



Committee on Regional Trade Agreements

FACTUAL PRESENTATION

**FREE TRADE AGREEMENT BETWEEN HONG KONG, CHINA AND AUSTRALIA
(GOODS AND SERVICES)**

Report by the Secretariat

This report, prepared for the consideration of the Free Trade Agreement between Hong Kong, China and Australia, has been drawn up by the WTO Secretariat on its own responsibility and in full consultation with the Parties. The factual presentation reproduces as closely as possible the terminology used in the Agreement and in the comments provided and does not imply official endorsement or acceptance by the Secretariat of such terminology. The report has been drawn up in accordance with the rules and procedures contained in the Decision for a Transparency Mechanism for Regional Trade Agreements (WT/L/671) and thus does not imply any value judgement by the Secretariat regarding the contents of the Agreement.

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Key Facts

Parties to the Agreement:	Hong Kong, China and Australia
Date of Signature:	26 March 2019
Date of Entry into Force:	17 January 2020
Date of Notification:	17 January 2020
Full implementation:	17 January 2020

1 TRADE ENVIRONMENT

1.1 Merchandise trade¹

1.1. With a GDP of USD 363 billion, in 2018, Hong Kong, China's total merchandise trade was valued at USD 1,196 billion (exports at USD 569 billion and imports at USD 627 billion); Australia's total trade in the same year was USD 493 billion (exports at USD 257 billion and imports USD 236 billion), with a GDP of USD 1,418 billion. The trade to GDP ratios (2016-2018) of the Parties were 187.4 for Hong Kong, China and 21.2 for Australia.

1.2. In 2018, Hong Kong, China was the 6th largest global exporter and the 5th largest global importer (excluding intra-EU trade) with 2.92% of world exports and 3.16% of world imports.² In comparison, Australia was the 16th largest global exporter and the 17th largest global importer (with 1.32% of world exports and 1.19% of world imports³).

1.3. With respect to bilateral trade, in 2019⁴, Australia was Hong Kong, China's 17th largest export market (0.8%%), and its 14th largest source of imports (0.8%), while Hong Kong, China was Australia's 8th largest export destination (3%) and the 21st largest source of imports (0.3%).

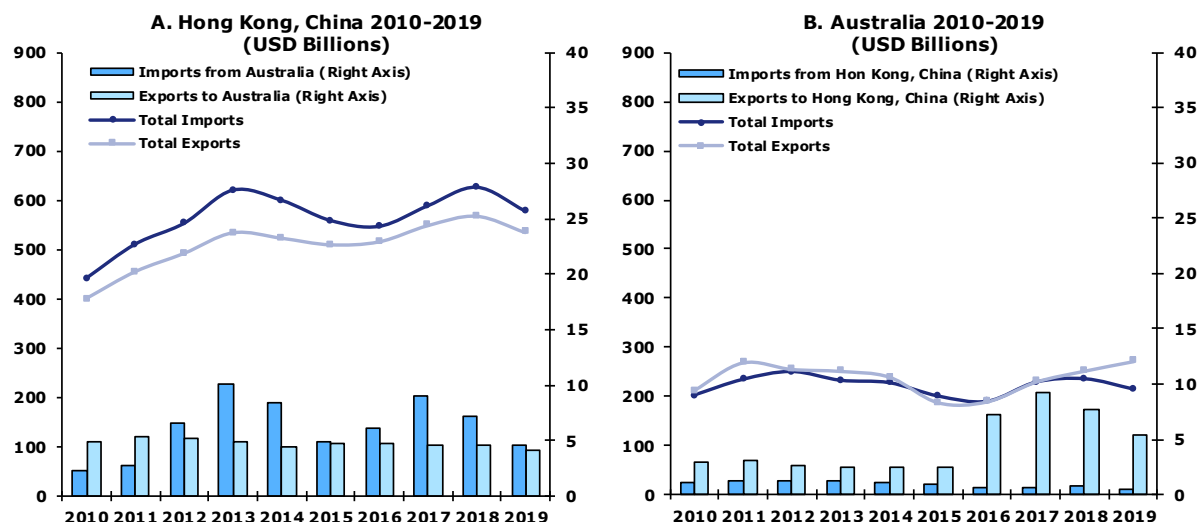
1.4. Chart 1.1 summarizes the trends in global trade of the Parties as well as their bilateral trade relations. It shows an overall moderate increase in global trade during the period for both Parties, with a dip in 2009 due to the financial crisis and a similar slowdown in trade between 2013 and 2015. A trade deficit was maintained over the entire period for Hong Kong, China while Australia experienced a moderate global trade surplus, with a deficit between 2015 and 2016. Statistics from UNSD Comtrade show some discrepancies with respect to the magnitude of bilateral trade between the Parties. Data reported by Hong Kong, China shows a trade deficit with Australia during the first part of the period with a reversal from 2012 onwards while data reported by Australia shows a constant trade surplus.

¹ Figures in this section, except with respect to bilateral trade and unless indicated otherwise, are from the WTO Trade Profiles as of March 2020 (2018 data). Export figures are calculated f.o.b. and imports c.i.f. World trade rankings exclude intra-EU trade.

² The five top destinations for exports from Hong Kong, China were: China (55.3%); the EU(28) (8.5%); the US (7.3%); India (2.9%); and Japan (2.9%). Its five top sources of imports were: China (45.7%); Chinese Taipei (7.3%); the EU(28) (6.9%); Singapore (6.5%), and Japan (5.8%).

³ The five top destinations for exports from Australia were: China (34.7%); Japan (16.4%); Korea, Rep. of (7%); India (4.9%); and the EU(28) (4.9%). Its five top sources of imports were: China (24.5%); the EU(28) (18.1%); the US (10.5%); Japan (7.4%), and Thailand (4.9%).

⁴ For bilateral trade, figures reported by the Parties to UNSD, Comtrade database are used (2019 data).

Chart 1.1 Hong Kong, China - Australia: Merchandise bilateral trade and with world, 2010-2019

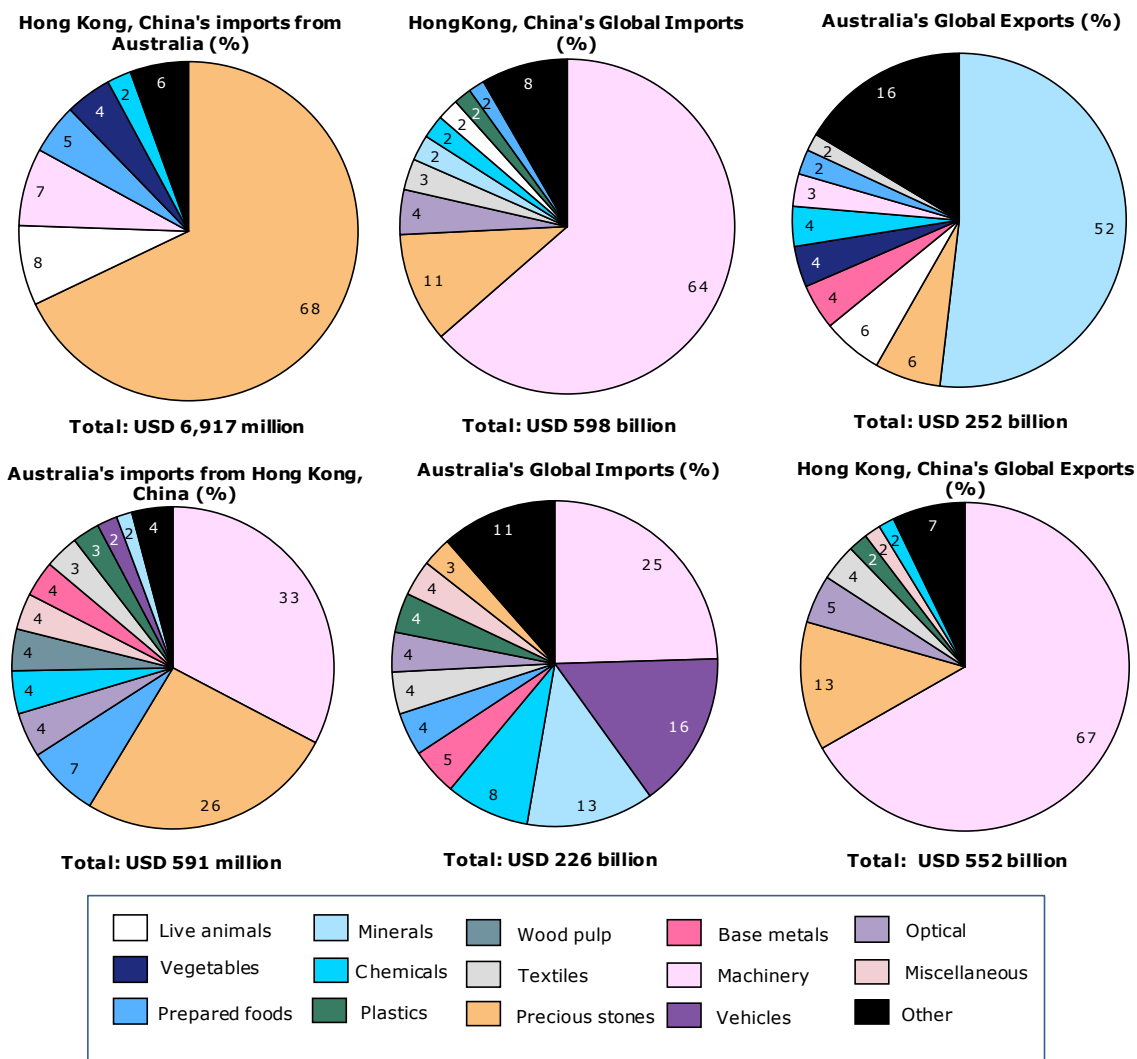
Source: UNSD Comtrade database and ITC TradeMap (Australia 2019).

1.5. The commodity structure of trade between the Parties as well as of their global trade in the periods 2017-2019 are shown in Chart 1.2, on the basis of Harmonized System (HS) sections.

1.6. While Australia's global exports are dominated by minerals (52% of exports), Hong Kong, China's main imports from Australia are constituted by-products classified under the category "precious stones and precious metal" (HS Chapter 71), representing 68% of Hong Kong, China's imports from Australia. This category was accounted for 11% of Hong Kong, China's imports⁵, but a relatively small share of Australia's exports (representing 6% of, but corresponding to its 2nd largest, exports to the world). Australia's three main import categories from Hong Kong, China were machinery and mechanical appliances (33% of Australia's imports from Hong Kong, China), natural and cultured pearls and precious stones (26%), and prepared foodstuffs and beverages (7%).

⁵ Gold for non-monetary purposes represents an important subset of HS Chapter 71, which, when complemented by HS tariff lines 261690, 284310, and 284390, corresponds to 6% of Hong Kong, China's global imports.

Chart 1.2 Hong Kong, China - Australia: product composition of merchandise trade, annual average, 2017-2019

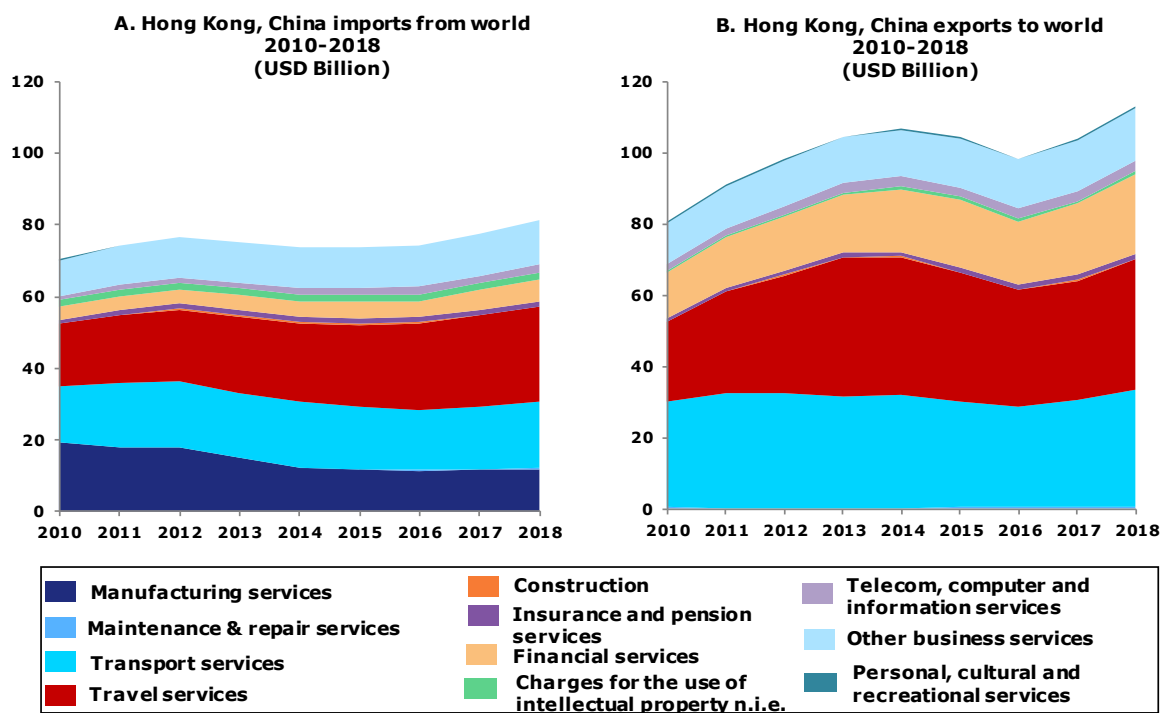


Source: UNSD Comtrade database and ITC TradeMap (Australia 2019).

1.2 Trade in services and investment

1.7. In 2018, Hong Kong, China's share of trade in commercial services trade corresponded to 1.97% of world total exports (valued at USD 114 billion and 1.48% of world total imports (valued at USD 81 billion). Hong Kong, China was the 8th largest global exporter of services and 11th largest global importer. In comparison, Australia's shares of global commercial services exports and imports corresponded to 1.18% of world total exports (valued at USD 68 billion) and 1.29% of world total imports (valued at USD 70 billion). Australia was the 13th largest global exporter and importer of services.

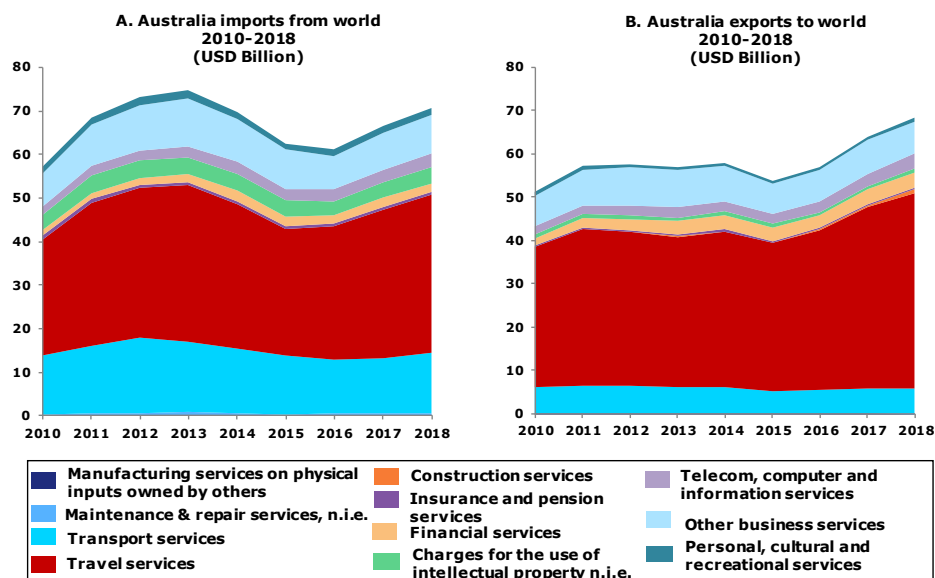
1.8. Charts 1.3 and 1.4 below show the breakdown of global trade in commercial services for the Parties. Travel services was Hong Kong, China's main import and an important export, together with transport services. For Australia, travel services were, by far, the largest imports and exports, with transport services and manufacturing services constituting most of the remaining imports from the world with transport services and financial services important exports sectors.

Chart 1.3 Hong Kong, China: Trade in commercial services with world, 2010-2018

Note: Based on BPM6.
No exports for Manufacturing services on physical inputs owned by others and Construction (2010-2018).

Exchange rates to convert HK Dollar to US Dollar: 2010 (7.77) 2011 (7.78) 2012 (7.76) 2013 (7.76) 2014 (7.75) 2015 (7.75) 2016 (7.76) 2017 (7.79) and 2018 (7.84).

Source: Hong Kong, China authorities.

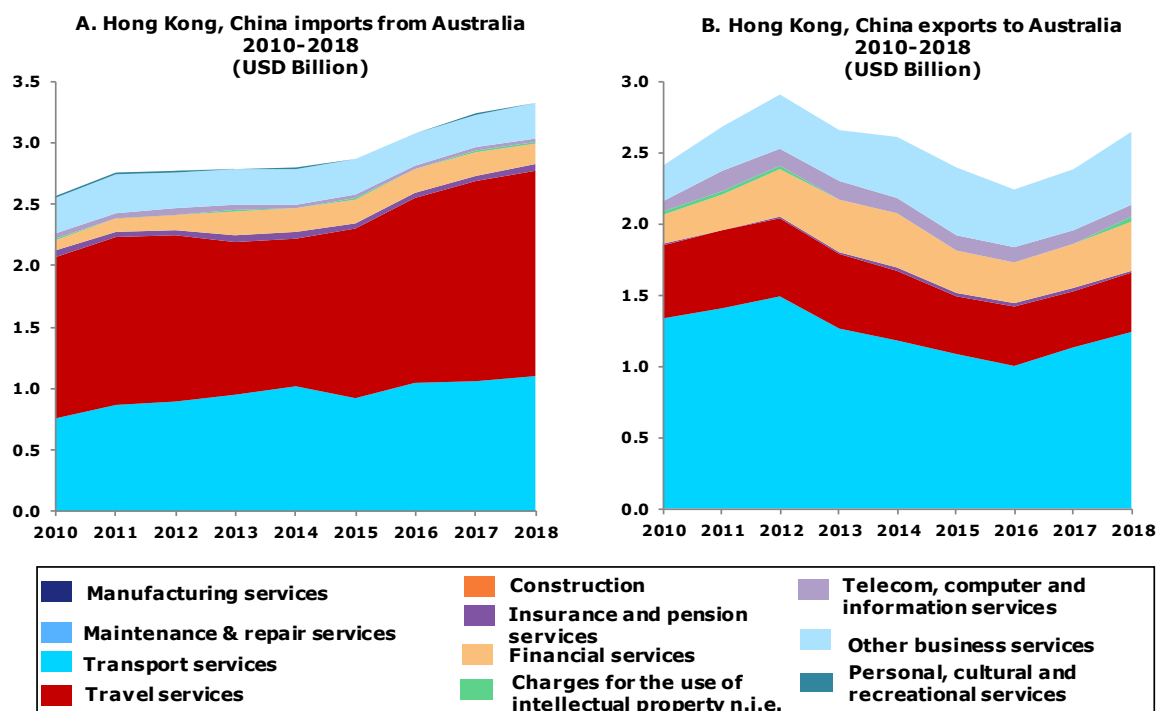
Chart 1.4 Australia: Trade in commercial services with world, 2010-2018

Note: Based on BPM6.
No imports for Manufacturing services on physical inputs owned by others and Construction (2010-2018).
Exchange rates to convert Australian Dollar to US Dollar for 2017-2018 are: 2017 (1.30) and 2018 (1.34).

Source: WTO Statistics database and Australian authorities (2017-2018).

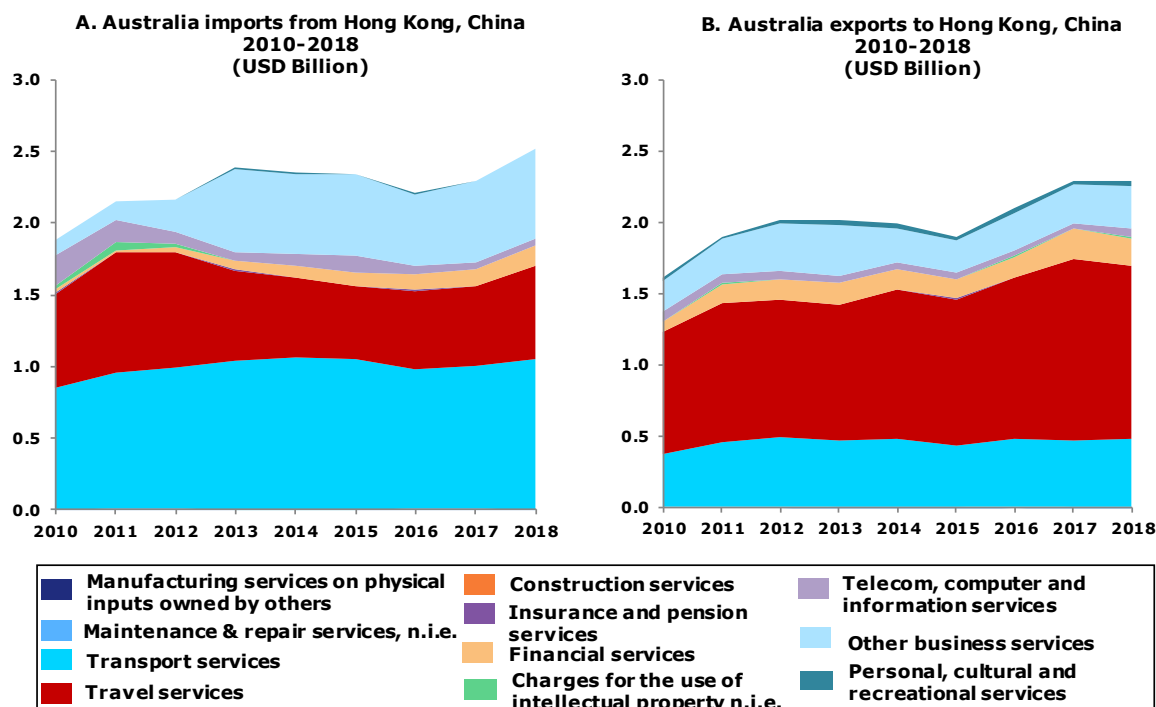
1.9. Charts 1.5, and 1.6 depict bilateral trade in commercial services as reported by the Parties. Travel and transport services dominate trade between the Parties with Hong Kong China maintaining a trade surplus in transport services and a trade deficit in travel services with Australia. Other key sectors traded are financial services and other business services.

Chart 1.5 Hong Kong, China: Bilateral trade in commercial services with Australia, 2010-2018.



Note: Based on BPM6.
 No trade in commercial services for Manufacturing services on physical inputs owned by others, Maintenance and repair services, and Construction (2010-2018); no trade for Charges for the use of intellectual property n.i.e. (imports for 2011 and no export for 2013-2017); no export for Personal, cultural, and recreational services (2010-2015, 2017-2018).
 Exchange rates to convert HK Dollar to US Dollar: 2010 (7.77) 2011 (7.78) 2012 (7.76) 2013 (7.76) 2014 (7.75) 2015 (7.75) 2016 (7.76) 2017 (7.79) and 2018 (7.84).

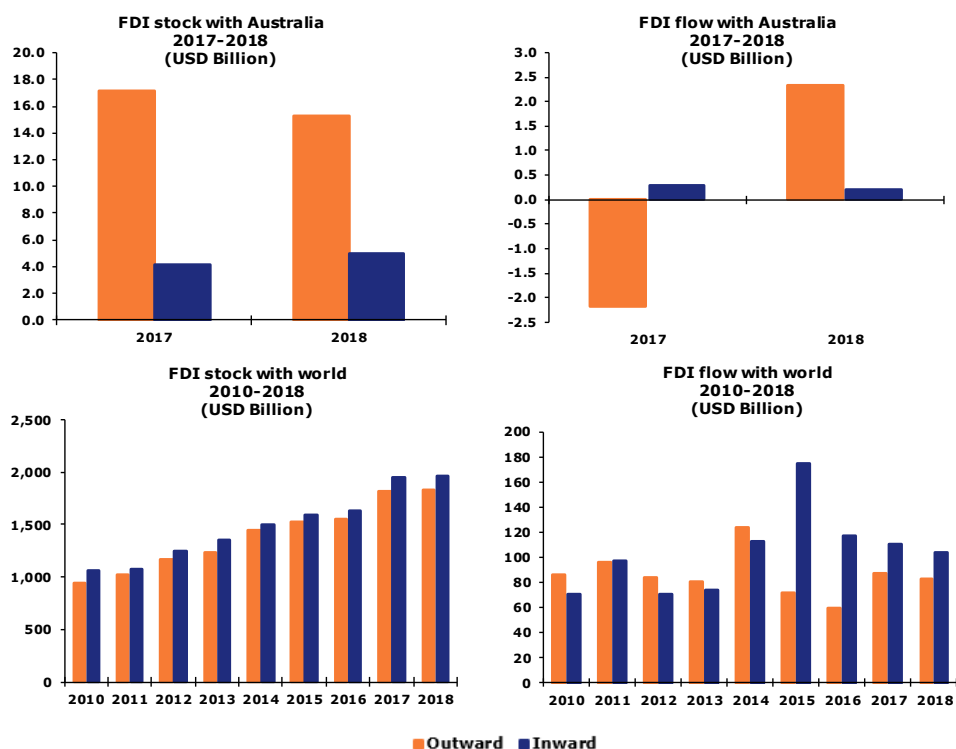
Source: Hong Kong, China authorities.

Chart 1.6 Australia: Bilateral trade in commercial services with Hong Kong, China, 2010-2018.

Note: Base on BPM6.
 No trade in commercial services for Manufacturing services on physical inputs owned by others (2010-2018), Maintenance and repair services (no export for 2010-2012, 2016 and no import for 2013-2014), and Construction (no export for 2010-2014, 2017-2018 and no import for 2010-2018), no import for Charges for the use of intellectual property n.i.e. (2017).
 Exchange rates to convert Australian Dollar to US Dollar for 2017-2018 are: 2017 (1.30) and 2018 (1.34).

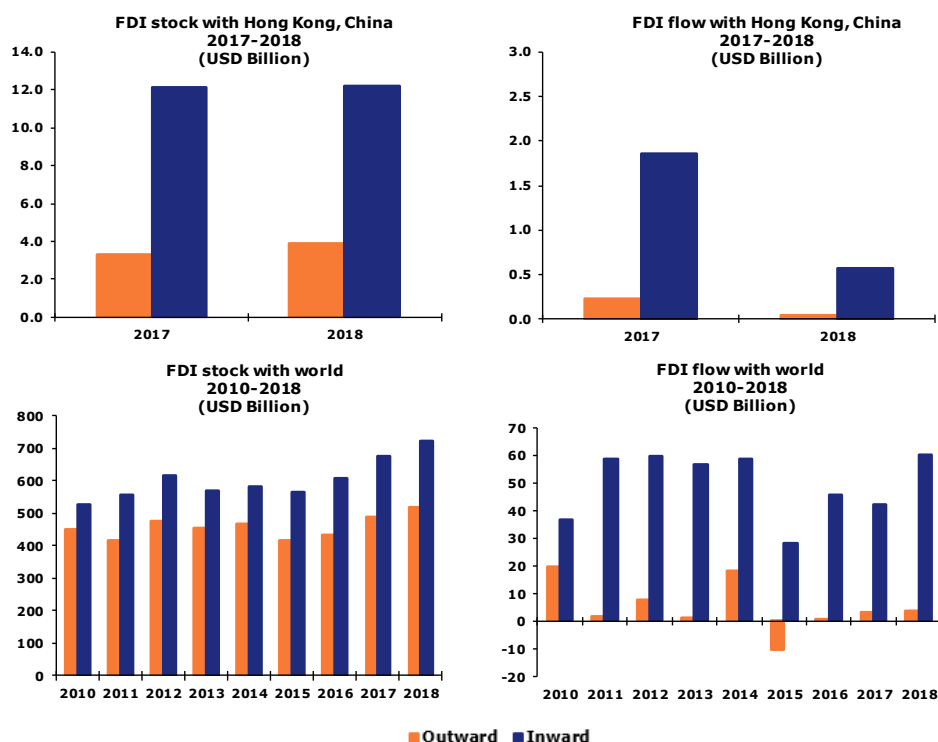
Source: WTO Statistics database and Australian authorities (2017-2018).

1.10. Charts 1.7 and 1.8 below depict the Parties' bilateral (2017-2018) and global (2010-2018) FDI stocks and flows. While inward FDI flows to Hong Kong China have surpassed outflows since 2015, it remained a net recipient in terms of its global FDI stocks. Australia remained a net FDI recipient overall during this period. Australia was a net recipient of FDI from Hong Kong China.

Chart 1.7 Hong Kong, China: FDI stock and flow with Australia and world

Note: Exchange rates to convert HK Dollar to US Dollar for 2017-2018 are: 2017 (7.79) and 2018 (7.84).

Source: UNCTADStat and authorities of Hong Kong, China (2017-2018).

Chart 1.8 Australia: FDI stock and flow with Hong Kong, China and world

Note: Exchange rates to convert Australian Dollar to US Dollar for 2017-2018 are: 2017 (1.30) and 2018 (1.34).

Source: UNCTADStat and Australian authorities (2017-2018).

2 CHARACTERISTIC ELEMENTS OF THE AGREEMENT

2.1 Background information

2.1. The Free Trade Agreement between Hong Kong, China and Australia, hereinafter referred to as "the Agreement" is one of Hong Kong, China's 7 RTAs and Australia's 14 RTAs.⁶ The Agreement was signed on 26 March 2019. It was notified to the WTO under Article XXIV:7(a) of the GATT 1994 and Article V:7(a) of the GATS on 17 January 2020.⁷ The Agreement entered into force on 17 January 2020.

2.2. The Parties also signed an "Investment Agreement" on 26 March 2019 which, together with the Agreement, they consider to be part of a wider process of economic integration and trade liberalization.

2.3. The text of the Agreement is available, together with its Annexes, on the following websites:

Hong Kong, China:

<https://www.tid.gov.hk/english/ita/fta/hkaufita/index.html>

Australia:

<https://dfat.gov.au/trade/agreements/in-force/a-hkfta/a-hkfta-text/Pages/default.aspx>

2.2 Structure of the Agreement

2.4. The Agreement is composed of 20 Chapters and a number of general and chapter specific Annexes. Side letters and associated documents complement the legal framework. Table 2.1 below summarizes the Agreement:

Table 2.1 Structure of the Agreement

Preamble	
Chapter 1	Initial provisions and general definitions and interpretations
Chapter 2	Trade in goods
Chapter 3	Rules of origin and origin procedures
Chapter 4	Customs procedures and trade facilitation
Chapter 5	Technical barriers to trade
Chapter 6	Sanitary and phytosanitary measures
Chapter 7	Cross-border trade in services
Chapter 8	Financial services
Chapter 9	Telecommunications
Chapter 10	Movement of natural persons
Chapter 11	Electronic commerce
Chapter 12	Establishment and related provisions
Chapter 13	Government procurement
Chapter 14	Intellectual property
Chapter 15	Competition policy
Chapter 16	Transparency
Chapter 17	Institutional provisions

⁶ RTAs on trade in goods and/or services notified separately to the WTO are counted as one. Source: RTA Information System (WTO Database on RTAs), at: <http://rtais.wto.org> (viewed on 17 March 2020).

⁷ WTO documents WT/REG400/N/1 and S/C/N/986.

Chapter 18	Consultations and dispute settlement
Chapter 19	General provisions and exceptions
Chapter 20	Final provisions
Annexes	
Annex I	Explanatory Notes and Schedules (Services and investment)
Annex II	Explanatory Notes and Schedules (Services and investment)
Side letters and associated documents	
	Legal services
	Professional services
	Government-owned enterprises
	Government procurement

Source: WTO Secretariat, based on the Agreement.

2.5. The Agreement establishes a free trade area between the Parties (Article 1.1).

3 PROVISIONS ON TRADE IN GOODS

3.1. While Chapter 2 specifically refers to trade in goods, Chapters 3 through 6 also apply to Trade in goods. Moreover, Chapter 13 (Government procurements) contains disciplines applicable, *inter alia*, to trade in goods. Chapter 1, and Chapters 14 through 20 contain rules applicable generally, and thus are also applicable to merchandise trade.

3.1 Import duties and charges, and quantitative restrictions

3.1.1 General provisions

3.2. The Parties commit to apply national treatment for all covered products in accordance with Article III of the GATT 1994, which is incorporated into and made part of the Agreement (Article 2.3).

3.3. The Agreement prohibits the adoption or maintenance of any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party, except in accordance with Article XI of the GATT 1994, which is incorporated into and made part of the Agreement (Articles 2.6). It confirms that the Parties prohibit measures such as export and import price requirements⁸; import licensing conditioned on the fulfilment of a performance requirement; and voluntary export restraints. Moreover, neither Party shall adopt or maintain any non-tariff measures on the importation of any good of the other Party, except in accordance with its rights and obligations under the Agreement or the WTO agreement. With respect to import, when allowed, the need for transparency is recognized in the Agreement.

3.4. The Agreement refers to, borrows from, and builds on Article VIII of the GATT 1994 (fees and formalities connected with importation and exportation) (Article 2.5); and the WTO Agreement on Import Licensing Procedures (Article 2.7). There is a requirement to publish online fees and charges imposed in connection with importation and exportation and any information that is required to be published under Article 1.4(a) of the WTO Agreement on Import Licensing Procedures.

3.5. Consultations on non-tariff measures may take place with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties (Article 2.6). Consultations on any proposed or actual measure on trade in goods may take place with reference

⁸ Such measures are prohibited except when and as permitted in enforcement of countervailing and antidumping duty orders and undertakings.

to Article 2.13 (paragraphs 2 through 4). Measures that fall within the scope of a Chapter other than Chapter 2 shall be addressed through the consultation mechanism established under that Chapter.

3.6. Conditional duty-free temporary admission of goods is governed by Article 2.9, which also provides that duty free treatment shall be granted for containers, pallets and packing material used in the international transportation of goods.

3.1.2 Liberalization of trade and tariff lines

3.7. Each Party agrees to eliminate all customs duties on originating goods of the other Party from the date of entry into force of the Agreement (Article 2.4).

3.1.2.1 Hong Kong, China

3.8. In 2020, and based on the HS 2017 nomenclature, Hong Kong, China's tariff consisted of 7,551 tariff lines (at the eight-digit level). All tariff lines were duty free on an MFN basis.

3.9. As all products originating in Australia are granted duty free access in Hong Kong, China, it has no liberalization schedule in the Agreement.

3.1.2.2 Australia

3.10. Australia's applied tariff in 2020 consisted of 6,475 lines at the HS eight-digit level (HS 2017); 99.9% of its tariff has *ad valorem* duties, with 9 *non-ad valorem* duty lines.⁹

3.11. As all products originating in Hong Kong, China are also granted duty free access in the Australian market, no liberalization schedule is attached to the Agreement for Australia.

3.12. Table 3.1 shows tariff elimination commitments by Australia for imports from Hong Kong, China and Table 3.2 shows Australia's tariff elimination, by HS section.

3.13. Before the entry into force of the Agreement (2020), 3,197 (eight-digit) tariff lines, representing 49.4% of Australia's tariff, and corresponding to 73% of its imports from Hong Kong, China during 2017-2019, were duty free on an MFN basis. At the entry into force of the Agreement, an additional 3,278 lines (50.6% of the tariff) became duty-free for imports from Hong Kong, China. As a result, 100% of Australia's tariff became duty free for imports from Hong Kong, China immediately at the entry into force of the Agreement.

Table 3.1 Australia: Tariff elimination commitments under the Agreement and corresponding average trade

Duty phase-out period	Number of lines	% of total lines in Australia's tariff schedule	Value of Australia's imports from Hong Kong, China (2017-2019) USD million	% of Australia's total imports from Hong Kong, China 2017-2019
MFN duty free (2020)	3,197	49.4	407.0	73.0
2020	3,278	50.6	150.7	27.0
Total	6,475	100.0	557.6	100.0

Note: Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the Australian authorities and the WTO-IDB.

Table 3.2 Australia: Tariff elimination under the Agreement, by HS Section

HS Section	MFN average%	Number of lines	Duty-free lines under the MFN 2020	Number of duty-free lines under the Agreement 2020
I	0.0	374	367	7
II	0.7	321	275	46
III	1.8	49	31	18

⁹ 5 tariff lines with specific duties and 4 lines with mixed duties.

HS Section	MFN average%	Number of lines	Duty-free lines under the MFN 2020	Number of duty-free lines under the Agreement 2020
IV	2.9	294	140	154
V	0.4	198	184	14
VI	1.3	964	705	259
VII	4.4	239	27	212
VIII	3.4	92	29	63
IX	3.2	179	65	114
X	3.7	285	73	212
XI	4.1	920	163	757
XII	2.5	60	30	30
XIII	3.4	167	52	115
XIV	1.0	53	42	11
XV	3.5	583	171	412
XVI	2.5	1,000	497	503
XVII	3.6	272	76	196
XVIII	0.8	240	201	39
XIX	1.6	19	13	6
XX	3.5	159	49	110
XXI	0.0	7	7	
Total	2.5	6,475	3,197	3,278

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.

Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the Australian authorities.

3.1.3 Tariff rate quotas

3.14. There are no tariff rate quota commitments in the Agreement.

3.2 Rules of origin

3.15. The disciplines on rules of origin and origin procedures are set out in Chapter 3.

3.16. While Section A contains the rules of origin *per se*, and Annex 3-B the product-specific rules of origin, Section B sets out the origin procedures, complemented by the information to be included in the declaration of origin in Annex 3-A. Section C foresees that the Parties may consult to discuss possible amendments or modifications to Chapter 3 and its annexes. For the purposes of the Agreement, a product is considered as originating in a Party if it is:

- wholly obtained or produced entirely in one or both of the Parties by one or more producers as established in Article 3.3;
- produced entirely in one or both of the Parties by one or more producers, exclusively from originating materials; or
- produced entirely in one or both of the Parties by one or more producers using non-originating materials provided that the good satisfies the applicable product-specific rules of origin in Annex 3-B to the Agreement, and the good satisfies all other applicable requirements of Chapter 3.

3.17. According to Annex 3-B, the product-specific rules of origin apply to goods in which non-originating materials are used in the production process (Article 3.2(c)).¹⁰ For most HS Chapters, the products are considered originating if they are wholly obtained or if their transformation involves a change in tariff classification (CTC) either at the level of the Chapter (2 digits), heading (4 digits), or sub-heading (6 digits) under the HS. For a number of industrial and some agricultural products, the transformed good must have a regional value content (RVC) of not less than 40% (Article 3.4).¹¹

¹⁰ The product-specific rules are formulated on the basis of the HS 2017.

¹¹ The RVC requirement (40%) is applicable in particular for some products, such as in HS Sections I (dairy products); II (vegetables and food products); IV (prepared foodstuffs, beverages); V (mineral fuels); VI (chemical products); VII (plastics); X (paper and printed books); XI (apparel, clothing, and made up textiles);

In most cases, for when an RVC is required, it is an alternative to the CTC requirement. In some other cases, the RVC is defined as a cumulative requirement together with the fulfilment of another criteria (usually CTC or a manufacturing or processing operation).¹² Specified manufacturing or processing operations are required for a certain number of products¹³, and for chemical products.¹⁴

3.18. Disciplines on the treatment of materials used in production; the determination of the value of such materials; as well as further adjustments to that value are contained in Articles 3.5 through 3.7.

3.19. Cumulation of origin is governed by the provisions of Article 3.8. Products shall be considered as originating in a Party if they are obtained there by incorporating materials originating in the other Party. The Parties also agree to meet within two years after the entry into force of the Agreement to review Article 3.8, particularly taking into account new approaches such as cross-cumulation.

3.20. Article 3.9 contains a *de minimis* tolerance provision if the value of non-originating material in a good does not exceed 10% of the adjusted value as defined in the Agreement. For textiles and textile article under HS Chapters 50-63, the *de minimis* tolerance can also be 10% of the total weight of the good.

3.21. Disciplines on the treatment of fungible goods or materials; accessories, spare parts, tool, and instructional or other information materials; packaging materials and containers for retail sale; packing materials and containers for shipment; indirect materials; and consignment are contained in Articles 3.10 through 3.15.

3.22. Section B of Chapter 3 governs origin procedures. It establishes, under Articles 3.16 through 3.27, rules and disciplines applicable to claims for preferential treatment, with minimum data requirements to be contained in a declaration of origin listed in Annex 3-A to the Agreement; basis of a declaration of origin; discrepancies in the declaration of origin; waiver of declaration of origin¹⁵; obligations relating to importation; refunds and claims for preferential tariff treatment after importation; record keeping requirements; verification of origin; verification visit; determinations on claims for preferential tariff treatment; penalties for violation of laws and regulations related to Chapter 3; and maintenance of the confidentiality of information collected in the process of origin determination.

3.3 Export duties and charges, and quantitative restrictions

3.23. Export duties applicable to goods destined for the other Party are prohibited, unless such duty is not in excess of that imposed on the like good destined for domestic consumption (Article 2.8).

3.24. The Agreement prohibits the adoption or maintenance of any prohibition or restriction on the exportation or sale for export of any good destined for the other Party, except in accordance with Article XI of the GATT 1994. Moreover, neither Party shall adopt or maintain non-tariff measures on the exportation of any good destined to the other Party, except in accordance with its rights and obligations under the Agreement or the WTO agreement. With respect to export restrictions, when allowed, the need for transparency is recognized in the Agreement (Article 2.6).

XIII (glass); XIV (silver, gold, platinum and jewellery); XV (metals); XVI (machinery); XVII (vehicles, including parts for aircrafts, ships and boats); XVIII (medical and surgical instruments, clocks, musical instruments); and XX (furniture, toys, and miscellaneous manufactured articles).

¹² This is specifically for some vehicles under HS 8701 through 8705.

¹³ This is specifically for some products under HS Chapters 08 (fruits); 09 (spices); 15 (vegetables, fats); and 61, 62 and 63 (textiles).

¹⁴ Specific rules are prescribed for the following processes: chemical reaction; distillation, purification; mixtures and blends; change in particle size; standards materials; and isomer separation.

¹⁵ For instance, with some attached conditions, in case the value of the imported goods does not exceed AUD 1,000 or the equivalent; or the importation of a good for which the importing Party has waived the declaration of origin requirement.

3.4 Regulatory provisions on trade in goods

3.4.1 Standards

3.4.1.1 Sanitary and phytosanitary measures

3.25. Chapter 6 contains disciplines on sanitary and phytosanitary measures (SPS) that are intended to facilitate trade between the Parties while protecting human, animal or plant life or health; promote transparency in and understanding of the application of each Party's SPS measures; strengthen SPS-related cooperation to facilitate trade and access to their respective markets; and to facilitate the implementation of the principles of the WTO SPS Agreement (Article 6.2). The Parties affirm their rights and obligations with respect to each other under the WTO SPS Agreement (Article 6.4).

3.26. The Agreement allows Parties to take emergency SPS measures on serious human, animal or plant life or health grounds, subject to notification and consultations if necessary (Article 6.6). It also refers to, respectively, Articles 4 and 6 of the WTO SPS Agreement for the determination of equivalence (Article 6.7) and the adaptation of determination to regional conditions.

3.27. While transparency provisions address the availability of information and notifications regarding proposed, new or amended SPS measures (Article 6.5), the Parties agree to cooperate to facilitate the implementation of Chapter 6; to designate contact points; and to consult on any matter arising under Chapter 6 (Articles 6.9 through 6.11). The Agreement nevertheless clarifies that neither Party shall have recourse to dispute settlement under Chapter 18 (consultation and dispute settlement) for any matter arising from Chapter 6.

3.4.1.2 Technical barriers to trade

3.28. Chapter 5 contains disciplines on technical barriers to trade (TBT), which apply to all technical regulations, standards and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties. Chapter 5 excludes sanitary or phytosanitary measures, which are covered in Chapter 6. Purchasing specifications prepared by governmental bodies for their production or consumption requirements are also excluded from Chapter 5. Two Annexes contain specific additional TBT-related disciplines for wine (Annex 5-A) and food products (Annex 5-B).

3.29. The Parties reaffirms their existing rights and obligations with regard to each other under the TBT Agreement (Article 5.4). It provides, in Article 5.5 for example, that international standards, guides and recommendations shall be used as basis for the Parties' technical regulations and related conformity assessment procedures, as appropriate and when they are effective and appropriate to fulfil legitimate objectives. Positive consideration to accept as equivalent technical regulations of the other Party is encouraged (in accordance with the TBT Agreement) (Article 5.6). The Parties are also invited to give positive consideration to accepting the results of each other's conformity assessment procedures (Article 5.7).

3.30. Transparency provisions require information on new and proposed regulations, standards and conformity assessment procedures be made available, including the full text within seven days of a request from the other Party. The Party making the notification shall endeavour to provide the other Party with a period of at least 60 days in which to comment except in urgent cases. The Party shall endeavour to respond to any comments on request within a reasonable period of time (Article 5.8). Contact points shall be designated (Article 5.10). Opportunities for cooperation between the Parties are also identified in Article 5.9.

3.31. Article 5.11 contains rules on TBT-related consultations. Neither Party shall have recourse to dispute settlement under Chapter 18 (consultations and dispute settlement) for any matter arising under Chapter 5 (Article 5.12).

3.32. On wine, Annex 5-A reflects the ongoing wine labelling practice and seeks to keep pace with the long term harmonisation for global wine trade, underlines some of the rights and obligations of the Parties in connection with labelling and the type of information that may be required on wine labels. The Annex also details rules on penalties, as well as disciplines on, *inter alia*, labelling of the minimum durability or expiration of products. On certification and classification the Parties may not

require that imported wine be certified by an official certification body of or by a body recognized by the Party in which it is produced, regarding the vintage, varietal or regional claims for wine (unless there is a reasonable and legitimate concern about these); instead any certification for health and safety reasons should be based on the Codex Alimentarius.¹⁶ The Parties also agree to endeavour to assess their respective laws, regulations and requirements in respect of oenological practices, with the aim of reaching agreements that provide for the mutual acceptance of their respective mechanisms for regulating oenological practices, if appropriate.

3.33. Annex 5-B enhances transparency in the regulatory mechanism for food products and foster a closer government to government liaison on regulations in surveillance matters. The Parties shall identify agencies that are authorised to regulate import and export of food products and manage food safety incidents in their respective area and make that information publicly available. The Parties confirm that their respective regulations of food products and the production of food product safety assurances are based on risk assessment procedures in accordance with applicable international standards, guides and recommendations, including those developed by the Codex Alimentarius Commission. They also agree to share information from post-market surveillance of food products for food products traded between them. Consultations are foreseen if and when a Party detects non-conformity of a food product from the other Party that results in a consignment being refused entry and on any matter arising in trade in food products, while collaboration through regional and international initiatives to improve the alignment of the Parties' respective regulations and regulatory activities for food products is encouraged. The Parties agree to give positive consideration to accepting the equivalence of each other's technical regulations and standards. They also may decide to negotiate recognition of their food safety systems for all or some food products based on relevant guidance by the Codex Alimentarius Commission.

3.4.2 Safeguard mechanisms

3.4.2.1 Global safeguards

3.34. The Parties' rights and obligations in respect of safeguards shall be governed by Article XIX of the GATT 1994 and the WTO Agreement on Safeguards (Article 2.12). The Agreement does not confer any additional rights or obligations on either Party for actions taken pursuant to Article XIX of the GATT 1994 and the WTO Agreement on safeguards.

3.4.2.2 Bilateral safeguards

3.35. The Agreement does not contain disciplines on bilateral safeguards.

3.4.2.3 Safeguard measures related to balance of payment (BOP) difficulties

3.36. A Party, in serious BOP and external financial difficulties, or under threat thereof, may, in accordance with the conditions established under the GATT 1994 and the relevant WTO Understanding, adopt or maintain restrictive import measures. Article 19.6 contains disciplines, partly based on relevant WTO provisions, and consistency of the Articles of Agreement of the IMF, for the application of BOP measures. Notification obligations are also linked to the use of such rights.

3.4.3 Anti-dumping and countervailing measures

3.37. The Agreement confirms that Article VI of the GATT 1994 and the WTO Antidumping Agreement shall govern the rights and obligations of the Parties (Article 2.10). The Agreement does not confer any additional rights or obligations on either Party with regard to actions taken pursuant to Article VI of the GATT 1994 and the WTO Antidumping Agreement.

3.38. Article 2.11 confirms that the rights and obligations of the Parties relating to countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures. When an application for the initiation of a countervailing investigation against the imports from the other Party is received by a Party it shall notify the other Party before the initiation of an investigation so as to provide reasonable opportunities for consultations with a view to finding a mutually acceptable solution. The Agreement does not confer

¹⁶ Guidelines for Design, Production, Issuance and Use of Generic Official Certificates (CAC/GL 38-2001).

any additional rights or obligations on either Party with regard to actions taken pursuant to Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.

3.4.4 Subsidies and State-aid

3.39. The Agreement confirms that the rights and obligations of the Parties relating to subsidies shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures (Article 2.11).

3.40. There are no provisions on State-aid in the Agreement.

3.4.5 Customs-related procedures and trade facilitation

3.41. While there are a number of customs-related provisions in other Chapters of the Agreement, Chapter 4 specifically addresses customs procedures and trade facilitation. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement on Trade Facilitation (Article 4.4). They also agree that Article VII of the GATT 1994 and the WTO Customs Valuation Agreement govern the determination of the customs value of goods trade with the other Party (Article 4.5). While each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and shall facilitate trade, the Parties also commit to conform to international standards and recommended practices established by the World Customs Organization, where possible. A periodic review of customs procedures by the customs administration of each Party shall take place with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangement to facilitate trade between the Parties (Article 4.6). Specific provisions are contained in Chapter 4 with respect to response to requests for advice or information; the application of information technology and the establishment of a single window system for traders on a best endeavour basis; the publication of relevant laws and regulations; the designation of enquiry points; as well as providing an opportunity to the public to provide comments on relevant draft general laws and regulations to the extent practicable (Articles 4.7, 4.8, and 4.12). Moreover, in Articles 4.9 through 4.11, the Parties agree on the use of risk management in its customs procedures to facilitate the clearance of low risk goods, and a periodic review of such practices; the adoption and maintenance of simplified customs procedures for the efficient release of goods; the maintenance and review of the operation of the Arrangement regarding Mutual Recognition of each Party's *Authorised Economic Operator Systems*. A review and appeal mechanism shall be available in each Party for administrative review and judicial review of decisions by customs administrations (Article 4.13).

3.42. Cooperation and consultations between the Parties are foreseen in and governed by Articles 4.14 and 4.15. In the event that consultations fail to resolve any disagreements, the matter may be referred to the Joint Commission established by the Agreement by the Party requesting consultations. The designation of contact points on customs procedures and trade facilitations matters is also foreseen.¹⁷

4 PROVISIONS ON TRADE IN SERVICES AND INVESTMENT

4.1 Scope and definitions

4.1. Rules governing trade in services are found in Chapter 7 (Cross-border trade in services), which covers cross-border trade in services¹⁸; Chapter 8 (Financial services), which applies to measures adopted or maintained by a Party affecting trade in financial services; Chapter 9 (Telecommunications), which applies to measures adopted or maintained by a Party affecting trade in telecommunications services; Chapter 10 (Movement of natural persons), which apply to measures that affect the movement of natural persons of a Party into the area of the other Party in the categories as defined in the Agreement; and in Chapter 12 (Establishment and related provisions), which applies to measures adopted or maintained by a Party relating to investors of the

¹⁷ For Hong Kong, China, the contact point can be accessed at hk_liaison@customs.gov.hk. For Australia, the contact point can be accessed at origin@abf.gov.au.

¹⁸ The definition of the term "cross-border trade in services", for the purpose of the Agreement, covers the supply of a service through modes 1, 2 and 4 as defined in the GATS.

Similarly, the terms "services" and "a service supplied in the exercise of governmental authority" are also, for the purpose of the Agreement, identical to those in the GATS.

other Party, and covered investments. Specific Annexes complement these disciplines. Chapter 7 does not apply to financial services, government procurement, services supplied in the exercise of governmental authority and subsidies or grants provided by a Party. It also does not apply to air services other than aircraft repair and maintenance services; selling and marketing of air transport services; computer reservations system services; specialty air services; airport operation services; and ground handling services.

4.2. The Schedules to Annexes I and II to Chapter 7 contain, respectively, the Parties' existing non-conforming measures and their lists of specific sectors, subsectors or activities for which they may maintain existing, or adopt new or more restrictive non-conforming measures. This is applicable to Chapter 12. Annex 8-B contains the Parties' specific commitments on financial services.

4.2 Denial of benefits

4.3. A Party may deny the benefits of Chapter 7 (cross-border trade in services) or of Chapter 12 (establishment and related provisions) to, respectively, a service supplier, or an investor that is an enterprise of the other Party and to investments of that investor, if the service supplier or enterprise are owned or controlled by persons of a third-party; and the denying Party adopts or maintains measures with respect to the third-party or a person of the third-party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of Chapter 7 or Chapter 12 were accorded to the enterprise (Articles 7.11 and 12.10). Similar disciplines are applicable for financial services (Article 8.16).

4.3 General provisions on trade in services

4.3.1 Market access

4.4. The principles in Article XVI of the GATS (paragraphs 2a through 2e) are confirmed with respects to market access granted by a Party to services and services providers from the other Party (Article 7.3).

4.5. Nevertheless, the existing and future non-conforming measures listed by the Parties, on commitments on market access, are in Annexes I and II to the Agreement (Article 7.7) and are summarized below under Section 4.4.

4.6. Market access specific commitments on financial services, based on a hybrid approach (i.e. market access commitments are positively scheduled while other commitments are negatively scheduled, are in Section A and Section B Part I of Annex 8-B.

4.3.2 National and MFN treatment

4.7. With respect to cross-border trade in services, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that is accords, in like circumstances, to its own services and service suppliers (Article 7.4) and to services and service suppliers of a third-party (Article 7.6). The same principles apply for investment (Articles 12.4 and 12.5).

4.8. As to the application of national treatment for investment, the Agreement stipulates that a Party may adopt or maintain a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or that a covered investment be legally constituted or organised under the laws or regulations of the Party (Article 12.9). This is providing that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments in accordance with Chapter 12. The provision of information concerning that investment solely for informational or statistical purposes may however be required by a Party.

4.9. Existing and future non-conforming measures listed by the Parties, for commitments on national and MFN treatment, are in Annexes I and II to the Agreement (Article 7.7 for cross-border trade in services and Article 12.8 for investment), and in Section B of Annex 8-B for financial services. The Parties' commitments are summarized below under Section 4.4.

4.3.3 Commercial (local) presence

4.10. Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its area as a condition for the cross-border supply of a service (Article 7.5).

4.11. Existing and future non-conforming measures listed by the Parties, on commitments on local presence, are in Annexes I and II to the Agreement (Article 7.7) and are summarized below under Section 4.4.

4.3.4 Performance requirement

4.12. With respect to investment, neither Party shall in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of a covered investment in its area, impose or enforce any requirement, or enforce any commitment or undertaking to activities identified in Article 12.6.

4.13. Existing and future non-conforming measures listed by the Parties, on commitments on performance requirements, are in Annexes I and II to the Agreement (Article 12.8) and are summarized below under Section 4.4.

4.3.5 Senior management and boards of directors

4.14. A Party shall not require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality (Article 12.7). Nevertheless, 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 area of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

4.15. Existing and future non-conforming measures listed by the Parties, on senior management and boards of directors, are in Annexes I and II to the Agreement (Article 12.8) and in Section B of Annex 8-B for financial services. The Parties' commitments are summarized below under Section 4.4.

4.3.6 Movement of natural persons

4.16. Chapter 10 on the movement of natural persons applies to measures affecting the movement of natural persons of a Party into the area of the other Party in several specified categories of persons. Each Party undertakes to grant temporary entry or extension of temporary stay to natural persons of the other Party to the extent and on the conditions provided for in its Schedule of specific commitments on the movement of natural persons, in Annex 10-A to the Agreement.

4.17. Australia grants temporary entry subject to the conditions and limitations, including length of stay, in its Schedule under Annex 10-A, for business visitors; intra-corporate transferees; independent executives; and spouses and dependants.

4.18. Hong Kong, China's specific conditions, for the temporary movement of natural persons, including duration of stay, cover business visitors; intra-corporate transferees¹⁹; installers or servicers; and dependants, as defined in Annex 10-A.

4.19. Chapter 10 also contains specific provisions on transparency, including the requirement to establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry (Article 10.4).

4.20. Expeditious processing of applications, prompt provision of information concerning the status of applications, reasonable fees imposed for the processing of immigration formalities, and the

¹⁹ The specific sectors and subsectors to which the commitments on intra-corporate transferees apply are detailed in Hong Kong, China's schedule.

provision of facilities for online lodgement and processing of immigration formalities are among the requirements and procedures listed in Article 10.5.

4.21. The obligations of a Party regarding its immigration measures can only derive from Chapter 1 (initial provisions, general definitions and interpretations); Chapter 10 (movement of natural persons); Chapter 18 (consultations and dispute settlement)²⁰; Chapter 20 (final provisions); and Article 7.10 of Chapter 7 (Cross-border trade in services: transparency).

4.4 Liberalization commitments

4.22. Commitments on cross-border trade in services (Chapter 7), establishment and related provisions (Chapter 12), and financial services (Chapter 8), except for market access in financial services, are scheduled mainly on a negative list basis so that obligations on market access (Articles 7.3 and 8.3); national treatment (Articles 7.4, 8.4, and 12.4); local presence (Articles 7.5); MFN treatment (Articles 7.6, 8.5, and 12.5); performance requirements (Articles 12.6); and senior management and boards of directors (Articles 8.7, and 12.7) apply to all services, unless specified otherwise in the Parties' existing and future non-conforming measures in Annexes I and II, respectively. Though a negative list approach is also followed by Australia in Annex II, commitments on market access are nevertheless expressed through a mix of negative and positive lists, building on its market access commitments under the GATS for the latter. For financial services (Chapter 8) with respect to market access, a positive list approach is used while for modes 1 and 2 the Parties apply a negative list approach, similar to their commitments for cross-border trade in services and establishment. Annex 8-B lists, in Section A, the Parties specific commitments on market access for financial services, while Section B of Annex 8-B lists the non-conforming measures (existing and future) for national and MFN treatment, and senior management and boards of directors, for financial services.

4.23. The sub-sections below present the Parties' liberalization commitments under the Agreement. Following a summary of MFN exemptions and horizontal limitations in the Agreement, Tables 4.1 and 4.2 summarize the Parties' specific commitments under the Agreement, by main sectors and subsectors, and compare them with their GATS Schedules. As different approaches are used under the GATS and the Agreement to schedule commitments, it is sometimes difficult to compare these commitments. Improvements in existing GATS commitments are either a reduction in the limitations on national treatment, additional sub-sectors in which commitments are made, and/or new commitments. It should however be noted that horizontal limitations in the GATS Schedules and MFN reservations or exemptions in the Agreement, are excluded from the Tables, as are mode 4 commitments. The summaries of MFN and horizontal limitations, as well as the summary tables, should be considered together with the Parties' respective Schedules of Specific Commitments and lists of MFN exemptions.

4.4.1 Hong Kong, China

4.24. In its GATS schedule, Hong Kong, China took commitments in 68 out of 155 services sectors, leaving in particular education services, environmental services, and health-related and social services unbound. Under the Agreement, its commitments are improved, in part as a result of the use of a negative list approach for most of the sectors.

4.4.1.1 MFN and horizontal commitments

4.25. Hong Kong, China has no MFN exemptions under the GATS. Under the Agreement, it reserves the right to adopt or maintain any measure that accords differential treatment to third parties under any bilateral or multilateral agreement or arrangement in force or signed prior to the date of entry into force of the Agreement. It also reserves the right to grant more favourable treatment to non-parties through any bilateral or multilateral agreement or arrangement which enters into force or is signed after the date of entry into force of the Agreement and involves aviation, fisheries, or maritime matters including salvage.

²⁰ However, a Party shall not have recourse to Chapter 18 regarding a refusal to grant temporary entry unless the matter involves a pattern of practice; and its natural persons affected have exhausted the remedies made available by the other Party regarding a particular matter.

4.26. Hong Kong, China's GATS Schedule does not have horizontal commitments although an attachment on the presence of natural persons details its additional commitments and conditions for the supply of services through mode 4. Under the Agreement, Hong Kong, China carves out certain public services (public law enforcement, ambulance services, correctional services and firefighting services) and certain social services established for a public purpose (in sectors such as: health, education, housing, training, transport, public utilities, social security, and social welfare) from its commitments on market access (Article 7.3), national treatment (Articles 7.4 and 12.4), local presence (Article 7.5), performance requirements (Article 12.6), and senior management and boards of directors (Article 12.7).²¹ Horizontal limitations are, applied to some or all its commitments²² for the acquisition or ownership of land and properties²³; the privatisation, divestment, sale or other disposition of corporate entities, equity interest or assets in government ownership²⁴; acquisition, sale or other disposition by Australian natural persons of bonds, bills, notes, or other kinds of debt securities or instruments issued by the Government or by a Government enterprise²⁵; legislation relating wholly or mainly to taxation²⁶; and measures affecting the presence of natural persons and supply of services through such presence, except as specified in Hong Kong, China's Schedule to Annex 10-A.²⁷

4.4.1.2 Sector specific commitments

4.27. The following section identifies some of the main differences between Hong Kong, China's GATS schedule and its sector-specific commitments under the Agreement. It should also be read in conjunction with Annexes I, II and 8-B of the Agreement.

4.28. Hong Kong, China's sector-specific commitments under the Agreement build on its GATS commitments. The use of the negative list approach contributes to substantially improving the coverage of the commitments under the Agreement, as compared to the GATS.

Table 4.1 Hong Kong, China: comparison between the GATS and Agreement specific commitments

Sectors (CPC Classification)	GATS Sectoral Commitments	RTA		
		Compared to GATS	Annex I	Annex II
1. Business services				
A. Professional Services	Partial	Improved*	Partial	Partial
B. Computer and Related Services	Partial	Improved*	Full	Full
C. Research and Development Services	---	Improved*	Full	Full
D. Real Estate Services	Partial	Improved	Full	Partial
E. Rental/Leasing Services without Operators	Partial	Improved*	Partial	Partial
F. Other Business Services	Partial	Improved	Partial	Partial
2. Communication services				
A. Postal services	---	Same	---	---
B. Courier services	Partial	Improved	Full	Partial
C. Telecommunication services	Partial	Improved	Full	Partial
D. Audiovisual services	Partial	Improved*	Full	Partial
E. Other	---	Improved*	Full	Full
3. Construction and related engineering services				
A. General construction work for buildings	---	Same	---	---
B. General construction work for civil Engineering	---	Improved*	Partial	Full
C. Installation and assembly work	---	Improved*	Partial	Partial
D. Building completion and finishing work	Partial	Improved	Partial	Partial
E. Other	Partial	Improved	Full	Partial
4. Distribution services				
A. Commission agents' services	---	Improved*	Full	Full
B. Wholesale trade services	---	Improved*	Full	Full
C. Retailing services	Partial	Improved	Full	Full
D. Franchising	---	Improved*	Full	Full

²¹ Reservation II-HKC-1.

²² Market access, national and MFN treatment, performance requirements, local presence, senior management and boards of directors.

²³ Reservation II-HKC-2.

²⁴ Reservation II-HKC-4.

²⁵ Reservation II-HKC-3.

²⁶ Reservation II-HKC-5.

²⁷ See Section 4.3.6 above.

Sectors (CPC Classification)	GATS Sectoral Commitments	RTA		
		Compared to GATS	Annex I	Annex II
E. Other	---	Improved*	Full	Full
5. Educational services				
A. Primary education services	---	Improved*	Partial	Partial
B. Secondary education services	---	Improved*	Partial	Partial
C. Higher education services	---	Improved*	Partial	Partial
D. Adult education	---	Improved*	Partial	Partial
E. Other education services	---	Improved*	Partial	Partial
6. Environmental services				
A. Sewage services	---	Improved*	Full	Full
B. Refuse disposal services	---	Improved*	Full	Full
C. Sanitation and similar services	---	Improved*	Full	Full
D. Other	---	Improved*	Full	Full
7. Financial services (Annex 8-B)				
A. All insurance and insurance-related services	Partial	Improved	Partial	Partial
B. Banking and other financial services	Partial	Improved	Partial	Partial
C. Other	---	Same	---	---
8. Health related and social services				
A. Hospital services	---	Improved*	Full	Partial
B. Other Human Health Services	---	Improved*	Full	Partial
C. Social Services	---	Same	---	---
D. Other	---	Same	---	---
9. Tourism and travel related services				
A. Hotels and restaurants (including catering)	Partial	Improved	Full	Partial
B. Travel agencies and tour operators services	Partial	Improved	Partial	Partial
C. Tourist guides services	---	Same	---	---
D. Other	---	Same	---	---
10. Recreational, cultural and sporting services				
A. Entertainment services	---	Improved*	Full	Partial
B. News agency services	---	Same	---	---
C. Libraries, archives, museums and other cultural services	Partial	Improved	Full	Partial
D. Sporting and other recreational services	---	Improved*	Full	Full
E. Other	---	Same	---	---
11. Transport services				
A. Maritime Transport Services	Partial	Improved	Partial	Partial
B. Internal Waterways Transport	---	Same	---	---
C. Air Transport Services	---	Improved*	Full	Partial
D. Space Transport	---	Same	---	---
E. Rail Transport Services	---	Improved*	Full	Partial
F. Road Transport Services	---	Improved*	Full	Partial
G. Pipeline Transport	---	Improved*	Full	Full
H. Services auxiliary to all modes of transport	Partial	Improved*	Full	Partial
I. Other Transport Services	---	Same	---	---
12. Other services not included elsewhere	---	Improved*	Full	Partial

Note: MFN and Horizontal commitments, as well as Mode 4 commitments / limitations not considered in the Table.

Partial: Commitments subject to some limitation(s), including through non-conforming measures (existing and/or future).

Full: Commitments not subject to limitation(s), including through non-conforming measures (existing and/or future).

---: No commitments / unbound.

*: New commitments in the Agreement (full or partial, with or without limitations). "New" can, in most cases, be seen as "improved".

Improved: Overall improved commitments in the Agreement compared to the GATS.

Same: Identical commitments compared to the GATS.

Similar: Similar commitments though possibly, in specific individual cases, with limited improvements and/or limited additional reservations.

Source: Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/HKG), prepared by the Secretariat (in 2003) and Hong Kong, China's Schedules annexed to the Agreement.

4.4.1.2.1 Business services

4.29. Hong Kong, China's commitments under the Agreement build on its GATS commitments. Coverage is improved within each subsector but particularly in computer and related services, partially covered under GATS but fully covered under the Agreement; research and development services (unbound under the GATS and fully covered under the Agreement); as well as a number of other business services. The level of commitments for real estate services and rental/leasing services without operators is similar under the Agreement and the GATS.

4.30. With respect to legal services, the Parties, agree, through an exchange of letters, to meet within one year of the date of entry into force of the Agreement²⁸ with the intention of supplementing commitments made by Hong Kong, China on legal services with additional substantive commitments on mode 3.

4.4.1.2.2 Communication services

4.31. While postal services, unbound under the GATS, remain covered by a general reservation for future non-conforming measures, and a partial reservation for courier services, the coverage of telecommunication services is improved, though Hong Kong, China reserves the possibility to restrict or require specific types of legal entity through which a service supplier may supply a service. Coverage is also improved for audiovisual services, with, however, reservations for radio and television services, which are limited to modes 2 and 3 for certain services; and market access for author audiovisual services.

4.32. Chapter 9 includes specific disciplines for telecommunications.

4.4.1.2.3 Construction and related engineering services

4.33. All sub-sectors are now covered, though with some existing and future reservations, while under the GATS, general construction work and installation and assembly work are unbound. General construction work for buildings are covered without reservations.

4.4.1.2.4 Distribution services

4.34. While the whole sector is unbound under the GATS, except for retailing services which are partially covered, under the Agreement all subsectors are covered without any existing non-conforming measure and/or reservations.

4.4.1.2.5 Educational services

4.35. While the whole sector is unbound under the GATS, it is now completely covered under the Agreement, though with both existing and future non-conforming measures. Reservations have been introduced for the provision of some educational services through commercial presence.

4.36. The horizontal reservation for social services established for a public purpose nevertheless applies.

4.4.1.2.6 Environmental services

4.37. Under the Agreement, the sector, which is entirely unbound under the GATS, is now fully covered with no reservation or limitation.

4.4.1.2.7 Financial services

4.38. Hong Kong, China broadly matches its GATS commitments in insurance and insurance-related services, though adjustments have been made to the extent and nature of its reservations and commitments to cover for instance insurance intermediation such as brokerage and agency as well as services auxiliary to insurance. The same applies to a large extent to banking services, with some improved coverage for the provision and transfer of financial information, and financial data

²⁸ The Parties indicate that they have not yet met to date.

processing and related software by suppliers of other financial services. Hong Kong, China's commitments under the Agreement shall not prevent it from adopting or maintaining non-discriminatory measures which restrict or require specific types of legal entities through which a service supplier may supply a service. Moreover, there is a statutory monopoly on the operation of stock markets in Hong Kong, China.

4.39. Specific disciplines on trade in financial services are in Chapter 8.

4.4.1.2.8 Health related and social services

4.40. While the sector is unbound under the GATS, it is now covered under the Agreement, though with some reservations for future non-conforming measures for hospital and other human health services.

4.41. The horizontal reservation for social services established for a public purpose is however applicable.

4.4.1.2.9 Tourism and travel related services

4.42. Tourist guide services are unbound under the GATS. They are fully covered without any reservation by the Agreement. The coverage and level of the commitments on hotels and restaurants as well as for travel agencies and tour operator services is partly expanded.

4.4.1.2.10 Recreational, cultural and sporting services

4.43. While most of the sector is unbound under the GATS, under the Agreement it is now almost fully covered. No existing non-conforming measures are listed. However, there are some reservations for some entertainment services and for the provision of services through mode 1 for library and archives services. Sporting and other recreational services remain reserved.

4.4.1.2.11 Transport services

4.44. The coverage of sector, largely unbound under the GATS except for a partial coverage of maritime transport services and auxiliary services, is improved under the negative list approach. While there are no existing non-conforming measures, there are a number of reservations through future new non-conforming measures under the Agreement. This is the case for example for measures on cabotage transport and provision of certain port services²⁹; internal waterways transport, space transport and other transport services; some air transport services; and some rail transport services except pushing and towing services, maintenance and repair of rail transport equipment, or supporting services for rail transport services. Similar reservations are made with respect to road transport services, except freight transportation, rental services of commercial freight vehicles with operator, or maintenance and repair of road transport equipment; and cargo-handling services in respect of air and rail and storage and warehousing services in respect of air and rail.

4.4.1.2.12 Other services sectors

4.45. Under the Agreement, Hong Kong, China reserves the right to adopt or maintain any measure on services of membership organisations³⁰, other services³¹, private households with employed persons³², and services provide by extraterritorial organizations and bodies.³³

²⁹ The Australian maritime transport service suppliers may however have access to these port services on a non-discriminatory basis.

³⁰ CPC 95.

³¹ CPC 97. This reservation does not apply to spa services provided through modes 2 and 3 (CPC 9702).

³² CPC 98.

³³ CPC 99.

4.4.2 Australia

4.46. In the GATS, Australia took commitments in 103 out of 155 services sectors. It did not make commitments, *inter alia*, on certain specific business services; postal and courier services, as well as audiovisual services; some education services (primary and adult education services); sanitation and similar services; hospital and social services; entertainment services and libraries, archives, museums and other cultural services; and internal waterways, space and rail transport services.

4.47. Under the Agreement, as a negative list approach is chosen, as a principle, all the sectors are covered, though a number of non-conforming measures are listed in Annex I to the Agreement. Moreover, though a negative list approach is also followed in Annex II, commitments on market access use a mixed negative and positive list approach, building on Australia's market access commitments under the GATS. With respect to commitments on financial services, as it is the case for Hong Kong, China, Australia uses a positive list approach for market access commitments and a negative list approach for national and MFN treatment, and senior management and boards of directors. The coverage of its commitments under the Agreement is expanded to sectors and subsectors that are unbound under the GATS. This is in particular the case for some communication services (postal and courier services); adult education services; hospital and social services; some recreational services; and some transport services (in particular space transport and rail transport services). The degree of expansion is however impacted by the introduction of two relatively broad horizontal carve-outs to exclude cultural industries (covering for instance audiovisual services as well as museum, archives, and cultural services) and public and social services (covering for instance some education services, aspects of health and social services; as well as some public transport services).

4.4.2.1 MFN and horizontal commitments

4.48. Under the GATS, Australia scheduled MFN exemptions for audiovisual services covering co-production and/or actions taken to respond to any unreasonable measures imposed on Australian services or service suppliers by another WTO Member. Under the Agreement, reservations are made with respect to existing measures for some professional services (to cover citizenship requirements also including New Zealand nationals). The right to maintain or introduce MFN inconsistent measures is also reserved for the acquisition of agricultural land or agribusiness; the provision of services covered by the social services for public purposes carve-out; and primary education services. Through a broad cultural industry carve-out, and as under the GATS, Australia maintains MFN non-conforming measures that might be taken in the audiovisual sector. Under the Agreement, Australia also reserves the right to adopt or maintain any measures that accord more favourable treatment to service suppliers or investors of third-parties under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Agreement, especially the Australia – New Zealand Closer Economic Relations Trade Agreement, and favourable treatment that may be granted to service suppliers or investors of Pacific Island Forum member State. It moreover reserves the right to derogate from the MFN principle for advantages that might be granted under any future bilateral or multilateral international agreement involving aviation, fisheries, or maritime matters, including salvage.

4.49. Under the GATS, Australia has horizontal reservations for establishment (mode 3) and in connection with the Foreign Acquisitions and Takeovers Act of 1975. Some residency requirements are also listed and preferential measures in favour of indigenous persons or organisations are unbound.³⁴ Under the Agreement, Australia replicates most of these reservations, though it improves specific commitments on mode 4 (Annex 10-A). While the coverage of commitments is expanded through the negative listing approach, Australia also introduces horizontal reservations to cover preferences for indigenous persons³⁵ or organizations; the acquisition of commercial land; the devolution to the private sector of services provided in the exercise of Governmental authority at the time the Agreement entered into force; and the privatisation of Government owned entities or assets. There are reservations for a number of existing measures on establishment involving authorization requirements for certain types of investments. The above-mentioned social services carve-out and the cultural services carve-out also apply horizontally. Australia moreover reserves the right to adopt or maintain and to add to its Schedule in Annex I (existing measures) any non-conforming measure at the regional level of government that existed on 1 January 2005 but

³⁴ Mode 4 commitments and reservations are handled in a separate section of this factual presentation.

³⁵ The term "indigenous" covers Aboriginal and Torres Strait Islander peoples.

was not listed at the date of entry into force of the Agreement. Residency requirements are listed as existing non-conforming measures at the national level for establishment and related provisions and at the sub-national level for both cross-border trade in services and establishment and related provisions. For co-operatives a registered office in Australia is also required. Limited partnerships or incorporated limited partnerships must have an office, principal office or registered office in a State or Territory to provide services. A promoter of a third-party "trading scheme" must maintain an office in Australia.

4.4.2.2 Sector specific commitments

4.50. The following section identifies some of the main differences, by sector, between Australia's GATS schedule and its sector-specific commitments under the Agreement. It should also be read in conjunction with Annexes I, II and 8-B of the Agreement.

Table 4.2 Australia: comparison between the GATS and Agreement specific commitments

Sectors (CPC Classification)	GATS Sectoral Commitments	RTA		
		Compared to GATS	Annex I	Annex II
1. Business services				
A. Professional Services	Partial	Improved	Partial	Full
B. Computer and Related Services	Partial	Improved	Full	Full
C. Research and Development Services	Partial	Improved	Partial	Full
D. Real Estate Services	Partial	Improved	Partial	Full
E. Rental/Leasing Services without Operators	Partial	Improved	Full	Full
F. Other Business Services	Partial	Improved	Partial	Full
2. Communication services				
A. Postal services	---	Improved*	Partial	Partial
B. Courier services	---	Improved*	Partial	Partial
C. Telecommunication services	Partial	Similar	Partial	Full
D. Audiovisual services	---	Similar	Partial	---
E. Other	---	Improved*	Full	Full
3. Construction and related engineering services				
A. General construction work for buildings	Partial	Same	Full	Partial
B. General construction work for civil Engineering	Partial	Same	Full	Partial
C. Installation and assembly work	Partial	Same	Full	Partial
D. Building completion and finishing work	Partial	Same	Full	Partial
E. Other	---	Improved*	Full	Full
4. Distribution services				
A. Commission agents' services	Partial	Similar	Partial	Full
B. Wholesale trade services	Partial	Similar	Partial	Full
C. Retailing services	Partial	Similar	Partial	Full
D. Franchising	Full	Same	Full	Full
E. Other	---	Improved*	Full	Full
5. Education services				
A. Primary education services	---	Similar	Full	---
B. Secondary education services	Partial	Similar	Full	Partial
C. Higher education services	Partial	Similar	Full	Partial
D. Adult education	---	Similar	Full	---
E. Other education services	Partial	Similar	Full	Partial
6. Environmental services				
A. Sewage services	Full	Same	Full	Full
B. Refuse disposal services	Full	Same	Full	Full
C. Sanitation and similar services	Full	Same	Full	Full
D. Other	---	Improved*	Full	Full
7. Financial services (Annex 8-B)				
A. All insurance and insurance-related services	Partial	Improved	Partial	Full
B. Banking and other financial services	Partial	Improved	Partial	Full
C. Other	---	Similar	---	---
8. Health related and social services				
A. Hospital services	---	Similar	Partial	---
B. Other Human Health Services	Partial	Similar	Partial	---
C. Social Services	---	Similar	Partial	---
D. Other	---	Similar	Partial	Partial
9. Tourism and travel related services				
A. Hotels and restaurants (including catering)	Full	Same	Full	Full
B. Travel agencies and tour operators services	Partial	Improved	Full	Full
C. Tourist guides services	Full	Same	Full	Full
D. Other	---	Improved*	Full	Full

Sectors (CPC Classification)	GATS Sectoral Commitments	RTA		
		Compared to GATS	Annex I	Annex II
10. Recreational and cultural and sporting services				
A. Entertainment services	---	Improved	Partial	Partial
B. News agency services	Full	Same	Full	Full
C. Libraries, archives, museums and other cultural services	---	Similar	Full	---
D. Sporting and other recreational services	Partial	Improved	Partial	Full
E. Other	---	Improved*	Full	Full
11. Transport services				
A. Maritime Transport Services	Partial	Similar	Partial	Partial
B. Internal Waterways Transport	---	Improved*	Full	Partial
C. Air Transport Services	Partial	Similar	Partial	Partial
D. Space Transport	---	Improved*	Full	Full
E. Rail Transport Services	---	Improved*	Full	Full
F. Road Transport Services	Partial	Similar	Partial	Full
G. Pipeline Transport	Full	Same	Full	Full
H. Services auxiliary to all modes of transport	Partial	Improved	Full	Full
I. Other Transport Services	---	Improved*	Full	Full
12. Other services not included elsewhere	---	Improved*	Full	Full

General Note: MFN and Horizontal limitations, as well as Mode 4 commitments / limitations not considered in the Table.

Partial: Commitments subject to some limitation(s), including through non-conforming measures (existing and/or future).

Full: Commitments not subject to limitation(s), including through non-conforming measures (existing and/or future).

---: No commitments / unbound.

*: New commitments under the Agreement (Full or partial, with or without limitations). "New" can, in most cases, be seen as "improved".

Improved: Overall improved commitments under the Agreement compared to the GATS.

Same: Identical commitment as under GATS.

Similar: Similar commitments though possibly, in specific individual cases, with limited improvements and/or limited additional reservations.

Source: Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/AUS), prepared by the Secretariat (in 2003) and Australia's Schedules annexed to the Agreement.

4.4.2.2.1 Business services

4.51. There are no reservations for new measures that Australia may take in the future, except if preferential treatment involving fisheries supporting services are granted through future bilateral agreements with third parties. However, there are several existing non-conforming measures, essentially related to residency or registration requirements, for some professional services; research and development services; real estate services, fishing and pearling services; mining and related services; and other business services. Additional market access commitments, compared to the GATS, are made for some of the following sub-sectors: research and development services; rental and leasing services without operators; and other business services (technical testing; services incidental to manufacturing; maintenance and repair of equipment; and packaging services). Overall, Australia improves the coverage of its commitments compared to the GATS, *inter alia*, by using a negative list. This is the case for computer and related services and rental and leasing services without operators, for which it has full commitments without limitations under the Agreement.

4.52. With respect to legal services, the Parties, agree, through an exchange of letters, to meet within one year of the date of entry into force of the Agreement³⁶ with the intention of supplementing commitments made by Hong Kong, China on legal services with additional substantive commitments on mode 3.

³⁶ The Parties indicate that they have not yet met to date.

4.4.2.2.2 Communication services

4.53. Partial commitments are made in the Agreement for postal and courier services, which are unbound under the GATS. The Chapter on cross-border trade in services includes the usual (GATS) carve-out for services supplied in the exercise of governmental authority (e.g. Australia Post), and the agreement does not include any sector-specific commitments market access on delivery services. With respect to telecommunication services, restrictions under the GATS are, in essence, mirrored by the Agreement. While audiovisual services are unbound under the GATS, they are, under the Agreement, subject to a number of limitations and conditional specific commitments forming part of a broad carve-out covering cultural industries.

4.54. Chapter 9 has specific disciplines on telecommunications.

4.4.2.2.3 Construction and related engineering services

4.55. As under the GATS, full commitments without limitations are made for modes 2 and 3 while mode 1 remains unbound, with respect to market access.

4.4.2.2.4 Distribution services

4.56. As a result of using a negative list approach, coverage under the Agreement is expanded, as compared to under the GATS. Reservations on the distribution of firearms, liquor, tobacco, and wine are however maintained.

4.4.2.2.5 Educational services

4.57. Australia's reservation of its rights to adopt or maintain any measure on the supply of education services through commercial presence reflects the difference in its approach to scheduling commitments on education services under the Agreement and the GATS. The broad public services carve-out covers public education and training. Moreover, in the introductory notes to Australia's Schedule attached to Annex II, it is clarified that nothing in Chapter 7 (cross-border trade in services) or Chapter 12 (establishment and related provisions) shall interfere with the ability of individual education and training institutions to maintain autonomy in admissions policies, in setting tuition rates and in the development of curricula or course content. Provisions on autonomy of accreditation, quality assurance procedures for institutions and their programmes; the pursuit of government funding, subsidies or grants; or compliance with requirements on the establishment and operation of a facility in a particular jurisdiction are also contained in these introductory notes.

4.4.2.2.6 Environmental services

4.58. As under the GATS, full commitments are made without limitation. The coverage under other environmental services is moreover expanded without limitation, of remediation and clean-up of soil and water; noise and vibration abatement; protection of biodiversity and landscape; and other environmental and ancillary services.

4.4.2.2.7 Financial services

4.59. Australia's commitments under the Agreement are largely based upon its GATS commitments. While existing and future non-conforming measures are listed in Section B of Annex 8-B Australia's commitments, Section A of Annex 8-B lists its market access limitations and conditions. Prudential regulations apply and Australia reserves the right to require the registration or authorisation of cross-border financial service suppliers of Hong Kong, China and of financial instruments. Under the Agreement, Australia reserves the right to maintain and to add to Section B of its Schedule any non-conforming measure at the regional level of government that existed on 1 January 2005 but was not listed in the Schedule at the date of the entry into force of the Agreement. This reservation applies for obligations on national and MFN treatment, and senior management and boards of directors. Market access restrictions are based on a positive list approach, while a negative list approach is used for national and MFN treatment, and senior management and boards of directors' obligations. Australia reserves the right to adopt or maintain any measure for guarantees by Government of Government-owned entities whose operations include the provision of financial services, including guarantees related to the privatisation of such entities.

4.60. With respect to insurance and insurance-related services, market access restrictions are maintained for modes 1 and 2 with specific conditions for insurance of risks relating to maritime shipping, commercial aviation, and space launching and freight; reinsurance and retrocession; insurance intermediation; and services auxiliary to insurance. As under the GATS, restrictions are also maintained in some provinces or territories, by way of monopolies or licensing provisions and associated controls on premiums and other terms of policies for compulsory third-party motor vehicle accident and workers compensation. Approval of non-resident life insurers is also restricted to subsidiaries incorporated under Australian law.

4.61. With respect to banking and other financial services (excluding insurance), specific limitations are set under the Agreement for the provision of certain services through mode 1. Moreover, there are existing non-conforming measures for market access for some banking services under the Agreement, in particular in relation to offering services to Australian enterprises; raising funds in Australia through the issue of debt securities under certain conditions; authorisation to undertake banking business as a deposit-taking institution, and related conditions; the coverage of liabilities of the previously Commonwealth Government-owned banks by transitional guarantee arrangements; some local requirements applicable (at provincial level) in relation to the provision of credit, debt collection or operation as a finance broker, as well as in the context of operation by second-hand dealer or pawnbroker.

4.4.2.2.8 Health related and social services

4.62. While all health-related sub-sectors are covered by virtue of the negative list approach, the public service carve-out covers any measure with respect to health and childcare, thus essentially offering a similar level of coverage as under the GATS.

4.4.2.2.9 Tourism and travel related services

4.63. Australia's commitments under the Agreement, offering full and unrestricted coverage, expands the coverage of its GATS commitments.

4.4.2.2.10 Recreational, cultural and sporting services

4.64. Australia builds on its GATS commitments, improves its coverage in particular for entertainment services, sporting and other recreational services, though with some restrictions. It nevertheless has limitations on gambling and betting related services. The broad carve-out applicable to cultural industries also covers libraries, archives, museums and other cultural services.

4.4.2.2.11 Transport services

4.65. While replicating some of the limitations in its GATS Schedule and expanding the coverage of specific commitments through the negative list approach, Australia improves the scope and depth of its commitments as compared to under the GATS. This is the case in particular for space and rail transport. Specific existing non-conforming measures are registered for some maritime transport services (shipping for instance), the provision of some airline services, and some activities connected to road transport (taxis in particular). Additional market access commitments, as compared to the GATS, are made in some of the following sectors/sub-sectors: some maritime transport services; some air transport services, including ground handling services and airport operation services; rail transport services; and rental of commercial vehicles with operator. Maritime cabotage is completely excluded and a general reservation is made for vessel registration, investment in activities of federal airports, matters covered by existing bilateral agreements with third parties and/or future agreements that may be concluded on maritime matters, including salvage. Moreover, the broad public services carve-out also covers public transport.

4.5 Regulatory provisions

4.5.1 Domestic regulation

4.66. Article 7.8 builds on Article VI of the GATS. While it reaffirms that each Party shall ensure that the measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner; it also replicates the GATS disciplines on maintaining judicial,

arbitral or administrative tribunals or procedures to provide for review of, and appropriate remedies for, administrative decisions affecting trade in services.

4.67. The Agreement contains detailed rules on requirements for authorisation for the supply of a service, including rules on authorisation fees and transparency requirements. It also provides for disciplines on licensing or qualification requirements and procedures in place domestically to assess the competency of professionals.

4.68. Qualification requirements and procedures, technical standards, and licensing requirements and procedures shall not constitute unnecessary barriers to trade in services and the Agreement establishes some guidelines in that regard.

4.69. Moreover, a review is foreseen by the Agreement if the results of the negotiations on paragraph 4 of Article VI of the GATS enter into effect. Furthermore, non-conforming measures are registered with respect to most disciplines on domestic regulation.

4.70. The Parties shall also encourage their competent authorities to adopt technical standards that are developed through open and transparent processes. Anybody designated to develop technical standards shall be encouraged to use open and transparent processes.

4.5.2 Recognition

4.71. Article 7.9 contains specific provisions on the recognition of education or experience obtained, requirements met, or licences or certifications granted. It prescribes, *inter alia*, that such recognition may be granted upon agreement or arrangement with the Party or third-party concerned or otherwise be accorded autonomously.

4.72. Where a Party recognizes, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in a third-party, that Party shall afford the other Party adequate opportunity to negotiate its accession to such agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education or experience obtained, requirements met, or licences or certification granted in the other Party, should also be recognized.

4.73. Recognition shall not be accorded in a manner that would constitute a means of discrimination between the other Party and third parties.

4.74. With a view to endeavour to facilitate trade in professional services, in Annex 7-A to the Agreement, the Parties agree on common disciplines, related to the use of business names; and the promotion of the mutual recognition of, and the improved mobility of professional competence in engineering and architecture.³⁷ The Annex also contains a *rendez-vous* clause for the Parties to meet within two years after the date of entry into force of the Agreement to facilitate the fulfilment of the objectives of Annex 7-A and determine the future direction of possible work between the Parties.

4.5.3 Subsidies

4.75. Subsidies or grants provided by a Party are excluded from the coverage of Chapters 7 (cross-border trade in services), 8 (financial services), and 12 (establishment and related provisions). The terms subsidies or grants cover government-supported loans, guarantees and insurance. It also refers to any conditions attached to the receipt of subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic service consumers or service suppliers.

4.5.4 Safeguards

The Parties agree that, in the case of trade in services, they may adopt or maintain restrictions on payments (balance of payments, bop), or transfers related to trade in services. Article 19.6 contains

³⁷ In that context, reference is made to the APEC Engineer and APEC Architect frameworks.

disciplines, partly based on WTO relevant provisions for the application of BOP provisions. Notification obligations are also linked to the use of such rights.

4.5.5 Other

4.5.5.1 Transparency and cooperation

4.76. Specific transparency provisions, such as for responses to enquiries or advance notices and opportunities for comments, are contained in Article 7.10, with respect to cross-border trade in services. Each Party shall also designate one or more contact points to facilitate communication between the Parties on matters covered by Chapter 7 (Article 7.14).

4.77. The Parties commit to endeavour to cooperate on issues covered in Chapter 7. They also agree to strengthen cooperation in education services, as set out in Annex 7-B.

4.6 Sector specific provisions on trade in services

4.6.1 Financial services

4.78. Chapter 8 contains additional disciplines on trade in financial services. It applies to measures adopted or maintained by a Party affecting trade in financial services, including all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as listed in Annex 8-A to the Agreement.³⁸ It however does not apply to Government procurement (covered by Chapter 13); subsidies or grants (see also Section 4.5.3 above); activities conducted by a central bank or monetary authority or any other public entity in pursuit of monetary or exchange rate policies; activities forming part of a statutory system of social security or public retirement plans; or other activities conducted by a public entity for the account or with the guarantee or using the financial resources of a Party.

4.79. There are provisions on market access (Article 8.3); national treatment (Article 8.4); most-favoured-nation treatment (Article 8.5); and special formalities and information requirements (Article 8.6), including formalities in connection with the supply of services through commercial presence, such as residency requirement for registration, or requirements related to the form of legal constitution or organisation. Article 8.7 establishes the conditions applicable with respect to the appointment of senior management and boards of directors.

4.80. The existing and future non-conforming measures listed by the Parties, for commitments on national and MFN treatment, and senior management and boards of directors are contained, in part, in Annexes I and II to the Agreement, and in part in the specific schedules of financial services commitments in Annex 8-B. The Parties' commitments on financial services are summarized above in Section 4.4.

4.81. Chapter 8 also stipulates that the Parties shall allow the supply of electronic payment services; though there may be requirements for the cross-border supply of electronic payment services. A Party may nevertheless adopt or maintain measures for public policy purposes (Article 8.9). Chapter 8 also contains specific provisions governing effective and transparent regulation in the financial services sector; expedited availability of insurance; financial services new to the area of a Party; self-regulatory organisations; performance of back-office functions; and payment and clearing systems (Articles 8.10 through 8.15). It provides for denial of benefits and obligations for permitting payments and transfers (Articles 8.16 and 8.17). There are also provisions allowing Parties to protect the disclosure of confidential information; consultations regarding any matter arising under the Agreement that affects financial services; and requesting the Parties to designate one or more contact points to facilitate communication between them on any matter covered by Chapter 8 (Articles 8.18, 8.21, and 8.22).

4.82. Notwithstanding these provisions, a Party shall not be prevented from adopting or maintaining reasonable measures for prudential reasons, including for the protection of investors, depositors, policy-holders, or persons to whom a fiduciary duty is owed by a financial service supplier; or the

³⁸ Annex 8-A identifies insurance and insurance-related services; and banking and other financial services as it is defined in the Annex on financial services, attached to the GATS.

maintenance of the safety, soundness, integrity or financial responsibility of financial services suppliers, or for ensuring the integrity and stability of a Party's financial system. Such measures shall not be used as a means of avoiding the Party's commitments or obligations under the provisions of Chapter 8. Recognition of prudential measures of a Party or of a third-party is encouraged and governed by Article 8.20.

4.6.2 Telecommunications

4.83. Chapter 9 contains additional disciplines on telecommunications, which apply to measures adopted or maintained by a Party affecting trade in telecommunications services. It does not apply to measures relating to broadcast or cable distribution of radio or television programming in general. However, the provisions of Article 9.4 (access to public telecommunications services) apply to a cable or broadcast service suppliers' access to and use of public telecommunications services, and the provisions on transparency (Article 9.9) apply to any technical measure to the extent that the measure also affect telecommunications services. Chapter 9 does not apply to any measures relating to private telecommunications networks or services. It does not however prohibit a Party from requiring an enterprise to obtain a licence to supply any telecommunications service within its area.

4.84. Most of the provisions are based on and build on the GATS Annex on telecommunications complemented by the Reference paper developed by the Negotiating Group on Basic Telecommunications. Chapter 9 covers topics such as approaches to regulation; access to and use of public telecommunications services; interconnection; telecommunications regulatory body and government ownership; technology choice; licensing; transparency; unbundling of network elements; treatment by major suppliers; competitive safeguards; international submarine cable systems; universal services; and allocation and use of scarce resources (in Articles 9.3 through 9.17). Disciplines on international mobile roaming are contained in Article 9.17.

4.85. In relation to dispute settlement, further to the provisions applicable to cross-border trade in services in general applicable to administrative proceedings, review and appeal, and transparency, each Party shall ensure that recourse to a telecommunications regulatory body or other competent authority of the Party is possible for enterprises in order to resolve disputes regarding the matters covered in Chapter 9. Moreover, the Parties shall also ensure that, if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time. Furthermore, telecommunications services' suppliers that have requested interconnection with a major supplier in the area of a Party may seek review by a Party's telecommunications regulatory body or other competent authority to resolve disputes regarding the terms, conditions and rates for interconnection with that major supplier (Article 9.18).

4.86. The Parties agree to designate contact points to facilitate communication between them on any matter covered by Chapter 9.

4.6.3 Education services

4.87. In Annex 7-B, the Parties agree to strengthen their cooperation in education services. They identify areas like quality assurance processes; recognition of qualifications; online education, distance education and blended learning models; as well as any other area of cooperation in education which may be mutually determined. They further identify different ways to achieve such encouraged cooperation.

4.6.4 Air services

4.88. Chapter 7 on cross-border trade in services does not apply to air services, including domestic and international air transportation services, or to regulated services in support of air services, other than aircraft repair and maintenance services; selling and marketing of air transport services;

computer reservation system services; speciality air services³⁹; airport operation services⁴⁰; and ground handling services.⁴¹ Under the GATS only aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system services were covered.

4.89. In the event of any inconsistency between Chapter 7 and a bilateral, plurilateral or multilateral air services agreement to which the Parties are party, a Party may invoke the dispute settlement procedures established in Chapter 18 (consultations and dispute settlement) only after any dispute settlement procedures in the other agreement have been exhausted.

4.90. the Parties agree that, if the Annex on Air Transport Services to GATS is amended, they shall jointly review any new definitions with a view to aligning the definitions in the Agreement with those definitions, as appropriate.

4.7 Investment

4.91. While Chapter 7 does not cover mode 3 (commercial presence), Chapter 12 (on establishment and related provisions) applies to measures adopted or maintained by a Party relating to investors⁴² of the other Party; and covered investments. Chapter 12 applies to any person when it exercises any governmental authority delegated to it by a Party. It however does not apply to subsidies or grants (see also Section 4.5.3 above); government procurement (covered by Chapter 13); or any act or fact that took place or any situation that ceased to exist before the date of entry of the Agreement. Measures covered by Chapter 8 (on financial services) are also excluded from the coverage of Chapter 12.

4.92. Chapter 12 contains provisions on national treatment (Article 12.4); most-favoured-nation treatment⁴³ (Article 12.5); performance requirements (Article 12.6), including forced transfer of technology though certain situations remain reserved⁴⁴, or achievement of a given level of domestic content. Article 12.7 establishes the conditions applicable to the appointment of senior management and boards of directors.

4.93. The existing and future non-conforming measures of the Parties, with respect to commitments on national and MFN treatment, performance requirements, and senior management and boards of directors are contained in Annexes I and II to the Agreement (Articles 12.4, 12.5, 12.6 and 12.7) and are summarized above under Section 4.4. Amongst others, the higher monetary thresholds for investment screening applicable to investments by Hong Kong investors are also set out in Annexes I and II of Australia's Schedules of Commitments (Annex I-AU-1 and Annex II-AU-6).

³⁹ Under the Agreement, "specialty air services" means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

⁴⁰ Under the Agreement, "airport operation services" means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services.

⁴¹ Under the Agreement, "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering (except the preparation of the food); air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems.

⁴² Under the Agreement, "investors" means a Party, a natural person of a Party or an enterprise of a Party, that attempts to make, is making, or has made an investment in an area of the other Party. An investor of a third-party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the area of that Party, that is not an investor of a Party.

⁴³ The provisions contained in Article 12.5 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by Article 14.6 (Intellectual Property: national treatment), or Article 4 of the TRIPS Agreement.

⁴⁴ See paragraphs 4(a) and 4(b) of Article 12.6.

4.94. In the event of inconsistency between Chapter 12 and another Chapter under the Agreement, the other Chapter shall prevail to the extent of the inconsistency (Article 12.3).

4.95. Nothing in Chapter 12 shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with Chapter 12 that it considers appropriate to ensure that investment activity in its area is undertaken in a manner sensitive to environmental, health or other regulatory objectives (Article 12.11).

4.96. When the Parties notified the Agreement, they indicated that they had also signed an associated "Investment Agreement" and that the two agreements are an integral part of a wider process of economic integration and trade liberalization.

4.97. The Investment Agreement updates the 1993 Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments (the 1993 Agreement). It contains provisions to protect the Parties investors and an Investor-State Dispute Settlement (ISDS) mechanism.

5 GENERAL PROVISIONS OF THE AGREEMENT

5.1 Transparency

5.1. Chapter 16 covers general transparency disciplines related to publication; notification and provision of information; administrative proceedings, and review and appeal for the review and, where warranted, correction of final administrative actions regarding matters covered by the Agreement; and regulatory coherence (Articles 16.2 through 16.5, and 16.7). Specific transparency provisions are also contained in other Chapters of the Agreement.

5.2. The Agreement also governs the disclosure, or non-disclosure, of information in certain situations (Article 19.1). It also contains disciplines on confidentiality of information (Article 19.2).

5.2 Current payments and capital movements

5.3. The Parties agree to permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of each Party (Article 7.12). Such transfers and payments may be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer. Nevertheless, transfers may be prevented or delayed for good faith application of laws and regulations on bankruptcy, insolvency, protection of the rights of creditors; issuing, trading or dealing in securities, futures, options or derivatives; criminal or penal offences; financial reporting or record keeping of transfers in certain situations; or ensuring compliance with order or judgement in certain proceedings. Article 8.17 includes similar disciplines on payments and transfers for the supply of financial services.

5.3 Exceptions

5.3.1 General exception

5.4. With respect to trade in goods, Article XX of the GATT 1994 shall apply to and is incorporated into and made part of the Agreement, while, with respect to trade in services, Article XIV of the GATS applies to and is incorporated into and made part of the Agreement (Article 19.3). Building on Article XIV of the GATS, Article 12.12 makes the concept of general exception also applicable to Chapter 12 (on establishment and related provisions). It also covers measures necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter 12 including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract; the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or safety.

5.3.2 Security exception

5.5. In connection with what each Party considers necessary for the protection of its respective essential security interests, the Agreement replicates the rules in Article XXI of the GATT 1994, for

trade in goods, and Article XIV***bis*** of the GATS, for trade in services (Article 19.3). The Joint Commission shall be informed of measures taken in connection with measures which the Parties may take under Article 19.3.

5.3.3 Taxation measures

5.6. Nothing in the Agreement shall apply to taxation measures. The Agreement only grants rights or imposes obligations for taxation if: (i) they are also granted or imposed under the WTO Agreement; or (ii) they are granted or imposed under Chapter 2 (trade in goods), or Article 12.6 (establishment and related provisions, and in particular the provisions on performance requirements). Article 19.5 however foresees that rights granted and obligations imposed under the Agreement shall not apply to certain measures, such as, and *inter alia*, non-conforming provisions of existing taxation measures; taxation measures aimed at ensuring the equitable or effective imposition or collection of taxes, provided certain conditions are fulfilled. Moreover, nothing in the Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any tax convention applicable to the Party.

5.4 Accession and withdrawal

5.7. While the Agreement does not contain any provision on accession, it provides for a termination. Such termination shall take effect 180 days after the date of receipt of the notification of withdrawal by a Party, or on such other date as the Parties may agree. Consultation may take place between the Parties if requested following a notification of withdrawal (Article 20.4).

5.5 Institutional framework

5.8. Chapter 17 establishes the Hong Kong, China – Australia Joint Commission (hereinafter the Joint Commission), *inter alia*, to review, consider and, as appropriate, decide on matters relating to the application or implementation of the Agreement⁴⁵ (Articles 17.1 and 17.2). The Parties agree to undertake a general review, including matters relating to the implementation or operation of the Agreement, within five years of the date of entry into force of the Agreement and every five years thereafter (Article 17.4).

5.9. While a number of contact points and enquiry points are to be designated by the Parties under specific provisions under the Agreement, Article 17.5 identifies the contact points established to facilitate communication between them on any matter covered by the Agreement.⁴⁶

5.6 Dispute settlement

5.10. Chapter 18 establishes a dispute settlement mechanism between the Parties. It applies to the avoidance or settlement of disputes arising under the Agreement but it is not applicable to the settlement of disputes under Chapter 5 (TBT); Chapter 6 (SPS); Chapter 15 (competition policy); and Article 16.6 and 16.7 of Chapter 16 (respectively SMEs and regulatory coherence, under the transparency provision).

5.11. Disputes arising on the same matter under the Agreement and under another international agreement, including the WTO Agreement, may be settled in either forum at the discretion of the complaining Party. Once a forum has been selected to address the matter, that forum shall be used to the exclusion of other in respect of the matter of the dispute. However, the exclusive forum shopping principle shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute; or the forum selected fails for procedural or jurisdictional reasons to make findings on the merits of the claim (Article 18.4).

5.12. If a panel has been established under Chapter 18 to interpret an obligation under the Agreement, which is identical, or substantially identical, to an obligation under the WTO Agreement,

⁴⁵ The Joint Commission shall also review, consider and, as appropriate, decide on matters relating to the application or implementation of the associated investment agreement, also signed by the Parties, and which the Parties consider to constitute an integral part of a wider process of economic integration and trade liberalization.

⁴⁶ For Australia, the contact point is the Department of Foreign Affairs and Trade, or its successor. For Hong Kong, China, the contact point is the Trade and Industry Department, or its successor.

the panel shall also consider relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body (Article 18.3).

5.13. Section B of Chapter 18 addresses the dispute settlement procedure. In particular, it governs the consultations that may be requested by a Party in any dispute arising under the Agreement (Article 18.5). It also covers good offices, conciliation and mediation, which may begin and be terminated at any time during the dispute settlement process (Article 18.6).

5.14. Section C (Articles 18.7 through 18.11) contains adjudication provisions, such as requests for establishment of panels; establishment⁴⁷ and reconvening of panels; functions of panels; panel procedures, including timetable, panel proceedings, submissions, hearings, confidentiality, additional information and technical advice, and reports; and suspension and termination of proceedings. These disciplines are based on disciplines under the WTO Dispute Settlement Understanding, with some differences. For example, before the panel presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. In addition, there is no appeal stage in the dispute settlement mechanism under the Agreement.

5.15. Section D (Articles 18.12 through 18.14) is on implementation. It covers implementation by the responding Party and follow-up; compliance review; and compensation and suspension of concessions or other obligations, including post-suspension review.

5.16. Section E (Articles 18.15 through 18.16) contains rules on the coverage of costs and expenses; the designation of contact points by each Party; and the use of the English language for all proceedings.

5.7 Relationship with other agreements concluded by the Parties

5.17. The Parties reaffirm their rights and obligations under the WTO Agreement and other international agreements to which they are party. In the event of inconsistency between the Agreement and these agreements, the Parties agree to immediately consult with a view to finding a mutually satisfactory solution (Article 1.2).

5.18. Table 5.1 below shows the Parties' participation in RTAs, notified and non-notified, other than the Agreement.

Table 5.1 Hong Kong, China and Australia. Participation in other RTAs (notified and non-notified in force), as of 17 July 2020

RTA Name	Date of entry into force	Coverage	GATT /WTO Notification	
			Year	WTO Provision
HONG KONG, CHINA				
Hong Kong, China - Georgia	13-Feb-19	Goods & Services	2019	GATT Art. XXIV & GATS Art. V
Hong Kong, China - Macao, China	27-Oct-17	Goods & Services	2017	GATT Art. XXIV & GATS Art. V
Hong Kong, China - Chile	09-Oct-14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
EFTA - Hong Kong, China	01-Oct-12	Goods & Services	2012	GATT Art. XXIV & GATS Art. V
Hong Kong, China - New Zealand	01-Jan-11	Goods & Services	2011	GATT Art. XXIV & GATS Art. V
China - Hong Kong, China	29-Jun-03	Goods & Services	2003	GATT Art. XXIV & GATS Art. V
ASEAN - Hong Kong, China	11-Jun-19 ⁴⁸	Goods & Services	Not notified	
AUSTRALIA				
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	30-Dec-18	Goods & Services	2018	GATT Art. XXIV & GATS Art. V
Australia - China	20-Dec-15	Goods & Services	2016	GATT Art. XXIV & GATS Art. V
Japan - Australia	15-Jan-15	Goods & Services	2015	GATT Art. XXIV & GATS Art. V

⁴⁷ The rules of procedure for panel proceedings are contained in Annex 18-A to the Agreement, while the code of conduct for panellists is contained in Annex 18-B to the Agreement.

⁴⁸ The ASEAN-Hong Kong, China FTA entered into force for (i) Hong Kong, China; Laos; Myanmar; Singapore; Thailand and Viet Nam on 11 Jun 2019; (ii) Malaysia on 13 Oct 2019; (iii) the Philippines on 12 May 2020; and (iv) Indonesia on 4 Jul 2020. Brunei Darussalam and Cambodia are still undergoing domestic procedures in order to bring the FTA into force. (Situation in early July 2020).

RTA Name	Date of entry into force	Coverage	GATT/WTO Notification	
			Year	WTO Provision
Korea, Republic of - Australia	12-Dec-14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
Malaysia - Australia	01-Jan-13	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
ASEAN - Australia - New Zealand	01-Jan-10	Goods & Services	2010	GATT Art. XXIV & GATS Art. V
Australia - Chile	06-Mar-09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Thailand - Australia	01-Jan-05	Goods & Services	2004	GATT Art. XXIV & GATS Art. V
United States - Australia	01-Jan-05	Goods & Services	2004	GATT Art. XXIV & GATS Art. V
Singapore - Australia	28-Jul-03	Goods & Services	2003	GATT Art. XXIV & GATS Art. V
Australia - New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)	01-Jan-83	Goods Services	1983	GATT Art. XXIV GATS Art. V
	01-Jan-89		1995	
South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)	01-Jan-81	Goods	1981	Enabling Clause
Australia - Papua New Guinea (PATCRA)	01-Feb-77	Goods	1976	GATT Art. XXIV
Australia - Peru	11-Feb-20	Goods & Services	Not notified	
Indonesia -Australia	5-Jul-20	Goods & Services	Not notified	

Source: WTO Secretariat. Further information on these Agreements and on specific dates of entry into force/provisional applications may be found in the WTO Database on RTAs: <http://rtais.wto.org>.

5.8 Government procurement

5.19. Chapter 13 of the Agreement contains rules on Government procurement. While it applies to covered procurement⁴⁹, it does not apply to non-contractual agreements or any form of assistance that a Party provides⁵⁰; procurement related to international assistance and development aid; public employment contracts; procurement by international organisations; the acquisition or rental of land, existing buildings, or other immovable property; procurement conducted under an international agreement relating to the stationing of troops; or procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale redemption and distribution of public debt.

5.20. Each Party specifies in its Schedule in Annex 13-A to the Agreement, its commitments with respect to covered procurement by: central government entities (Section A of Annex 13-A), sub-central government entities (Section B), and other entities (Section C); as well as covered goods (Section D), services, other than construction services (Section E), and construction services (Section F).

5.21. Hong Kong, China has been a party to the 1994 WTO Government Procurement Agreement (GPA) since 19 June 1997, and to the Revised GPA, since 6 April 2014. Australia has been a party to both 1994 WTO Government Agreement (GPA) and to the Revised GPA since 5 May 2019. Both Parties commitments under the Agreement largely mirror their commitments under the Revised GPA with respect to entities and thresholds, thus leaving the Parties' commitments *vis-à-vis* each other largely unchanged.

5.22. Chapter 13 also provides, in Articles 13.2 through 13.18, for disciplines on compliance with the commitments made by each Party; the valuation of procurement; applicable general exceptions; the applicable general principles⁵¹; publication of procurement information; notices of intended and planned procurements; conditions for participation in a covered procurement; qualification of suppliers, including registration systems and qualification procedures, selective tendering, and multi-use lists; procedures with respect to limited tendering; conditions for the negotiations which could be conducted by the procuring entities; technical specifications that may apply; tender documentation to be made available; applicable time-period for the tender procedure; treatment of

⁴⁹ Under the Agreement, the term "covered procurement" corresponds to the broad definition under the Revised GPA.

⁵⁰ Including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and sponsorship arrangements.

⁵¹ Such as non-discrimination; procurement methods; rules of origin; offsets; measures not specific to procurement; and use of electronic means.

tenders and awarding of contracts; post-award information; disclosure of information; ensuring integrity in procurement practices; and administrative and judicial review.

5.23. A Party may modify its coverage under Chapter 13, under conditions set in Article 13.19. Compensation may have to be provided in certain cases.

5.24. The Parties commit to cooperate in government procurement-related matters. They also agree to consult regarding Chapter 13. Moreover, they may decide to hold further negotiations with a view to revising the thresholds set out in Annex 13-A and the threshold adjustment formula set out in Section H of Annex 13-A.

5.25. The Parties exchanged side letters to provide for entering into discussions at an agreed time, but no later than two years after the date of entry into force of the Agreement, to facilitate industry capacity and capability to engage in each other's government procurement markets, including on conditions for participation in each other's procurement markets and the related assessment process.

5.9 Intellectual property rights

5.26. Chapter 14 covers the protection of intellectual property rights (IPR). It establishes that the obligations in the Agreement constitute minimum obligations and that each Party shall be free to determine the appropriate method of implementing the Agreement's IPR-related provisions within its own legal system and practice (Article 14.3).

5.27. While the Parties recognise the principles and flexibilities established in the 2001 WTO *Declaration on the TRIPS Agreement and Public Health*, they affirm their commitment to contribute to international efforts on the acceptance and implementation of the Protocol attached to the WTO General Council Decision of 6 December 2005 on the Amendment of the TRIPS Agreement (Article 14.4). The Parties also affirm their commitments to the TRIPS Agreement and any other multilateral agreements concluded or administered under the auspices of the WIPO to which both are party. They moreover commit to becoming parties to or applying a number of multilateral agreements⁵², if they are not already party to them, and shall endeavour to become parties to a number of other multilateral agreements⁵³ to comply with their substantive provisions, if they are not already party to them (Article 14.5).

5.28. Each Party reaffirms its commitment to accord national treatment to natural persons of the other Party or an enterprise of that Party, who would meet the criteria for eligibility for protection provided for in the agreements listed in Article 14.5.2 and the TRIPS Agreement. (Article 14.6). Procedures provided in multilateral agreements concluded under the auspices of WIPO in relation to the acquisition or maintenance of IPR as well as exceptions provided in the TRIPS Agreement, and certain measures in relation to a Party's judicial or administrative procedure, remain applicable with regards to commitments made under Chapter 14.

5.29. Chapter 14 contains additional provisions on various IPR-related matters.

5.30. On trademarks under Article 14.10, no Party may require as a condition of registration that trademarks are visually perceptible; that they only comprise sounds or scents but may require an adequate description would be a graphical representation of a trademark. It also relates to the protection of collective and certification trademarks. Signs that may serve as geographical indications (GI) may be protected under a trademark system. Parties may nevertheless provide

⁵² These are: the *Paris Convention for the Protection of Industrial Property*; the *Berne Convention for the Protection of Literary and Artistic Works*; the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (the Rome Convention); the *Patent Cooperation Treaty* (the Washington Treaty); the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*; the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*; the *World Intellectual Property Organization Performances and Phonograms Treaty*; the *WIPO Copyright Treaty*; and the *International Convention for the Protection of New Varieties of Plants*.

⁵³ The *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*; and the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*.

limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

5.31. On GIs (Article 14.11), the Parties recognise the protection of GIs through a trademark or a sui generis system, or other legal means. Transparency shall be guaranteed for GIs proposed for protection or recognition and appropriate procedures shall be in place for recognition or refusal of recognition.

5.32. Subject to international obligations and domestic laws applicable to each Party, appropriate measures may be established to protect genetic resources, traditional knowledge and folklore (Article 14.12).

5.33. TRIPS provisions on the protection of undisclosed information are essentially replicated in Article 14.13.

5.34. On copyrights (Article 14.14), the Agreement underlines that each Party shall foster the establishment or maintenance of appropriate bodies for the collective management of copyrights, also emphasising the need to achieve an appropriate balance in its copyrights and related rights system, while giving due consideration to legitimate purposes such as criticism, news reporting, teaching, research, review, study, and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled.

5.35. With respect to exhaustion, the freedom of the Parties to determine whether, and under what conditions, the exhaustion of intellectual property rights applies remains unchanged by the Agreement (Article 14.8).

5.36. The Parties commit to continue to work to enhance their examination and registration systems, including through improving examination procedures and quality systems, and with a view to achieving efficient and timely grant or registration of IPRs. Disciplines on procedures and acquisition and maintenance are contained in Article 14.9.

5.37. Chapter 14 also contains transparency provisions (Article 14.7) including the publication of final judicial decisions or rulings on IPR enforcement.

5.38. The Parties reaffirm and build on TRIPS rules on enforcement (Article 14.15) and provide for disciplines on the determination and treatment of counterfeit trademark and pirated copyright goods (Article 14.16).

5.39. The Agreement foresees IPR-related cooperation between the Parties (Article 14.17) and requires that each Party designates a contact points to facilitate communications between the Parties on any matter covered by Chapter 14.

5.10 Competition

5.40. Chapter 15 addresses competition. It requires that Parties shall maintain competition laws to proscribe anti-competitive conduct, with the objective of promoting economic efficiency and consumer welfare. It also requires that each Party maintains a competition authority responsible for the enforcement of its competition law (Article 15.2).

5.41. The principle of procedural fairness in competition law enforcement is embedded in Article 15.3, while, under Article 15.4, recognising that a private right of action⁵⁴ is an important supplement to the public enforcement of competition law, each Party agrees that it should adopt or maintain laws that provide an independent private right of action.

⁵⁴ For the purposes of the Agreement, "private right of action" means the right of a 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 a Party's competition law, either independently or following a finding of violation by the competition authority of that Party.

5.42. Consultations on competition-related matters are foreseen in order to foster mutual understanding between the Parties, or to address any specific matter under Chapter 18 (Article 15.7). Cooperation is also encouraged in the area of competition policy, as well as on issues of competition law enforcement, notification, consultations, exchange of information and coordination on cross-border enforcement matters (Article 15.5). Moreover, while each Party shall adopt or maintain laws or regulations on consumer protection, the promotion of cooperation and coordination on matters of mutual interest related to unfair trade practices is among the disciplines contained in Article 15.6.

5.43. No Party may have recourse to dispute settlement under Chapter 18 (consultations and dispute settlement) for any competition-related matter arising under Chapter 15.

5.10.2 Environment

5.44. The Agreement does not contain any environment related provisions.

5.11 Labour

5.45. The Agreement does not contain any labour related provisions.

5.12 Electronic commerce

5.46. Chapter 11 addresses electronic commerce and applies to measures adopted or maintained by a Party that affect trade by electronic means. It does not apply to government procurement; information held or processed by or on behalf of a Party; or subsidies or grants provided by a Party whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers.

5.47. Under Section A (Articles 11.2 through 11.13), the Parties cannot deny the legal validity of electronic signatures (Article 11.3). They agree to maintain a legal framework consistent with the principles of the UNCITRAL Model Law on Electronic Commerce or the UN Convention on the Use of Electronic Communications in International Contracts (Article 11.4) and to ensure transparent and effective methods to protect consumers (Article 11.5). They agree to not impose customs duties on electronic transmissions although this shall not preclude them from imposing internal taxes, fees or other charges on electronic transmissions as long as these are consistent with the Agreement (Article 11.6). The Chapter also includes a commitment to not require a covered person to use or locate computing facilities in the Party's Area as a condition for conducting business in that Area (Article 11.8). Other provisions include a commitment to provide a legal framework for the protection of personal information; a best endeavour commitment on paperless trading; measures to regulate unsolicited commercial electronic messages; and a prohibition on any requirement to transfer the source code as a condition for the import, distribution or sale of software or products containing such software. Article 11.13 has provisions on cooperation between the Parties on electronic commerce.

5.48. Section B specifically governs movement of information and location of computing facilities for financial services (Article 11.15).

5.13 Small and medium-sized enterprises (SMEs)

5.49. Chapter 16 (on transparency), contains each Party's commitment to establish or maintain its own publicly accessible website with information regarding the Agreement, including information designed for SMEs.⁵⁵ Such information should contain a description of the provisions in the Agreement that the Party considers to be most relevant to SMEs, and any additional information that it considers would be useful for SMEs interested in benefitting from the opportunities provided by the Agreement (Article 16.6). There is also an indicative list of the types of such information. Each Party also commits to regularly review the information and links on its dedicated website.

⁵⁵ The Parties' relevant websites are, for Hong Kong, China: <https://www.tid.gov.hk/english/ita/fta/hkaufat/index.html>; and for Australia: <https://www.dfat.gov.au/trade/agreements/in-force/a-hkfta/Pages/default> and <https://ftaportal.dfat.gov.au/>

5.50. Neither Party shall have recourse to dispute settlement under Chapter 18 (Consultations and dispute settlement) for any matter arising under Article 16.6.

5.51. There are also provisions on SMEs under the Chapter on electronic commerce, calling for the Parties to endeavour to work together to assist SMEs to overcome obstacles to the use of electronic commerce.

ANNEX 1**INDICATORS OF TRADE LIBERALIZATION UNDER THE AGREEMENT****Hong Kong, China's Market**

1 Table A1.1 gives an indication of market access in Hong Kong, China for Australia's top 25 global exports, which accounted for 67.4% of its global exports in 2017-2019; these corresponded to 79 lines in Hong Kong, China's tariff at the HS six-digit level (using the HS 2017). Prior to the entry into force of the Agreement, all these lines were already (MFN) duty free. On the date of entry into force of the Agreement, in 2014, all these tariff lines became legally bound at duty free level for exports from Australia.

Table A1.1 Hong Kong, China: Market access opportunities under the Agreement for Australia's top 25 exports to the world

Australia's top export products in 2017-2019			Access Conditions to Hong Kong, China's import markets	
HS number and description of the product		Share in global exports (%)	MFN 2020	
			Average MFN applied rate (%)	Number of duty-free lines
260111	Non-agglomerated iron ores and concentrates	21.3	0.0	1
270112	Bituminous coal, whether or not pulverised, non-agglomerated	18.2	0.0	1
710813	Gold, incl. gold plated with platinum, in semi-manufactured forms, for non-monetary purposes	5.7	0.0	1
271111	Natural gas, liquefied	4.7	0.0	1
270900	Petroleum oils and oils obtained from bituminous minerals, crude	2.0	0.0	1
260300	Copper ores and concentrates	1.6	0.0	1
020230	Frozen, boneless meat of bovine animals	1.5	0.0	2
100199	Wheat and meslin	1.3	0.0	1
281820	Aluminium oxide	1.2	0.0	1
510111	Greasy shorn wool, incl. fleece-washed wool, neither carded nor combed	1.0	0.0	1
020130	Fresh or chilled bovine meat, boneless	1.0	0.0	1
740311	Copper, refined, in the form of cathodes and sections of cathodes	1.0	0.0	1
760110	Aluminium, not alloyed, unwrought	0.9	0.0	2
260800	Zinc ores and concentrates	0.7	0.0	1
220421	Wine of fresh grapes, incl. fortified wines, and grape must whose fermentation has been arrested by the addition of alcohol, in containers of ≤ 2 l	0.7	0.0	5
271019	Medium oils and preparations, of petroleum or bituminous minerals, not containing biodiesel, n.e.s.	0.6	0.0	15
300490	Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic purposes, put up in measured doses "incl. those for transdermal administration" or in forms or packings for retail sale	0.6	0.0	25
880330	Parts of aeroplanes or helicopters, n.e.s.	0.5	0.0	1
020442	Frozen cuts of sheep, with bone in	0.5	0.0	1
790111	Unwrought zinc, not alloyed, containing by weight ≥ 99.99% of zinc	0.5	0.0	1
520100	Cotton, neither carded nor combed	0.5	0.0	1
210690	Food preparations, n.e.s.	0.4	0.0	8
100390	Barley	0.4	0.0	1
253090	Arsenic sulfides, alunite, pozzuolana, earth colours and other mineral substances, n.e.s.	0.4	0.0	4

Australia's top export products in 2017-2019			Access Conditions to Hong Kong, China's import markets	
HS number and description of the product		Share in global exports (%)	MFN 2020	
			Average MFN applied rate (%)	Number of duty-free lines
261690	Precious-metal ores and concentrates	0.4	0.0	1
TOTAL		67.4		79

Note: Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the WTO-IDB, ITC TradeMap and UNSD, Comtrade database.

Australia's market

2. As depicted in Table A1.2, the overall average applied on an MFN basis prior to the entry into force of the Agreement was 2.5% (1.1% for agricultural products, and double that at 2.8% for industrial products) while 49.4% of Australia's tariff lines were duty free prior to the entry into force of the Agreement (78.3% for agricultural products and 43.8% for industrial). Immediately at the entry into force of the Agreement, all tariff lines became duty free for imports originating in Hong Kong, China.

Table A1.2 Australia: Indicators of MFN tariff rates and preferential rates for imports from Hong Kong, China

Origin of goods	Year	ALL PRODUCTS			Agricultural products ^a			Industrial products		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2020	2.5	5.0	49.4	1.1	5.4	78.3	2.8	5.0	43.8
Hong Kong, China	2020	0.0	0.0	100.0	0.0	0.0	100.0	0.0	0.0	100.0

a WTO Definition.

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.

Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the Australian authorities.

3. Table A1.3 gives an indication of additional market access into Australia resulting from the entry into force of the Agreement for Hong Kong, China's top 25 global exports, which accounted for 64.3% of its global exports in 2017-2019; these corresponded to 34 lines in Australia's tariff at the six-digit level (using the HS 2017). In 2020, prior to the entry into force of the Agreement, 30 of these tariff lines were already (MFN) duty free in Australia's market. With the entry into force of the Agreement, on 1 January 2020, the 4 remaining dutiable tariff lines became duty-free.

Table A1.3 Australia: Market access opportunities under the Agreement for Hong Kong, China's top 25 exports to the world

Hong Kong, China's top export products in 2017-2019			Access Conditions to Australia's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Number of duty-free lines under the agreement
			Average MFN applied rate (%)	Number of dutiable lines	Number of duty-free lines	
854239	Electronic integrated circuits	8.6	0.0	1		

Hong Kong, China's top export products in 2017-2019			Access Conditions to Australia's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Number of duty-free lines under the agreement
			Average MFN applied rate (%)	Number of dutiable lines	Number of duty-free lines	
854231	Electronic integrated circuits as processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits	7.1	0.0	1		
710812	Gold, incl. gold plated with platinum, unwrought, for non-monetary purposes	6.9	0.0	1		
854232	Electronic integrated circuits as memories	6.2	0.0	1		
851770	Parts of telephone sets, telephones for cellular networks or for other wireless networks and of other apparatus for the transmission or reception of voice, images or other data, n.e.s.	5.9	0.0	2		
851712	Telephones for cellular networks "mobile telephones" or for other wireless networks	5.2	0.0	1		
847330	Parts and accessories of automatic data-processing machines or for other machines of heading 8471, n.e.s.	4.3	0.0	1		
851762	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, incl. switching and routing apparatus	2.5	0.0	1		
710239	Diamonds, worked, but not mounted or set	2.4	0.0	1		
853400	Printed circuits	1.9	0.0	1		
852990	Parts suitable for use solely or principally with transmission and reception apparatus for radio-broadcasting or television, television cameras, digital cameras, video camera recorders, radar apparatus, radio navigational aid apparatus or radio remote control apparatus, monitors and projectors, n.e.s.	1.7	1.0	4	1	1
847170	Storage units for automatic data-processing machines	1.2	0.0	1		
711319	Articles of jewellery and parts thereof, of precious metal other than silver, whether or not plated or clad with precious metal	1.2	5.0		1	1
847130	Data-processing machines, automatic, portable, weighing ≤ 10 kg, consisting of at least a central processing unit, a keyboard and a display	1.0	0.0	1		
853690	Electrical apparatus for switching electrical circuits, or for making connections to or in electrical circuits, for a voltage ≤ 1.000 v	1.0	3.3	1	2	2
844399	Parts and accessories of printers, copying machines and facsimile machines, n.e.s.	0.9	0.0	1		
850440	Static converters	0.9	0.0	2		
847180	Units for automatic data-processing machines	0.7	0.0	1		
841112	Turbojets of a thrust > 25 kn	0.7	0.0	1		

Hong Kong, China's top export products in 2017-2019			Access Conditions to Australia's import markets			
HS number and description of the product		Share in global exports (%)	MFN 2020			Number of duty-free lines under the agreement
			Average MFN applied rate (%)	Number of dutiable lines	Number of duty-free lines	
852351	Solid-state, non-volatile data storage devices for recording data from an external source [flash memory cards or flash electronic storage cards]	0.7	0.0	1		
847150	Processing units for automatic data-processing machines, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units	0.7	0.0	1		
854233	Electronic integrated circuits as amplifiers	0.7	0.0	1		
854140	Photosensitive semiconductor devices, incl. photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes	0.6	0.0	1		
853224	Fixed electrical capacitors, ceramic dielectric, multilayer	0.6	0.0	1		
852580	Television cameras, digital cameras and video camera recorders	0.6	0.0	2		
TOTAL		64.3		30	4	4

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.
Based on the HS 2017 nomenclature.

Source: WTO estimates based on data from the Australian authorities and UNSD, Comtrade database.