

GUIDE TO THE PROVISIONS OF THE AUSTRALIA-THAILAND FREE TRADE AGREEMENT

Structure and coverage

The Agreement consists of 19 Chapters and several Annexes and side-letters (exchanges of letters). A common cross-referencing system applies. Individual Articles are referred to as Article (Chapter Number).(Article Number). For example, Article 803 is the third article of Chapter 8. Annexes are numbered according to the Chapter they supplement. For example, Annex 2, which contains the tariff schedules of the two countries, supplements Chapter 2 of the Agreement (Trade in Goods).

Unless specified otherwise, the Agreement covers both citizens and permanent residents of both countries. The term "person" when used in the Agreement, refers both to a natural person and to a legal entity, such as a corporation. The Agreement covers activity throughout the territories of Australia and Thailand.

Further information

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CHAPTER 1: OBJECTIVES AND DEFINITIONS

Objectives (Article 102)

The main objectives of the Agreement are:

- to liberalise trade in goods and services and to create favourable conditions for trade and investment;
- to build upon the countries' WTO commitments and to support trade liberalisation and facilitation in APEC; and
- to establish a program of cooperative activities.

Definitions (Article 103)

This Article contains definitions of key terms used throughout the Agreement.

CHAPTER 2: TRADE IN GOODS

The Chapter applies to trade in all goods between the two countries.

National treatment (Article 202)

The two countries will give national treatment to each other's goods. The national treatment obligation means that imports from the other country must be treated no less favourably than the same or similar domestically produced good once they have passed Customs.

Elimination of customs duties (Article 203)

This Article outlines rules for the elimination of customs duties on goods traded between Australia and Thailand which meet the rules of origin (see chapter 4, below).

Most customs duties will be eliminated when the Agreement enters into force. Others will be phased down to zero over varying periods. The two countries have set out their tariff elimination timetables in an Annex to this chapter (Annex 2).

Any tariff-rate quotas will be administered in a way that does not exacerbate the trade-restricting effect of the quota. A side letter commits both countries to cooperate in developing agreed procedures for the administration of tariff rate quotas.

Accelerated tariff elimination (Article 204)

Both countries have the right to ask the other for faster elimination of customs duties, and either may choose to reduce or eliminate its tariffs more quickly than provided for in Annex 2.

Administrative fees and formalities (Article 205)

Any fees and charges either country imposes under the FTA other than:

- (i) those permitted under Article III of the GATT (ie customs duties and internal charges); and
- (ii) anti-dumping or countervailing duties imposed in connection with trade; must be limited to the approximate cost of the services rendered and must not represent indirect protection.

Anti-dumping (Article 206)

Both countries will follow the anti-dumping rules and procedures provided for in the WTO Agreement. The Article sets out agreed practices, specifically in relation to consideration of price undertakings and the timeframe to be used in determining the volume of dumped imports in investigations or reviews.

Subsidies and countervailing measures (Article 207)

The countries confirm their rights and obligations under the WTO Agreement on Subsidies and Countervailing Measures.

Agricultural export subsidies (Article 208)

This Article commits the two countries to work towards the elimination of agricultural export subsidies in the WTO. It also provides for bilateral consultations on policies which may affect trade in food or agricultural products.

Both countries have agreed not to introduce or maintain any agricultural export subsidy on goods exported to the other.

Non-tariff measures (Article 209)

Except where allowed by WTO rules or under other provisions of this Agreement, neither country will take measures to restrict bilateral imports or exports. Any non-tariff measures will be transparent and will not be aimed at creating unnecessary obstacles to trade.

Annex – schedule of tariff commitments.

CHAPTER 3: CUSTOMS PROCEDURES

The Chapter aims to simplify and harmonise customs procedures and to ensure they are applied properly between the two countries.

Customs valuation (Article 303)

When determining the value of goods, the two countries will comply with the relevant WTO rules.

Customs procedures and facilitation (Article 304)

Both countries will maintain customs procedures that are transparent and that reflect international standards.

Cooperative arrangements and review and appeal (Articles 305 and 306)

The two countries will advise each other of changes in their customs laws or procedures which may affect the operation of the Agreement. They will also assist each other in seeking to prevent breaches of customs legislation. Each country will provide avenues for appeals against decisions taken by customs administrations.

Advance rulings and facilitation (Articles 307-311)

The two sides have committed to provide in advance (i.e. before export) rulings to exporters on the tariff classification of goods to be exported under the provisions of the Agreement. In addition, the customs administrations will release immediately any goods imported which are accompanied by a certificate of origin. Where the customs administration doubts the validity of the certificate, it may require the payment of a security until it has investigated the matter. The two countries will work to clear

quickly low-risk goods. The two countries will also implement paperless trading initiatives. Contact points will be established in both countries to respond to customs-related enquiries.

CHAPTER 4: RULES OF ORIGIN

This Chapter sets out the rules for determining which goods are originating and therefore eligible for preferential tariff treatment under the Agreement.

Originating goods (Article 402)

Originating goods of a country are those that:

- are wholly obtained or produced in the country;
- are produced in the country wholly from originating materials; or
- are produced in the country wholly or partly from non-originating materials. Goods containing inputs from third countries must satisfy requirements agreed between the parties, which are set out in the provisions of the chapter and in Annex 4.1. The principal requirement for determining whether goods containing third country input qualify as originating is whether that input has undergone a specified change in tariff classification as a result of production processes occurring in the territory of either party. This is known as a “change in tariff classification” approach to determining origin. The required change for each product is set out in Annex 4.1.

Regional value content (Article 403)

For a number of products (particularly textiles, clothing and footwear, and machinery, but also for a number of other manufactures), the good being exported must also contain a defined level of local content as a proportion of the overall value of the good. This is known as a “regional value content” requirement. Where there is a regional value content requirement, this is also set out for each product in Annex 4.1.

For textile and clothing products, a proportion of other developing country input may be counted as originating for the purposes of determining whether those goods comply with the regional value content requirement. This input must undergo the relevant change in tariff classification applying to non-originating input.

Calculation of values (Articles 404-406)

To supplement the core “change in tariff classification” and “regional value content” criteria, the chapter contains detailed provisions covering a range of supplementary issues to be considered in determining whether a product qualifies as originating. Those provisions include how to take account of accessories delivered with goods, how to determine whether fungible goods are originating and whether packaging in which goods are packed needs to meet the origin requirements for the good.

The relevant provisions of the WTO Customs Valuation Agreement are to be used in determining the value of goods and inputs (or materials), modified as necessary.

Goods will not qualify for a tariff preference if, following export from one of the countries, they undergo further production in a third country prior to importation by the other country.

Registration of exporters (Article 407)

To bolster compliance with the rules of origin, detailed requirements have been included which must be met by exporters of either country who wish to export goods under the Agreement. Firstly, an exporter must register with an authorised body (in Australia's case, this will be either the Australian Chamber of Commerce and Industry or the Australian Industry Group and, in Thailand's case, it will be the Department of Foreign Trade, Ministry of Commerce) as an exporter of a certain product. The authorised body will then conduct any examinations of the exporter's operations it considers necessary to determine whether the product the exporter wishes to export would in fact qualify as originating. If the authorised body considers the product would comply, it will register the exporter as entitled to export that product.

Certification of origin (Article 408)

In addition to the requirement for registration as an exporter for a certain product, an exporter must also obtain from the authorised body a certificate of origin for each shipment of that product. The importing country will grant the tariff preference under the Agreement only to goods which are accompanied by a certificate of origin. The authorised bodies for each country and the documentary requirements for registration as an exporter and for obtaining a certificate of origin are set out in Annex 4.2.

Exporter sanctions (Article 409)

Exporters must notify an authorised body where production processes change in a way that might affect whether the goods would qualify as originating. The authorised body may then conduct an examination of the production process to ascertain whether the product would still qualify. This Article also provides for the imposition of sanctions on exporters, including where those exporters secure registration or obtain a certificate on the basis of false or misleading statements or fail to notify the authorised body of a change in production processes. The sanctions may include de-registration of certain products for a given period, or refusal to consider the granting of a certificate of origin.

Origin verification (Articles 412-414)

These Articles set out action that may be taken to verify the origin of goods seeking preferential treatment under the Agreement, including requesting written information and through visits to factories and premises. The importing country may suspend the application of the tariff preference during an investigation into origin verification. A claim for tariff preference treatment may be denied if a good does not meet the origin requirement or if the producer or exporter/importer fails to comply with the relevant requirements. Each country will provide a right of appeal in matters relating to eligibility for tariff preferences.

Committee on rules of origin (Article 415)

A committee on rules of origin will be established to monitor implementation of the provisions of the rules of origin, to discuss any issues that may arise and to consider modifications to the rules. The committee will meet at least yearly.

Annex 4.1 – rules of origin for each product

Annex 4.2 – authorised bodies, documentary requirements for registration as an exporter and for obtaining a certificate of origin

CHAPTER 5: SAFEGUARDS

The Chapter provides a mechanism for protecting industries in both Australia and Thailand from injury from rapidly increasing imports during the transition period (the transition period is the period during which tariffs are being reduced to zero under the Agreement). It also provides for special safeguard measures to apply to a number of agricultural products.

Application (Articles 502-503)

This Article allows each country, during the transition period, to lift the tariff to the most-favoured nation rate (i.e. the rate applying to imports of the product from most countries) which applied either at entry into force of the Agreement or at the time the measure was imposed (whichever was lower) or to suspend further reductions in the customs duties. In order to take safeguard measures, increased imports resulting from the reduction or elimination of customs duties must be causing or threatening serious damage to the domestic industry which produces a like or competitive product.

These transitional safeguard measures may be imposed initially for two years with a possibility of extension. The total duration of transitional safeguard measures is limited to six years. All safeguard measures must terminate within two years of the end of the transition period for the product concerned. A country applying a safeguard measure for more than a year must liberalise the measure at regular periods.

Investigation (Article 504)

A transitional safeguard measure can be applied only following an investigation by the country's competent authorities into the impact of increased imports on the particular industry. The Article refers to the economic variables to be addressed by such an investigation. There will be scope for interested parties to present their views to the investigating authority.

Provisional measures (Article 505)

In principle, transitional safeguards may be imposed only following an investigation into the effect of increased imports from the other party on the domestic industry. However, in highly unusual and critical circumstances where delay would cause damage that would be difficult to repair, a country may impose safeguard measures

provisionally for up to 200 days pending the results of an investigation. This Article outlines the factors to be considered in determining whether there are unusual and critical circumstances.

Notification and consultation (Article 506)

The Article sets out the requirements for notification and consultation when a safeguard investigation is initiated and at other intervals in the investigation process.

Compensation (Article 507)

If a safeguard measure is extended for a period longer than three years, compensation is payable to the other country, in the form of substantially equivalent concessions. The nature of such compensation is to be determined through bilateral consultations.

Global safeguards (Article 508)

Each country retains its rights and obligations under the relevant WTO provisions. If either country applies global safeguards, it may exclude from the scope of those measures imports from the other country if those imports are not causing injury.

Special safeguard measures (Article 509)

Special safeguards apply to agricultural products which both countries have nominated as sensitive. Thailand has claimed this treatment for 41 tariff items covering meat, dairy and horticultural products for which tariffs will phase to zero by 2015 or 2020. Australia has claimed special safeguards for four tariff items covering canned tuna, processed pineapple and pineapple juice for the period from entry into force until 2008. The specific products are listed in Annex 5.

Special safeguard action on these products can be taken without demonstrating damage to local industry: all that is required is that a specified volume of imports is exceeded in a given (calendar) year. If the volume level is triggered, the action that is allowed is the levying of customs duties at the current MFN tariff rate or at the base tariff rate specified in Annex 2 for the balance of the year.

Supplies of the product in question that are en route on the basis of a contract settled before the volume level is triggered will be exempted from the additional duties, but the volume will be counted against the following year's special safeguard volume.

The special safeguards regime will be reviewed within three years of entry into force of the Agreement, taking into account relevant international developments. If either country enters into a free trade agreement with a third country which excludes specific products from a special safeguards regime, the two countries will enter into consultations on possible action.

Annex 5 – products subject to a special safeguard

CHAPTER 6: SANITARY AND PHYTOSANITARY (SPS) MEASURES AND FOOD STANDARDS

This Chapter reaffirms that decisions on matters affecting quarantine and food safety will continue to be made on the basis of existing procedures including scientific assessments of the risks involved in the commercial trade of food, animals and plants and their products. This affirmation is made to reflect the primacy of existing rights and obligations under the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).

The Chapter recognises that both Australia and Thailand are major agricultural producers and exporters but with different systems and pest and disease status. Nothing in the Chapter undermines the right of either country to determine the level of protection it considers appropriate. The two countries have agreed to enhance consultation and cooperation on SPS issues to improve understanding of each country's measures and regulatory systems, and to work together to improve efficiencies in quarantine operations and associated regulatory processes. They will also cooperate internationally in these areas. An Expert Group will be established for this purpose, and will supplement the existing Joint Working Group on Agriculture.

General Provisions (Articles 603-608)

Each country reaffirms its existing commitments under the WTO SPS Agreement and, where relevant, the WTO Technical Barriers to Trade (TBT) Agreement, and agrees to enhance cooperation to facilitate safe trade in agricultural and food products. The countries will cooperate in encouraging the international harmonisation of SPS standards and in responding to each other's requests for consideration of equivalence of SPS measures and related processes. They will review their inspection, testing and certification procedures to ensure these are reasonable and necessary. They will also cooperate to ensure that any isolated non-compliance of imported consignments for products subject to SPS measures or other standards does not result in unnecessary hindrance to trade.

Consultative forum (Article 609)

This Article establishes an Expert Group on SPS Measures and Food Standards with a detailed mandate which will meet at least once a year to facilitate consultation and cooperation between Australia and Thailand on SPS issues and quarantine operational and other regulatory processes affecting agriculture and food trade. The Agreement incorporates (at Annex 6) a list of current SPS and certification priorities for both countries. At its first meeting the Expert Group will develop and agree to steps to implement a work program with the initial phase to be completed within two years of the signature of the Agreement.

CHAPTER 7: INDUSTRIAL TECHNICAL BARRIERS TO TRADE

This Chapter applies to all standards, technical regulations and conformity assessment procedures of the government that affect trade in all goods. As tariffs are

lowered or, in the case of an FTA eliminated, non-tariff measures that can be used to frustrate trade become increasingly prominent.

In addition to reaffirming the rights of each country under the TBT Agreement, the Chapter:

- includes a commitment to promoting harmonisation of technical regulations where appropriate, taking into account relevant international standards;
- encourages each country to consider recognising the other's standards as equivalent where they adequately fulfil the objectives of its own standards;
- makes provision for conformity assessment procedures to be made compatible to the greatest extent practicable; and
- provides for bilateral cooperation on standards issues and establishes contact points for that purpose.

CHAPTERS 8 - 10: TRADE IN SERVICES, INVESTMENT AND THE MOVEMENT OF NATURAL PERSONS

Each country's schedule of specific commitments will be annexed to the Agreement (at Annex 8). The specific commitments take the form of a positive list, as in the General Agreement on Trade in Services (GATS).

These chapters do not apply to subsidies or grants provided for the supply or consumption of a service or in relation to an investment; or to services supplied in the exercise of governmental authority; or to government procurement; or to measures affecting individuals of one party seeking access to the other for the purposes of employment. The services chapter explicitly preserves each country's right to regulate services in its territory.

Trade in services (Chapter 8)

Rules applying to trade in services (Articles 805 – 807)

The Trade in Services Chapter applies to all modes for supplying services, including through commercial presence of (that is, direct investments by) service providers of one country in the other. The rules applying to services are based on the GATS, with modifications necessary to reflect the nature of the agreement as an FTA. The Chapter incorporates relevant GATS provisions on domestic regulation, monopoly service providers, as well as on financial services, air services and telecommunications.

The Chapter also provides for the relevant bodies in each country to cooperate in developing arrangements on the recognition in each country of professional or educational qualifications gained in the other.

Cooperation (Article 808)

This Chapter provides for enhanced cooperation in a range of areas, including research and development; human resources and professional development; management of data on trade in services; small and medium enterprise (SME) capacity enhancement; and education, health care and tourism. The chapter also

provides for cooperation to assist Thailand develop the capacity to grant applications for business entry offshore.

Specific commitments (Articles 809 – 810)

The key liberalisation obligations in this Chapter relate to market access and national treatment. These obligations are modelled on corresponding GATS provisions.

Recording and review of commitments (Articles 812 – 816)

The Chapter provides for further negotiations on services within three years of entry into force of the Agreement. An accompanying side-letter sets out the areas that those negotiations should focus on: they include financial and telecommunications services and on the improvement by Thailand of the conditions which apply to Australian business people when visiting Thailand. These further negotiations complement the range of up-front commitments made by Thailand (and set out in its schedule in Annex 8).

The Chapter also provides that, where one country provides better access to a third country (for example, in free trade negotiations), the other country may ask for that better treatment to be extended to it, but there is no requirement that the better treatment should be extended.

Investment (Chapter 9)

Liberalisation of investments (pre-establishment) (Articles 903 – 905)

This Chapter includes commitments to liberalise investment in non-services sectors (mining and manufacturing). These commitments do not apply to subsidies or grants or to government procurement.

Treatment of investments post-establishment (Articles 906- 917)

The two countries have made a general commitment to treat investments in these sectors made by each other's investors at least as well as they treat such investments made by their own investors, with specified exceptions (which are listed in the countries' respective schedules of commitments on services and investment in Annex 8).

This Chapter also includes provisions on the protection of investments. These provisions are based on Australia's investment promotion and protection agreements. They provide for the fair and equitable treatment of investments, and for the treatment of each other's investors and their investments at least as well as investors or investments of any other country (a most-favoured nation commitment), except where such treatment flows from an FTA with another country.

The two countries have agreed not to expropriate investments made by each other's investors except for a public purpose, on a non-discriminatory basis and have undertaken to pay compensation where they do expropriate an investment. The Chapter also provides that the countries will permit each other's investors to transfer their funds freely, except where a party is facing balance of payments or external financial difficulties.

The Chapter also includes investor-state dispute settlement provisions, which are designed to give additional protection to Australian investors in Thailand. These provide an investor of one country with the right to challenge directly the other country to the agreement either in the other country's courts or in an international arbitral tribunal. Any decision is binding.

Modification and Review of Commitments (Articles 918 – 919)

There is provision in the Agreement for the countries to negotiate improvements to their commitments on investment in the event they provide better treatment to other countries or unilaterally liberalise their rules affecting investment.

Temporary movement of business people (Chapter 10)

This Chapter provides for temporary entry of intra-corporate transferees (i.e. individuals moving from part of a company located in one of the countries to another part of the same company located in the other country), contractual service suppliers (i.e. individuals of one of the countries providing a service to a company located in the other country under a contract) and business visitors (i.e. individuals of a country visiting the other country for the purposes of conducting business transactions relating to the sale of goods or services, or for the purposes of investing in the other country).

Short-term temporary entry (Article 1004)

The two countries have made a commitment to permit entry for up to 90 days for business visitors, and longer periods for intra-corporate transferees and contractual service suppliers. The Chapter in no way affects the rights of either country to regulate immigration.

Long-term temporary entry (Article 1005)

The countries will permit temporary entry for longer periods in accordance with their commitments set out in Annex 8.

Expedition application procedures (Article 1008)

The two countries will process applications for immigration formalities expeditiously.

Provision of information (Article 1006)

The two countries will publish information about their procedures relating to temporary entry of business people. In accordance with Annex 8, they will also notify each other from time to time of the documentary requirements which they apply to applicants for temporary entry (under the Agreement, Thailand has simplified these requirements for Australians).

CHAPTER 11: ELECTRONIC COMMERCE

This Chapter sets out a number of provisions designed to ensure that trade conducted electronically between Australia and Thailand remains free. It provides for the two countries to work together to promote electronic commerce.

Non-imposition of customs duties (Article 1102)

Both countries have agreed to maintain their current practice of not imposing customs duties on electronic transmissions between the two countries.

Domestic regulation (Article 1103)

The two countries will seek to minimise the regulatory burden on electronic commerce and ensure their regulatory frameworks support industry-led development of electronic commerce.

Electronic authentication (Article 1104)

The two countries will maintain domestic legislation on electronic authentication and work towards the mutual recognition of digital certificates, based on internationally accepted standards.

Protection of consumers and personal data (Articles 1105 – 1106)

The two countries will protect consumers using electronic commerce at the same level as other consumers. Recognising the differences in the two countries' approach to personal data protection, the Chapter provides for them to take appropriate measures to protect the personal data of people using electronic commerce.

Paperless trading (Article 1107)

This Article encourages the use of electronic forms for trade administration documents.

CHAPTER 12: COMPETITION POLICY

This Chapter is intended to facilitate trade and investment through promoting competition and the curtailment of anti-competitive practices.

Application of competition laws (Articles 1203 – 1204)

This Article includes a commitment to maintaining generic or sector-specific competition laws that apply to all businesses and to the administration of these in a transparent, comprehensive and non-discriminatory way. Exemptions from these undertakings are permitted if they are transparent and reflect the public interest.

Cooperation, consultations and review and transparency (Articles 1205-1207)

The two countries have agreed to cooperate on competition law enforcement. Either country may seek consultations with the other with a view to eliminating anti-competitive practices that may be affecting trade and investment. The two sides have agreed to make publicly available their laws promoting fair competition and their laws addressing anti-competitive practices. A review of the scope of the commitments on competition will take place within three years of entry into force of the Agreement.

CHAPTER 13: INTELLECTUAL PROPERTY

The objective of this Chapter is to increase the benefits from trade and investment through protecting and enforcing intellectual property rights.

International obligations (Article 1302)

The two countries have reaffirmed that they will respect the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and other relevant multilateral agreements on intellectual property.

Prevention of exports of pirated or counterfeit goods (Article 1303)

The two countries will take measures to prevent the export of goods that infringe copyright or trade marks.

Enforcement and cooperation (Articles 1304 – 1305)

The two countries will cooperate with a view to eliminating trade in goods which infringes intellectual property rights, including through the exchange of information through nominated contact points. They will also cooperate to increase awareness of intellectual property rights and the commercialisation of intellectual property.

CHAPTER 14: TRANSPARENT ADMINISTRATION OF LAWS AND REGULATIONS

This Chapter aims to ensure that the relevant laws and regulations of each country are readily available to interested people in the other country.

Publication (Article 1402)

Both sides will publish relevant laws, regulations and decisions, either in journals or on the internet, where possible in advance. They will respond to questions from each other on laws and regulations affecting trade and investment.

Enquiries (Article 1403)

This Article establishes contact points to facilitate communications between the two countries on any matter covered by the Agreement.

Administrative proceedings (Article 1404)

The two countries will advise interested persons of administrative proceedings that may affect them wherever possible. Persons who would be affected will be offered an opportunity to present facts in any proceedings, in accordance with the relevant laws.

Review and appeal (Article 1405)

The two countries will ensure there are domestic procedures to enable prompt review and correction where necessary of administrative actions taken in relation to this Chapter.

CHAPTER 15: GOVERNMENT PROCUREMENT

This Chapter is included in the Agreement in recognition of the importance of government procurement to the economies of Australia and Thailand.

Establishment of Working Group (Article 1502)

This Chapter establishes a bilateral working group of officials that will report within 12 months of the entry into force of the Agreement on the scope for commencing negotiations that would be aimed at developing rules, procedures and transparency standards to be applied in the conduct of government procurement.

Principles applying to Government Procurement (Article 1503)

In the meantime, the Chapter sets out principles which the two countries should apply in their procurement procedures, namely: transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination.

Exchange of Information (Article 1504)

The Chapter also provides for exchange of information on relevant laws and policies.

CHAPTER 16: GENERAL EXCEPTIONS

This Chapter sets out exceptions which will apply to the Agreement generally (individual chapters also include exceptions to specific provisions contained in those chapters).

General and Security Exceptions (Articles 1601 – 1602)

Article XX (General Exceptions) and Article XXI (Security Exceptions) of the GATT 1994 are incorporated into the Agreement to apply to chapters relating to trade in goods. Article XIV (General Exceptions) and Article XIV bis (Security Exceptions) of the GATS (General Exceptions), are incorporated into the Agreement and apply to chapters relating to trade in services and investment.

Disclosure of Information (Article 1603)

The provisions of the Agreement will not require the disclosure of confidential information where this would be contrary to the public interest or legitimate commercial interests.

Balance of Payments (Articles 1604 – 1605)

These provisions permit either country flexibility in implementing its obligations under the Agreement where it is facing serious balance of payments or other external financial difficulties. These provisions are based on corresponding provisions in the GATT and the GATS and impose a number of conditions on the application of any measures which the country may impose.

Article 1606 (Prudential Measures)

This provision confirms that neither country will be prevented by the Agreement from taking action to protect investors, depositors, policy holders or others who are owed a fiduciary duty by a financial service supplier. In addition, either country is permitted to take measures to ensure the integrity and stability of its financial system.

Taxation measures (Article 1607)

The Agreement only imposes rights or obligations with respect to taxation measures where there is a corresponding right or obligation provided for in the WTO Agreement or in relation to the expropriation of assets. In the event of any inconsistency between the FTA and the 1989 double tax agreement between Australia and Thailand, the tax agreement prevails.

CHAPTER 17: INSTITUTIONAL PROVISIONS

FTA Joint Commission (Articles 1701 – 1703)

A Free Trade Agreement Joint Commission (FTA Joint Commission) is established to ensure the proper implementation of the Agreement and to review periodically the economic relationship and partnership between the countries. The FTA Joint Commission may meet at the level of ministers or senior officials. The FTA Joint Commission will meet within one year of the date of entry into force of the Agreement and then each year, or as otherwise agreed.

General Review of the Agreement (Article 1704)

The Chapter also provides for a general review at ministerial level of the operation of the Agreement within five years of its entry into force and at least once every five years after that.

CHAPTER 18: CONSULTATIONS AND DISPUTE SETTLEMENT

This Chapter establishes a fair, transparent, timely and effective procedure for settling disputes arising under the Agreement.

The Chapter commits the two sides to seek to resolve any disputes through consultations. It also provides that the two sides can have recourse to good offices, conciliation and mediation at any time to resolve a dispute. Where consultations do not resolve the dispute, a country may after 60 days seek the establishment of an

arbitral tribunal. The tribunal consists of three members, one appointed by each country and the third (who acts as tribunal chair) appointed by the two members. The Chapter sets out time limits for the appointment of tribunal members.

The Chapter sets out some of the rules applying to proceedings of tribunals, leaving the remainder to be established by the tribunals themselves. The tribunal is to advise of its award within 120 days of its establishment, with that award being made public within a further 10 days. If one country is not satisfied that the other country has adequately implemented a tribunal award, it may decide to suspend benefits it owes to the other country under the Agreement, subject to a range of conditions.

The dispute settlement chapter will not apply to the SPS chapter. Any disputes on SPS issues will continue to be determined by WTO procedures. It will also not apply to a number of chapters where the provisions do not confer specific rights (such as government procurement, competition policy and electronic commerce).

CHAPTER 19: FINAL PROVISIONS

This Chapter contains a range of provisions on the formal aspects of the Agreement, including how it can be amended. It provides that other countries may accede to the Agreement. It confirms that, in most cases, the Agreement does not commit either country to passing on to the other any benefit it confirms to a third country under a free-trade agreement or customs union. The chapter provides that the *Trade Agreement Between the Government of Australia and the Government of the Kingdom of Thailand* of 5 October 1979 will be terminated on entry into force of the Agreement.

This Chapter provides that the Agreement will enter into force 30 days after the countries have notified each other that they have completed the domestic requirements necessary for entry into force of the Agreement.