or threaten to arise for

26 Nothing in this Agreement requires a Party to disclose confidential business information.

a Party, that Party may notify a new technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides or recommendations, if any, upon the adoption of that regulation or procedure, according to the procedures established under Article 2.10 or 5.7 of the TBT Agreement.

12. Both parties shall endeavour to notify proposals for new technical regulations and conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central level of government that are in accordance with the technical content of relevant international standards, guides and recommendations, if any, and that may have a significant effect on trade according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

13. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and should be notified in accordance with Article 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement or this Chapter, a Party shall consider, among other things, the relevant Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev. 12), as may be revised.

14. A Party that publishes a notice and that files a notification in accordance with Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter shall:

a. include in the notification an explanation of the objectives of the proposal and how it would address those objectives; and

b. transmit the notification and the proposal electronically to the other Party through their enquiry points established in accordance with Article 10 of the TBT Agreement, at the same time as it notifies WTO Members.

15. Both parties shall normally allow 60 days from the date it transmits a proposal for the other party or an interested person of the other party to provide comments in writing on the proposal. A Party shall consider any reasonable request from the other party or an interested person of the other party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, is encouraged to do so.

16. Both parties are encouraged to provide sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure, for its consideration of, and preparation of responses to, the comments received.

17. Both parties shall endeavour to notify the final text of a technical regulation or conformity assessment procedure at the time the text is adopted or published, as an addendum to the original notification of the proposed measure filed under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter.

18. No later than the date of publication of a final technical regulation or conformity assessment procedure that may have a significant effect on trade, both parties shall, preferably electronically:

a. make publicly available an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;

b. provide as soon as possible, but no later than 60 days after receiving a request from the other Party, a description of alternative approaches, if any, that the Party considered in developing the final technical regulation or conformity assessment procedure and the merits of the approach that the Party selected;

c. make publicly available the Party's responses to significant or substantive issues presented in comments received on the proposal for the technical regulation or conformity assessment procedure; and

d. provide as soon as possible, but no later than 60 days after receiving a request from the other Party, a description of significant revisions, if any, that the Party made to the proposal for the technical regulation or conformity assessment procedure, including those made in response to comments.

19. Further to paragraph J of Annex 3 of the TBT Agreement, both parties shall ensure that its central government standardising body's work programme, containing the standards it is currently preparing and the standards it has adopted, is available through the central government standardising body's website.

Article x.11

Compliance Period for Technical Regulations and Conformity Assessment Procedures

1. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement the term "**reasonable interval**" means normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or by the requirements concerning the conformity assessment procedure.[27]

27 For greater certainty, neither Party shall be required to provide a description of alternative approaches or significant revisions under subparagraph (b) or (d) prior to the date of publication of the final technical regulation or conformity assessment procedure.

1. If feasible and appropriate, both parties shall endeavour to provide an interval of more than six months between the publication of final technical regulations and conformity assessment procedures and their entry into force.

2. In addition to Paragraphs and 2, in setting a "reasonable interval" for a specific technical regulation or conformity assessment procedure, both parties shall ensure that it provides suppliers with a reasonable period of time, under the circumstances, to be able to demonstrate the conformity of their goods with the relevant requirements of the technical regulation or standard by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, both parties shall endeavour to take into account the resources available to suppliers.

Article x.12

Cooperation and Trade Facilitation

1. Further to Articles 5, 6 and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results. In this regard, a Party may:

   a. implement mutual recognition of the results of conformity assessment procedures performed by bodies located in its territory and the other Party's territory with respect to specific technical regulations;

   b. recognise existing regional and international mutual recognition arrangements between or among accreditation bodies or conformity assessment bodies;

   c. use accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;

   d. designate conformity assessment bodies or recognise the other Party's designation of conformity assessment bodies;

   e. unilaterally recognise the results of conformity assessment procedures performed in the other Party's territory; and

   f. accept a supplier's declaration of conformity.

2. The Parties recognise that a broad range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region, including:

   a. regulatory dialogue and cooperation to, among other things:

      i. exchange information on regulatory approaches and practices;

      ii. promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards and conformity assessment procedures;

      iii. provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology; or

      iv. provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this Chapter;

   b. greater alignment of national standards with relevant international standards, except where inappropriate or ineffective;

   c. facilitation of the greater use of relevant international standards, guides and recommendations as the basis for technical regulations and conformity assessment procedures; and

   d. promotion of the acceptance of technical regulations of another Party as equivalent.

3. The Parties shall cooperate in the field of standards, technical regulations, and conformity assessment procedures to reduce and eliminate unnecessary technical barriers to trade, including costs associated with unnecessary regulatory differences, while achieving the levels of health, safety and environmental protection that each side deems appropriate and otherwise meeting legitimate regulatory objectives. To this end, the Parties shall seek to identify, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that address particular cross-cutting or sector-specific issues. These initiatives may include cooperation on regulatory issues, such as promoting the adoption of good regulatory practices, establishing procedures to recognise as equivalent standards used as a basis for or in support of compliance with regulations, and instituting mechanisms to facilitate the acceptance of conformity assessment results.

4 With respect to the mechanisms listed in Articles x.12.1 and x.12.2, the Parties recognise that the choice of the appropriate mechanism in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.

5. The Parties shall strengthen their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region.

6. A Party shall, on request of the other Party, give due consideration to any sector-specific proposal for cooperation under this Chapter.

7. Further to Article 2.7 of the TBT Agreement, a Party shall, on request of the other Party, explain the reasons why it has not accepted a technical regulation of that Party as equivalent.

8. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment, accreditation and metrology, whether they be public or private to address matters arising under this Chapter.

9. The Parties shall strengthen opportunities for public input into their cooperation activities, including by making information regarding cooperation activities publicly available and by soliciting public comments and taking such comments into account with respect to cooperation activities.

Article x.13

Technical Discussions and Resolution of Trade Concerns

1. A Party may request the other party to provide information on any matter arising under this Chapter. A Party receiving a request under this Article shall provide that information within a reasonable period of time, and if possible, by electronic means.

2. Both parties may request technical discussions to discuss any standard, technical regulation or conformity assessment procedure of the other Party that it considers might adversely affect trade or have an anti-competitive effect. The request shall be made in writing and identify:

   a. the measure at issue;

   b. the provisions of the Chapter or the TBT Agreement to which the concerns relate; and

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

   d. any evidence of potential trade impact or anti-competitive effect.

3. For greater certainty, with respect to technical regulations or conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central government that may have a significant effect on trade, a Party may request technical discussions with the other party regarding those matters.

4. The Party to which the request is made shall promptly reply to the request in writing The Parties shall discuss the matter raised in the request, in person or via video or teleconference, within 60 days of the date of the request and shall endeavour to resolve the matter as expeditiously as possible. The Parties may convene the TBT Sub-Committee as appropriate for this purpose. If a requesting Party considers that the matter is urgent, it may request that any discussions take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

5. The Parties shall endeavour to resolve the matter as expeditiously as possible, recognising that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.

6. Unless the Parties that participate in the technical discussions otherwise agree, the discussions and any non-publicly available information exchanged in the course of the discussions shall be confidential and, for greater certainty, without prejudice to the rights and obligations of the participating Parties under this Agreement, the WTO Agreement or any other agreement to which both Parties are party.

Article x.14

Sub-Committee on Technical Barriers to Trade

1. The Parties hereby establish a Sub-Committee on Technical Barriers to Trade ("TBT SubCommittee"), comprising representatives of both Parties which will report to the overall Joint Committee.

2. Through the TBT Sub-Committee, the Parties shall strengthen their joint work in the fields of technical regulations, standards and conformity assessment procedures with a view to facilitating trade between the Parties.

3. The TBT Sub-Committee's functions shall include:

   a. seeking to resolve concerns regarding any matter arising under this Chapter;

   b. monitoring the implementation and operation of this Chapter, including any other commitments agreed under this Chapter, and identifying any potential amendments to or interpretations of those commitments;

c. monitoring and identifying ways to strengthen implementation of this Chapter;

d. identifying any potential amendments to, or issues of interpretation regarding, the Chapter for referral to the Joint Committee;

e. any technical discussions on matters that arise under this Chapter;

f. deciding on priority areas of mutual interest for future work under this Chapter and considering proposals for new sector-specific initiatives or other initiatives;

g. encouraging cooperation between the Parties in matters that pertains to this Chapter, including the development, review or modification of technical regulations, standards and conformity assessment procedures;

h. enhancing cooperation between the Parties regarding standards, technical regulations, and conformity assessment procedures, including by:

   i. facilitating improved understanding between the Parties related to the implementation of the WTO TBT Agreement and promoting cooperation between the Parties on TBT issues under discussion in multilateral fora, including the WTO TBT Committee and bodies that develop standards in accordance with the WTO TBT Committee Decision principles for the development of international standards, as appropriate;

   ii. identifying, developing, and promoting trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures addressing particular cross- cutting or sector-specific issues such as those specified in Article 7 as well as identifying opportunities for greater bilateral engagement which may include technical exchanges;

i. discussing at an early stage changes to, or proposed changes to, standards, technical regulations or conformity assessment procedures of either Party;

j. encouraging cooperation between non-governmental bodies in the Parties' territories, as well as cooperation between governmental and non-governmental bodies in the Parties' territories in matters that pertaining to this Chapter;

k. exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;

l. facilitating the identification of technical capacity needs;

m. encouraging the exchange of information between the Parties and their relevant nongovernmental bodies, if appropriate, to develop common approaches regarding matters under discussion in non- governmental, regional, plurilateral and multilateral bodies or systems that develop standards, guides, recommendations, policies or other procedures relevant to this Chapter;

n. providing a regular forum for exchanging information relating to both parties' standards, technical regulations and conformity assessment procedures and related policies;

o. providing opportunities for the public to participate in the work of the Committee, such as soliciting and taking into account comments on matters related to the implementation of this Chapter;

p. taking any other steps the Parties consider will assist them in implementing this Chapter (and the TBT Agreement);

q. reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and

r. reporting to the Joint Committee on the implementation and operation of this Chapter as appropriate.

4. The TBT Sub-Committee may establish working groups to carry out its functions.

5. To determine what activities the TBT Sub-Committee will undertake, the TBT Sub-Committee shall consider work that is being undertaken in other fora, with a view to ensuring that any activities undertaken by the TBT Sub-Committee do not unnecessarily duplicate that work.

6. The TBT Sub-Committee shall meet within one year of the date of entry into force of this Agreement and thereafter at least once a year unless the Parties otherwise decide.

7. The TBT Sub-Committee may, as it considers appropriate, establish and determine the scope and mandate of working groups, including ad hoc working groups, comprising representatives of both parties. Subject to decision of the TBT Sub-Committee and as the Parties may decide, each working group, including an ad hoc working group, may:

   a. as it considers necessary and appropriate, include or consult with non-governmental experts and stakeholders; and

   b. determine its work program, taking into account relevant international activities.

8. Both parties shall designate a Chapter Coordinator, and shall provide the other Party with the name of its designated Chapter Coordinator, along with the contact details of the relevant officials in that organisation, including telephone, email, and other relevant details.

9. A Party shall notify the other Party promptly of any change of its Chapter Coordinator or any amendments to the details of the relevant officials.

10. The responsibilities of each Chapter Coordinator shall include:

    a. communicating with the other Party's Chapter Coordinator including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

    b. communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;

    c. consulting and, where appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter; and

    d. additional responsibilities as the TBT Sub-Committee may specify.

Article x.15

Contact Points

1. Both parties shall designate and notify a contact point for matters arising under this Chapter.

2. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials.

3. The responsibilities of each contact point shall include:

    a. communicating with the other Party's contact point, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

    b. communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;

    c. consulting and if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter; and

    d. carrying out any additional responsibilities specified by the Committee.

ANNEX 5

Good Regulatory Practices/Regulatory Coherence

Article x.1

Definitions

For the purposes of this Chapter:

1. "**Competition Agency**" means:

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

    b. in the case of the European Union, the European Commission Directorate-General for Competition;

2. "**Covered Action**" means any of the following actions to the extent they are material:

    a. legally binding substantive rules including subordinate regulations;

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

    c. adjudications that have a binding effect on one or more parties;

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

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

3. "**International Instruments**" means any document adopted by international bodies or fora in which both Parties' Regulatory Agencies participate, including as observers, and which provide requirements or related procedures, recommendations or guidelines on the supply or use of a service, such as, for example authorisation, licensing, qualification or on characteristics or related production methods, presentation or use of a product;

4. "**Joint Committee**" means the committee formed by the Parties pursuant to Article 3;

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

6. "**Regulation**" means:

   a. in the case of the European Union:

      i. Directives;

      ii. Regulations; and

      iii. any delegated directives, regulations, regulatory technical standards, implementing technical standards, orders or guidance promulgated under either of the foregoing;

   b. in the case of the United Kingdom:

      i. Acts of Parliament;

      ii. Statutory instruments; and

      iii. any rules, regulations, codes, orders, requirements or guidance promulgated under either of the foregoing, including any rules, guidance, examples, practice documents and handbooks of regulators including the Financial Conduct Authority, Prudential

   Regulation Authority, Competition and Markets Authority and Bank of England;

4. "**Regulatory Agency**" means a governmental department or commission of a Party that engages in any Covered Action.

Article x.2
General Provisions

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

2. The Parties affirm the importance of:

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

   b. promoting an effective, pro-competitive regulatory environment which is transparent for citizens and economic operators;

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

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

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

   f. the role that law and regulation plays in achieving public policy objectives;

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

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

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

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

Article x.3

Establishment of the Sub Committee on Regulatory Coherence

1. The Parties have agreed to establish a sub committee for the purposes of assisting and monitoring the regulatory coherence relationship established under this Chapter (the 'RegCo Sub-Committee").

2. The RegCo Sub-Committee's roles shall consist of:

   a. Evaluating the Parties' compliance with the provisions of this Chapter;

   b. Producing an annual report on regulatory promulgation processes in both Parties; (c) Acting as an Information Exchange on new regulations prior to their promulgation.

3. The RegCo Sub-Committee shall consist of [3] members appointed by the United Kingdom and [3] members appointed by the European Union.

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

5. The RegCo Sub-Committee shall conduct itself by majority vote, and in the event of a tied vote, the chairperson shall cast the final binding vote.

6. The RegCo Sub-Committee shall adopt its internal procedures initially by mutual consent of the permanent members, and subsequently in accordance with Article 3.5.

7. The RegCo Sub-Committee's chairperson, permanent members and any other ancillary staff shall be chosen on the basis of appropriate technical or regulatory expertise, practice or other relevant experience.

8. The RegCo Sub-Committee shall meet [at least every [•]] / [in accordance with its established procedures, as necessary] to carry out its duties.

9. The RegCo Sub-Committee shall be able to request specialist technical, legal or other advice and employ ancillary additional staff if it considers necessary.

Article x.4

Scope of Covered Action

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

Article x.5

Coordination and review processes

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

2. The Parties recognise that while the processes or mechanisms referred to in Article 14.5 may vary between the Parties depending on their respective circumstances (including differences in levels of development and political and institutional structures), they should generally have as overarching characteristics the ability to:

   a. review proposed Covered Actions to determine the extent to which the development of such measures adheres to good regulatory practices, which may include, but are not limited to, those set out in Article x.17 (Implementation of Core Good Regulatory Practices), and make recommendations based on that review;

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

   c. make recommendations for systemic regulatory improvements; and

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

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

Article x.6

Legitimate regulatory objectives

1. The Parties will promulgate regulation which is the least trade restrictive, and anticompetitive consistent with a legitimate, publicly stated regulatory goal.

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

3. Legitimate regulatory goals cannot be so detailed, prescriptive or specific as to require a specific regulatory solution, and cannot be to ban products, or prescribe a particular technological process without an adequate explanation as to why it is necessary for the ban to have such broad coverage.

Article x.7

Trade effects

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

Article x.8

Competitive effects

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

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

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

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

   a. The analysis must take into account the issues addressed in Paragraph 1.

   b. Such analysis must include:

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

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

Article x.9

Statement of cost-benefit methodology

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

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

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

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

Article x.10

Access to government documents

1. Each Party shall make publicly available the following:

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

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

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

Article x.11

Description of regulatory processes

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

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

   b. the procedures for ensuring that regulatory agencies have considered public input;

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

   d. the processes or mechanisms referred to in Article x.15.

Article x.12

Regulatory collection

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

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

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

Article x.13

Decision-making based on evidence

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

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

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

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

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

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

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

3. Each Party shall prepare, on an annual basis, a public report setting forth:

   a. an estimate, to the extent feasible, regarding the total annual costs and benefits of major final Regulations issued in that period by its respective regulatory agencies;

   b. any proposals for systemic regulatory improvements; and

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

Article x.14

Petitions

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

Article x.15

Retrospective review of regulation and management of differences

1. Each Party shall maintain procedures or mechanisms to promote periodic reviews of Regulations that are in effect in order to determine whether they are in need of revision or repeal, including on a Regulatory Agency's own initiative or in response to a petition filed pursuant to Article x.14.

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

3. Each Party shall include in procedures or mechanisms adopted pursuant to Article x.15.1 provisions addressing Regulations that it considers to have a significant impact on a substantial number of small entities.

4. Acknowledging that on the effective date of this Agreement, both Parties' regulatory systems are identical and the Parties agree to recognise each other's laws and regulations in respect of goods and will accept certification of conformity to applicable laws and regulations by duly authorised conformity assessment bodies of the other Party to the fullest extent allowable by law.

5. Each Party agrees that it will not withdraw this recognition provided that the other Party has adhered to the provisions of this Chapter, and the respective laws and regulations of each Party in the relevant field achieve the respective policy objectives.

6. The Parties agree that it is the intention of the Parties to include detailed agreements in the following sectors [sectoral annexes].

7. Any disputes concerning this will be submitted to the RegCo Sub-Committee for resolution in the manner described in this Chapter, and in the event that these mechanisms do not succeed to subject the dispute to the dispute resolution mechanism of this Agreement.

Article x.16

Reducing information collection burdens associated with regulation

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

Article x.17

Implementation of core good regulatory practices

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

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

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

4. Regulatory impact assessments conducted by a Party should, among other things:

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

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

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

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

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

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

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

7. A Regulatory Agency of either Party, when considering a Covered Action, shall propose such Covered Action to the public and will provide for a public notice-and-comment period. This notice and comment period shall be of reasonable duration, having regard to the nature, scope and complexity of the Covered Action. The Notice shall include a statement of cost benefit analysis as expressed in Article x.9. This publication requirement shall apply to all statements of policy and all interpretations issued by a Regulatory Agency in its official capacity that are not solely internal and related to the internal management structure of the Regulatory Agency.

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

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

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

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

Article x.18

Cooperation

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

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

   b. information exchanges, dialogues or meetings with interested persons, including with SMEs, of the other Party;

   c. strengthening cooperation and other relevant activities between regulatory agencies; and

   d. other activities that the Parties may agree.

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

Article x.19

Notification of implementation

1. For the purposes of transparency, and to serve as a basis for cooperation and capacity building activities under this Chapter, each Party shall submit a notification of implementation to the Sub-Committee through the designated contact points within six months of the date of entry into force of this Agreement and at least once every year thereafter.

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

   a. establish processes or mechanisms to facilitate effective inter-agency coordination and review of proposed Covered Actions;

   b. encourage relevant regulatory agencies to conduct regulatory impact assessments;

   c. review its Covered Actions; and

   d. provide information to the public in its annual notice of prospective Covered Actions.

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

4. In its consideration of issues associated with the implementation and operation of this Chapter, the Sub-Committee may review notifications made by a Party pursuant to Article x.19. During that review, Parties may ask questions or discuss specific aspects of that Party's notification. The Sub-Committee may use its review and discussion of a notification as a basis for identifying opportunities for assistance and cooperative activities to provide assistance in accordance with this Chapter.

Article x.20

Relation to other chapters

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

Article x.21

Non-application of dispute settlement

No Party shall have recourse to dispute settlement under Chapter [ ] (Dispute Settlement) for any matter arising under this Chapter until the specific dispute settlement provisions of this Chapter have been exhausted under Article x.22.

Article x.22

Dispute settlement mechanisms

1. If one Party withdraws recognition from the other, and the other Party considers there to have been a violation of the agreement, it shall bring a complaint to the Sub-Committee.

2. If a Party considers that a valid petition has been made under this Chapter and believes that this petition has not been validly dealt with by the other Party, the other Party shall bring a Complaint to the Sub-Committee.

3. The RegCo Sub-Committee shall conduct a consultation mechanism for 30 days, and if the Parties have not resolved the issue the complaining Party can suspend concessions made under this Agreement [and/or impose fines].

4. If the Parties cannot resolve the dispute under this Article, they may refer the matter to the dispute settlement mechanism of Chapter [ ] (Dispute Settlement).

Article x.23

Contact points

1. The contact points for each Party in relation to submissions to the Committee under this Chapter shall be as follows:

   a. For the United Kingdom: [•]; and

   b. For Morocco: [•].

ANNEX 6

Market Distortions

Article x.1

Definitions

For the purposes of this Chapter:

1. "**Arrangement**" means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organisation for Economic Cooperation and Development (OECD), or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original Members to the Arrangement that were members as of January 1, 1979;

2. "**commercial activities**" means activities the end result of which is the production of a good or supply of a service which will be sold to a consumer, including a state enterprise, state-owned enterprise, or designated monopoly, in the relevant market in quantities and at prices determined by the enterprise and that are undertaken with an expectation of gain or profit;[28]

3. "**commercial considerations**" means factors such as price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that influence the commercial decisions of an enterprise in the relevant business or industry;

4. "**designate**" means, whether formally or in effect, to establish, name, or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

5. "**designated monopoly**" means a monopoly that a Party designates or has designated;

6. "**government monopoly**" means a monopoly that is owned or controlled by a Party or by another government monopoly;

7. "**injury**" means material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of a domestic industry;

28 For greater certainty, this excludes activities undertaken by an enterprise which operates on a: • not-for-profit basis; or cost recovery basis.

8. "**market**" means the geographical and commercial market for a good or service;

9. "**monopoly**" means an entity or a group of entities that, in any relevant market in the territory of a Party, is the exclusive provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

10. "**national competition laws**" shall mean the laws concerning the regulation of cartels and anti-competitive agreements or abuse of dominance / monopolisation;

11. "**non-commercial assistance**"[29] means the provision of:

    a. grant or debt forgiveness;

    b. a loan, equity infusion or capital, loan guarantee, or other type of financing or loan satisfaction on terms more favourable than those commercially available to that enterprise; or

    c. a subsidy within the meaning of Article 1 of the WTO Agreement on Subsidies and Countervailing Measures; or

    d. a good or service, other than general infrastructure, on terms more favourable than those commercially available to that enterprise;

12. "**state enterprise**" means an enterprise that is owned, or controlled through ownership interests, by a Party; and

13. "**state-owned enterprise**" means an enterprise that is engaged in economic activities; and:

    a. is owned, or controlled, by a Party's government; or

    b. in which a Party's government appoints or has the power to appoint the majority of members of the board of directors or any equivalent management

    c. is controlled by a Party's government through a control person or control persons.

29 For greater certainty, non-commercial assistance does not include intra-group transactions within a corporate group including state-owned enterprises, e.g. between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal accounting standards or business practices would require that the corporate entity prepare consolidated net financial statements of these intra-group transactions.

Article x.2

Competition Law and Anti-Competitive Practices

1. Each Party shall adopt or maintain national competition laws with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to that conduct. These laws should take into account the OECD Competition Assessment Toolkit (2007) (as revised from time to time), OECD Regulatory Toolkit and the APEC Principles to Enhance Competition and Regulatory Reform, done at Auckland, September 13, 1999.

2. Each Party shall endeavour to apply its national competition laws to all commercial activities in its territory[30], including the activities of state-owned enterprises both in their commercial sales and their procurement activities. However, each Party may provide for certain exemptions from the application of its national competition laws provided that those exemptions are transparent and are based on public policy grounds or public interest grounds.

3. Each party shall maintain an authority or authorities responsible for the enforcement of its national competition laws (national competition authorities). Each Party shall provide that it is the enforcement policy of that authority or authorities to act in accordance with the objectives set out in Article 15.2.1 and not to discriminate on the basis of nationality.

4. In modifying, enforcing, applying, amending, reviewing or issuing new national competition law, regulations or procedures, Parties shall conduct themselves consistently with the provisions of Chapter 14 (Regulatory Coherence).

Article x.3

Procedural Fairness in Competition Law Enforcement

1. Both parties shall ensure that before it imposes a sanction or remedy against any person for violating its national competition laws, it shall afford such person:

   a. information about the national competition authority's competition concerns;

   b. a reasonable opportunity to be represented by counsel; and

   c. a reasonable opportunity to be heard and present evidence in its defence, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy

30 For greater certainty, nothing in Article 15.2.2 shall be construed to preclude a Party from applying its competition laws to commercial activities outside its borders that have anticompetitive effects within its jurisdiction.

2. In particular, each Party shall afford that person a reasonable opportunity to offer evidence or testimony in its defence, including if applicable, to offer the analysis of a properly qualified expert, to cross-examine any witness (if testifying before a court); and to review and rebut the evidence introduced in the enforcement proceeding[31], subject to the confidentiality provisions of this Chapter. Parties' competition authorities shall normally afford persons under investigation for possible violation of its competition laws reasonable opportunities to consult with such competition authorities with respect to significant legal, factual or procedural issues that arise during the course of investigation.

3. Parties shall adopt or maintain written procedures pursuant to which its national competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavour to conduct their investigations within a reasonable time frame.

4. Each Party shall publish or otherwise make publicly available written rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its national competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence where applicable.

5. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its national competition laws with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that Party's laws.

6. Each Party shall authorise its national competition authorities to resolve alleged violations voluntarily by consent of the authority and the person subject to the enforcement action. A Party may provide for such voluntary resolution to be subject to judicial (or independent tribunal) approval or a public comment period before becoming final.

7. If a Party's national competition authority issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall avoid implying in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the Party's national competition laws.

31 For the purposes of this Article, enforcement proceedings means judicial or administrative proceedings following an investigation into alleged violation of the competition laws.

8. If a national competition authority of a Party alleges a violation of its national competition laws, that authority shall be responsible for establishing the legal and factual basis for the alleged violation in an enforcement proceeding.[32]

9. Each Party shall provide for the protection of confidential information and business secrets, and other information treated as confidential under its law, obtained by its national competition authorities during the investigative process. If a Party's national competition authority uses or intends to use that information in an enforcement proceeding, the Party shall, if it is permissible under its law and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate defence to the national competition authority's allegations.

10. Both parties shall ensure that its national competition authorities afford a person under investigation for possible violation of the national competition laws of that Party reasonable opportunity to consult with those competition authorities with respect to significant legal, factual or procedural issues that arise during the investigation.

Article x.4

Private Rights of Action

1. For the purposes of this Article, "**private right of action**" means the right of a legal or natural person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of national competition laws, either independently or following a finding of violation by a national competition authority.

2. Recognising that a private right of action is an important supplement to the public enforcement of national competition laws, each Party should adopt or maintain laws or other measures that provide an independent private right of action.

3. If a Party does not adopt or maintain laws or other measures that provide an independent private right of action, the Party shall adopt or maintain laws or other measures that provide a right that allows a person:

   a. to request that the national competition authority initiate an investigation into an alleged violation of national competition laws; and

   b. to seek redress from a court or other independent tribunal following a finding of violation by the national competition authority.

32 Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defence of the allegation.

4. Both Parties shall ensure that a right provided pursuant to Articles x.5.2 or x.5.3 is available to persons of the other party on terms that are no less favourable than those available to its own persons.

5. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

Article x.5

Cooperation

1. The Parties recognise the importance of cooperation and coordination between their respective national competition authorities to foster effective competition law enforcement in the free trade area. Accordingly, both parties shall:

   a. cooperate in the area of competition policy by exchanging information on the development of competition policy; and

   b. cooperate, as appropriate, on issues of competition law enforcement, including through notification, consultation and the exchange of information including confidential information and business secrets.

2. A Party's national competition authorities may consider entering into a cooperation arrangement or agreement with the competition authorities of the other party that sets out mutually agreed terms of cooperation.

3. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

4. The Parties commit to maintaining a high level of international cooperation and coordination. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organisations in this area.

Article x.6

Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:

a. a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the interests of misled consumers;

b. a practice of failing to deliver products or provide services to consumers after the consumers are charged; or

c. a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

Both parties shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities.[33]

3. The Parties recognise that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties is desirable to effectively address these activities.

4. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

5. The Parties shall endeavour to cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party and compatible with their respective laws, regulations and important interests and within their reasonably available resources.

Article x.7

Transparency of Policies and Practices

1. The Parties recognise the value of making their competition enforcement policies as transparent as possible.

2. On request of the other party, a Party shall make available to the requesting Party public information concerning:

a. its competition law enforcement policies and practices; and

b. exemptions and immunities to its national competition laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.

3. Each Party shall ensure that a final decision finding a violation of its national competition laws is made in writing and sets out, in non-criminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based. Both parties shall further ensure that any such decisions and any orders implementing them are published, or where publication is not practicable, otherwise made available to the public in such a manner as to enable interested persons to become acquainted with them. The version of the decisions or orders that the Party makes available to the public shall omit confidential business information, as well as information that is treated as confidential under its laws.

Article x.8

Consultations

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of another Party, a Party shall enter into consultations with the requesting Party within a reasonable period of time regarding any matter arising under this Chapter. In its request, the requesting Party shall specify the matter on which it seeks to consult and indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

Article x.9

State-owned Enterprises, State Enterprises and Designated Monopolies

1. This Chapter applies with respect to the activities of state-owned enterprises, state enterprises and designated monopolies that affect trade or investment between the Parties.

2. Notwithstanding Paragraph 1, this Chapter does not apply to:

a. a central bank or monetary authority of a Party;

b. a financial regulatory body or a resolution authority of a Party;

c. a financial institution or other entity owned or controlled by a Party that is established or operated temporarily solely for resolution purposes;

d. government procurement;

e. regulatory or supervisory activities of any non-governmental entity, including any securities or futures exchange or market, clearing agency, or other organisation

33 For greater certainty, the laws or regulations a Party adopts or maintains to proscribe these activities can be civil or criminal in nature.

or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, pursuant to direction or delegated authority of the Party;

f. where the Party is exercising public power in their capacity as a public authority;

g. where the Party is exercising powers of social solidarity, characteristics of schemes pursuing social solidarity include: a compulsory scheme, which pursues an exclusively social purpose, is non-profit making, where the benefits can be independent of the contribution made.

3. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from:

a. establishing or maintaining a state enterprise or state-owned enterprise, or

b. designating a monopoly.

4. Both parties shall ensure that when its state-owned enterprises, state enterprises, and designated monopolies exercise any regulatory, administrative, or other governmental authority[34] which the Party has directed or delegated to such an entity to carry out, such entity shall act in a manner that is not inconsistent with that Party's obligations under this Agreement.

5. Both parties shall ensure that its state-owned enterprises and designated monopolies, when engaging in economic activities:

a. act in accordance with commercial considerations in their purchases or sales of goods or services, except, in the case of a designated monopoly, to fulfil any terms of its designation that are not inconsistent with Article 15.9.5(b) and Article 15.9.7; and

b. accord to enterprises that are covered investments, goods of the other Party, and services suppliers of the other Party, treatment no less favourable than they accord to, respectively, like enterprises that are investments of the Party's investors, like goods of the Party, and like service suppliers of the Party, with respect to their purchases or sales of goods or services.

6. Article x.9.5 does not preclude a state-owned enterprise or designated monopoly from:

a. purchasing or supplying goods or services on different terms or conditions, including those relating to price; or

b. refusing to purchase or supply goods or services, provided that such different terms or conditions or refusal are undertaken in accordance with commercial considerations and Article x.9.5(b).

7. Both parties shall ensure that any designated monopoly that it establishes or maintains does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other entities that the Party or the designated monopoly owns or controls, anticompetitive practices in a non-monopolised market in its territory that adversely affect covered investments or trade between the Parties.

Article x.10
Commercial Considerations

Except to fulfil the purpose[35] for which special or exclusive rights or privileges have been granted, or in the case of a state enterprise to fulfil its public mandate, and provided that the enterprise's conduct in fulfilling that purpose or mandate is consistent with the provisions in the Chapter on Competition, both parties shall ensure that any enterprise referred to in Articles x.9.2 (d), (e) and (f) acts in accordance with commercial considerations in the relevant territory in its purchases and sales of goods, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, as well as in its purchases or supply of services, including when these goods or services are supplied to or by an investment of an investor of the other Party.

Article x.11
Courts and Administrative Bodies

1. Both parties shall provide its courts with jurisdiction over civil claims against a foreign state- owned enterprise based on a commercial activity carried on its territory, except where a Party does not provide jurisdiction over similar claims against enterprises that are not state-owned enterprises.

2. Both parties shall ensure that any body that it establishes or maintains, and that regulates a state- owned enterprise or designated monopoly, acts impartially with respect to all enterprises that it regulates, including enterprises that are not state-owned enterprises.

34 Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

35 Such as a Public Service Obligation. The Public Service Obligation shall be constructed in such a way as to be the most pro-competitive and least trade restrictive consistent with regulatory goals. Violation of the principals shall be grounds for violation of this agreement.

Article x.12

Adverse Effects

1. Neither party shall cause adverse effects to the interests of the other Party through the use of non-commercial assistance to enterprises active in markets open to trade.

2. Both parties shall ensure that no state enterprise or state-owned enterprise that it establishes or maintains causes adverse effects to the interests of the other Party through the use of non- commercial assistance that the state enterprise or state-owned enterprise provides to any of its state- owned enterprises, where the Party explicitly limits access to the non-commercial assistance provided by the state enterprise or state-owned enterprise to its state-owned enterprises, or where the state enterprise or state-owned enterprise provides non-commercial assistance which is predominately used by the Party's state-owned enterprises, provides a disproportionately large amount of the noncommercial assistance to the Party's state-owned enterprises, or otherwise favours the Party's state-owned enterprises in the provision of non-commercial assistance.

3. Adverse effects cannot be established on the basis of any act, omission, or factual situation, to the extent that act, omission, or factual situation took place before the date of entry into force of this Agreement.

4. For the purpose of Articles x.12.1 to x.12.3, adverse effects are effects that arise from the provision of a good or service by a Party's state-owned enterprise which has benefited from non-commercial assistance and:

   a. displace or impede from the Party's market imports of a like product or service[36] that is an originating good of the other Party, or sales of a like product that is a good produced by an enterprise that is a covered investment;

   b. consist of a significant price undercutting by a product of the Party's state-owned enterprise compared with the price in the same market of a like product that is an originating good of the other Party or a like product that is a good produced by an enterprise that is a covered investment, or significant price suppression, price depression, or lost sales in the same market;

   c. displace or impede from the Party's market a like service supplied by a service supplier of the other Party, or a like service supplied by an enterprise that is a covered investment, or

   d. consist of a significant price undercutting by a service supplied by the Party's state- owned enterprise as compared with the price in the same market of a like service supplied by a service supplier of the other Party, or by an enterprise that is a covered investment, or significant price suppression, price depression, or lost sales in the same market.

5. For the purposes of Articles x.12.4(a) and x.12.4(c), the displacing or impeding of a product or service includes any case in which there has been a significant change in relative share of the market to the disadvantage of the like product of the other Party or of a covered investment, or to the disadvantage of a like service supplied by a service supplier of the other Party or by a covered investment.

6. A significant change in relative shares of the market shall include any of the following situations:

   a. there is an increase in the market share of the product or service of the Party's state-owned enterprise in the range of 5-10%;

   b. the market share of the product or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or

   c. the market share of the product or service of the Party's state-owned enterprise declines, but by a significantly lower amount or at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

7. Where the change manifests itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the product or service, which shall be at least one year unless exceptional circumstances apply.

8. For purposes of Articles x.12.4(b) and x.12.4(d) significant price undercutting shall include demonstration through a comparison of prices at the same level of trade and at comparable times within the same market as follows:

   a. the prices of a product of the Party's state-owned enterprise benefiting from non-commercial assistance with the prices of a like product of the other Party or an enterprise that is covered investment; or

   b. the prices of a service of the Party's state-owned enterprise benefiting from non- commercial assistance with the prices of a like service supplied by a service supplier of the other Party or an enterprise that is a covered investment.

9. Due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of the price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

36 For greater certainty, for the purpose of this Chapter, the term "product" does not include financial instruments, including money.

Article x.13

Injury

1. Neither party shall cause injury to a domestic industry of the other Party through the use of non- commercial assistance that it provides, either directly or indirectly, to any enterprises in the territory of the other Party and where:

   a. the enterprise produces and sells a good in the territory of the other Party: and

   b. a like good is produced and sold by a domestic industry of the other Party.

Article x.14

Requirements for Transparency & Corporate Governance

1. The Parties shall ensure that enterprises referred to in Article x.9 (a) and Article x.9 (b) shall observe high standards of transparency and corporate governance in accordance with the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2. A Party which has reason to believe that its interests under this Agreement are being adversely affected by the operations of an enterprise or enterprises referred to in Article x.13(a) and Article x.13(b)of the other Party may request that Party to supply information about the operations of its enterprise related to the carrying out of the provisions of this Agreement.

3. Both parties shall, at the request of the other Party, make available information concerning specific enterprises referred to in Articles x.9.1 (d), (e) and (f)) and which do not qualify as small and medium-sized enterprises as defined in UK or EU law. Requests for such information shall indicate the enterprise, the products/services and markets concerned, and include indicators that the enterprise is engaging in practices that hinder trade or investment between the Parties.

4. The information may include:

   a. the organisational structure of the enterprise, the composition of its board of directors or of an equivalent structure of any other executive organ exercising direct or indirect influence through an affiliated or related entity in such an enterprise; and cross holdings and other links with different enterprises or groups of enterprises referred to in Articles x.9.1 (d), (e) and (f):

   b. the ownership and the voting structure of the enterprise, indicating the percentage of shares and percentage of voting rights that a Party and/or an enterprise referred to in Articles x.9.1 (d), (e) and (f) cumulatively own;

   c. a description of any special shares or special voting or other rights that a Party and/or an enterprise referred to in Articles x.9.1 (d), (e) and (f) hold, where such rights differ from the rights attached to the general common shares of such entity;

   d. the name and title(s) of any government official of a Party serving as an officer or member of the board of directors or of an equivalent structure or of any other executive organ exercising direct or indirect influence through an affiliated or related entity in the enterprise;

   e. details of the government departments or public bodies which monitor the enterprise and any reporting requirements;

   f. the role of the government or any public bodies in the appointment, dismissal or remuneration of managers; and

   g. annual revenue or total assets, or both; and

   h. exemptions, non-conforming measures, immunities and any other measures derogating from the application of a Party's laws or regulations or granting favourable treatment by a Party.

5. The provisions of Articles x.14.2 and x.14.3 shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

6. Both parties shall ensure that any regulatory body responsible for regulating any of the enterprises referred to in Articles x.9.1 (d), (e) and (f) is independent from, and not accountable to, any of the enterprises referred to in Articles x.91 (d), (e) and (f).

7. Both parties shall ensure the enforcement of laws and regulations in a consistent and non- discriminatory manner at all levels of government, be it central or local, and their application to enterprises referred to in Articles x.9.1 (d), (e) and (f). Exemptions must be limited and transparent.

8. The provisions of this Article apply to enterprises operating in all sectors.

Article x.15

Provision of Information

1. Both parties shall provide to the other Party a list of its state-owned enterprises within 180 days of the date of entry into force of this Agreement, and thereafter shall provide an updated list annually.

2. Where a Party designates a monopoly, or expands the scope of an existing designated monopoly, it shall promptly notify the other Party of the designation or expansion of scope and the conditions under which the monopoly shall operate.

3. On the written request of the other Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly:

   a. the percentage of shares that the Party, its state-owned enterprises, state enterprises, or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold in the entity;

   b. a description of any special shares, or special voting or other rights, that the Party, its state-owned enterprises, or designated monopolies hold, to the extent different from the rights attached to the general common shares of such entity;

   c. the government titles, or former government titles, and decision-making ability of any official serving as a board member, officer, director, manager, or other control person of such entity;

   d. the entity's annual revenue and total assets over the most recent three year period for which information is available;

   e. any exemptions and immunities from which the entity benefits under the Party's law; and

   f. any additional information regarding the entity which is publicly available, including annual financial reports and third-party audits, and which is sought in the written request.

4. On the written request of the other party, a Party shall promptly provide the following information concerning assistance received by any of its state-owned enterprises:

   a. any financing or re-financing that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, including the amount of such financing and the terms on which it was provided;

   b. any loan guarantee that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, including fees associated with the guarantee and any other conditions associated with the guarantee;

   c. any forgiveness of debt or other financial liability that the Party, or another of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise;

   d. any goods or services that the Party, or another one of the Party's state-owned enterprises or state enterprises, has provided to the state-owned enterprise, and the conditions associated with such provision; and

   e. any export credit that the Party, or one of the Party's state-owned enterprises, has provided in support of the export of a good or service from one of the Party's stateowned enterprises, including the amount of such export credits, and the terms and conditions on which it was provided.

5. Both parties shall include in any written request under Article 15.15 an explanation of how the activities of the state-owned enterprise may be affecting trade or investment between the Parties.

Article x.16

Anti-Competitive Market Distortion

1. The Parties agree that they will not, through laws, regulations, administrative practices or other Covered Actions, distort their markets in trade restrictive or anti-competitive ways ("Anti-Competitive Market Distortions" or "ACMDs"), unless there is a clearly expressed regulatory goal which has been published in advance consistent with Chapter x of this Agreement (Regulatory Coherence).

2. The Parties agree that they may provide supports to regionally impoverished areas[37] in their territories, and that prior to providing these supports the Parties should consult with each other through the Competition Policy Sub-Committee.

3. The Parties agree that they will develop mechanisms to deal with ACMDs of the other Party, and that these measures may include imposing a duty that is correlated to the scale of the impact of the ACMD on competition in the market, and that the imposition of such a duty, provided that it is consistent with the factors set out below it shall not be deemed to be a violation of this agreement or of the rules of the World Trade Organization:

   a. the complaining party must prove that there is an ACMD[38];

   b. the complaining party must prove that there is an adverse effect, or damage to their interests;

   c. the complaining party must adduce evidence of the scale of the adverse effect; and

   d. the complaining party must produce evidence of damage, and evidence that the ACMD has caused the damage.

37 Definition of Regionally Impoverished Area

38 Any measure can give rise to an ACMD, including laws, regulations, government actions or inactions, statements by regulators, made publicly and privately.

4. The Parties agree that they will use these ACMD mechanisms with respect to ACMDs in other jurisdictions, and will mutually defend any claims brought that such mechanisms violate WTO rules.

Article x.17

The corporate governance framework of each Party shall include provisions aiming at protecting and facilitating the effective exercise of shareholders' rights in publicly listed companies, ensuring timely and accurate disclosure on all material matters, including the financial situation, performance, ownership and governance of those companies.

Article x.18

The Parties will ensure that they maintain corporate governance rules which require all companies to disclose government supports, privileges or other benefits as part of any applicable securities filings.

Article x.19

1. The Parties shall adopt or maintain corporate governance mechanisms which ensure accountability of the management and board towards the shareholders, responsible, objective and independent board decision-making, and equal treatment of shareholders of the same class.

2. The Parties may provide that some corporate governance principles, but not those set out in 15.17, may not be applied to companies outside regulated markets or early phase development of the company.

Article x.20

Sub-Committee on State-Owned Enterprises, Designated Monopolies, State Aids and ACMDs

1. The Parties hereby establish a Sub-Committee on State-Owned Enterprises and Designated Monopolies, State Aids and ACMDs ("SOE Committee"), comprised of officials from both parties.

2. The Sub-Committee meet within one year of the date of entry into force of the Agreement, and at least annually thereafter, unless the Parties decide otherwise.

3. The Sub-Committee shall:

   a. review and consider the operation and implementation of this Chapter;

   b. discuss, at a Party's request, the activities of any state-owned enterprise or designated monopoly of a Party specified in the request with a view to identifying any distortion of trade or investment between the Parties that may result from those activities;

   c. Provide a framework for consultations under this Chapter;

   d. develop cooperative efforts, as appropriate, to promote the principles underlying the obligations contained in this Chapter and to contribute to the development of similar obligations in regional and multilateral institutions in which the Parties participate; and

   e. undertake such other activities as the Sub-Committee may decide.

4. Prior to each Sub-Committee meeting, both parties shall invite, as appropriate, input from the public on matters related to state-owned enterprises or designated monopolies that may affect developing its meeting agenda.

Article x.21

Exceptions

1. Nothing in Article x.11 (Courts and Administrative Bodies), Article x.12 (Adverse Effects), or Article x.13 (Injury), Article x.16 (state aids and ACMDs) shall be construed to:

   a. prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency; or

   b. apply to a state-owned enterprise for which a Party has taken measures on a temporary basis in response to a national or global economic emergency.

2. Article x.11(Courts and Administrative Bodies), Article x.12 (Adverse Effects), Article x.13 (Injury), Article x.7 (Requirements for Transparency & Corporate Governance), Article x.20 (Committee on State-Owned Enterprises and Designated Monopolies), and Article x.22 (Dispute Settlement) shall not apply where the state-owned enterprise is:

   a. established or maintained by a Party solely to provide essential services to the general public in its territory; or

b. subject to government mandates defining its public service function, such as universal service obligations, or requirements to provide services at below market rates or on a cost recovery basis which are not imposed on similarly situated private companies, except where that public services function is being fulfilled in a manner that unnecessarily damages competition or restricts trade.

3. Articles x.11 (Courts and Administrative Bodies), Article x.12 (Adverse Effects) and Article x.13 (Injury) shall not apply to a state-owned enterprise or designated monopoly that provides healthcare services or finances housing, including insurance or guarantees of residential loans or mortgage securities, except where such a state-owned enterprise or designated monopoly shall accord treatment to covered investments no less favourable than the treatment it accords to like enterprises which are investments of the Party's investors, and provided that these activities do not unnecessarily damage competition or restrict trade.

4. With respect to a state-owned enterprise of a Party that provides export credits, Article x.11 (Courts and Administrative Bodies), Article x.12 (Adverse Effects) and Article x.13 (Injury) shall not apply to:

a. the provision of export credits that fall within the scope of the Arrangement and are offered on terms consistent with the Arrangement, regardless of whether the Party is a Participant to the Arrangement; and

b. the provision of short-term insurance, guarantee, or other financing with a repayment term of less than two years, provided that the state-owned enterprise charges premium rates or interest rates that are adequate to cover the long-term operating costs and losses of the program, determined on a net present value basis, under which the insurance, guarantee, or other financing is provided.

Article x.22
Dispute Settlement

Any recourse to dispute settlement pursuant to Chapter x (Dispute Settlement) for any matter arising under this Chapter shall be subject to Annex x.1 of this Chapter.

ANNEX X

Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies

Where a panel has been established pursuant to Chapter X (Dispute Settlement) to examine a matter arising under this Chapter, the panel shall administer the process set out in paragraphs 2 through 4 aimed at developing information relevant to the claim, including data regarding the volume and value of relevant purchases or sales by the state-owned enterprise or designated monopoly in question, and information about that entity's relevant purchasing, sales, and contracting procedures.[39] The process shall include procedures aimed at protecting information that is by nature confidential or which a disputing Party provides on a confidential basis.

1. The complaining Party may present written questions to the other Party within 60 days of the date on which the panel is established. The responding Party shall provide its responses to the questions to the complaining Party and the panel within 60 days from the date it receives the questions.

2. The complaining Party shall have 60 days from the date it receives the responses to its questions to review them and provide any additional questions related to the responses to the responding Party. The responding Party shall have 45 days from the date it receives the additional questions to provide its responses to the additional questions to the complaining Party and the panel.

3. If the complaining Party considers that the responding Party has failed to cooperate in the process, the complaining Party shall inform the panel and the responding Party in writing no later than 30 days from the date responses to the complaining Party are due, and provide the basis for this view. The panel shall afford the responding Party an opportunity to reply to this view in writing.

4. The panel may seek additional information from a disputing Party that was not provided to the panel through the information development process carried out

39 The presentation of written questions and responses pursuant to paragraph 2 and 3 may commence prior to the date a panel is composed. Upon its composition, the complaining Party shall provide any questions it presented to the responding Party, and the responding Party shall provide any responses it provided to the complaining Party, to the panel.

under this Annex, where the panel considers the information necessary to resolve the dispute. However, the panel shall not request additional information to complete the record where the information would support a Party's position and the absence of that information in the record is the result of that Party's non- cooperation in the information gathering process.

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