

# JAPAN-AUSTRALIA ECONOMIC PARTNERSHIP AGREEMENT (JAEPA)

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### JAPAN-AUSTRALIA ECONOMIC PARTNERSHIP AGREEMENT (JAEPA)

#### Preamble

The Preamble recites the historical basis, bilateral context and broad aims of the Japan-Australia Economic Partnership Agreement (JAEPA).

#### Chapter 1: General Provisions

This Chapter contains provisions relating to transparency, public comment procedures, administrative proceedings, review and appeal, and confidentiality. The Chapter also sets out a number of World Trade Organization (WTO)-style general and security exceptions, and certain exemptions for taxation measures. The EPA Joint Committee is also established in this Chapter.

#### Chapter 2: Trade in Goods

This Chapter obliges the Parties to progressively reduce and/or eliminate tariffs in accordance with each Party's applicable Schedule of Tariff Commitments in Annex 1. To assist Australian businesses a separate detailed spreadsheet at a disaggregated tariff level showing the tariff treatment of Australian products is provided on the Department of Foreign Affairs and Trade website.

The Chapter also establishes the framework of rules for trade in goods between the Parties. The Chapter affirms a number of WTO provisions that already govern trade in goods among the Parties and, in some cases, provides for more specific commitments as well as enhanced transparency.

The Chapter ensures the consistency of JAEPA with the WTO Agreement on Import Licensing Procedures. It requires each Party to provide information about their respective licensing requirements for imported goods promptly after the date of entry into force of JAEPA, and publish any new or modified licensing requirements.

The Chapter requires the Parties to ensure that any non-tariff measures are transparent and do not create unnecessary barriers to trade between the Parties. It provides a review mechanism to address non-tariff measures on a case-by-case basis through the establishment of a Sub-Committee on Trade in Goods that will consider methods to promote trade between the Parties and review any non-tariff measure identified by a Party. The Sub-Committee on Trade in Goods will consider approaches to better facilitate trade and can submit any recommendations to the Joint Committee for consideration or action.

The Chapter prohibits the imposition of export duties and export subsidies on goods destined for the other Party.

Section 2 of the Chapter establishes arrangements for bilateral safeguard measures which may be applied during the transitional period, that is, while tariffs are being reduced and/or eliminated. Safeguard measures may only be applied after an investigation has been carried out by competent authorities, and to the extent and for such time as may be

necessary to prevent or remedy serious injury and to facilitate adjustment during the transitional period. The Chapter sets out compensation requirements and critical circumstances where provisional safeguard measures may be applied. Annex 1 to the Chapter also includes a separate agriculture safeguard mechanism relating to beef imports into Japan.

Existing WTO rights relating to Anti-Dumping, Subsidies and Countervailing Measures and Global Safeguard Measures have been preserved.

A review clause stipulates the need to review market access treatment for certain priority agriculture products such as wheat, sugar, some dairy products and beef in the fifth year of the Agreement. The review clause also ensures that should Japan provide better treatment for such goods to another party, then a review will be automatically triggered with a view to providing equivalent treatment to Australian products. This protects Australia's interests, particularly as key competitors are seeking to negotiate preferential access into Japan.

### Chapter 3: Rules of Origin and Origin Procedures

This Chapter and the Schedule of Product Specific Rules in Annex 2 set out the criteria for determining whether a good qualifies for preferential tariff treatment (that is, whether a good 'originates' in Australia or Japan). The Chapter also sets out the procedures and documentation for demonstrating that a good qualifies for preferential treatment and, if necessary, the process for verifying that this is the case.

In general, a good can qualify as 'originating' under JAEPA if it is:

- wholly obtained or produced entirely in the country, or
- produced entirely in either or both Japan and Australia, from originating materials of either country; or
- manufactured in either or both Japan and Australia using materials from other countries, and those materials meet the Product Specific Rules and requirements specified in the ROO Chapter.

Wholly obtained or produced goods are typically agricultural goods and energy and mineral resources. Goods produced entirely from originating materials are products produced entirely in either or both Japan and Australia, exclusively from originating materials, with no imported material content.

For goods that contain materials sourced outside the territories of Japan and Australia, a change of tariff classification (CTC) approach has been adopted. Under this approach, a good will qualify as originating if a transformation takes place defined in terms of a change in the tariff code of the input materials as compared to the tariff code of the final product (for example, transforming gold into jewellery). Annex 2 Schedule of Product Specific Rules details the CTC rules that apply to specific goods.

For some goods, a qualifying value content (QVC) approach to verifying origin applies. Under this approach, domestically sourced materials and processes must represent an

agreed proportion of the final value of the good. The QVC component can take the form of either an additional requirement to the CTC rule, or an alternative rule, allowing the product to meet a lesser degree of tariff change if the threshold is reached. The Chapter provides guidance on how to calculate the qualifying value content of a good.

The ROO Chapter covers a range of other issues relevant to determining origin, including: processes or operations which are considered insufficient to confer originating status ('non-qualifying operations'); treatment of accessories, spare parts and tools; treatment of goods where only a small proportion of inputs fail to meet the relevant ROO (the so-called *de minimis* principle); treatment of packing materials and containers; and transport of goods through non-Parties.

The ROO Chapter also sets out procedures and requirements relating to documentary evidence that a good satisfies origin requirements. Australian and Japanese importers, exporters and producers of goods can self-certify origin through completing an Origin Certification Document (OCD). Exporters and producers also have the option of making a claim for preferential tariff treatment on the basis of a Certificate of Origin (COO) issued by an authorised body. Annex 3 to the Agreement specifies the minimum data required to be included in the OCD or COO. These two options for origin certification, give traders, particularly small and medium-sized enterprises, the flexibility to use the method of certification that most suits their circumstances. Furthermore, JAEPA provides flexibility for each Party to waive the requirement of a COO under certain conditions. Post-importation claims for preferential tariff treatment can also be made, provided certain conditions are met. The chapter stipulates that there be regular meetings and ongoing consultation following implementation of JAEPA, to ensure the effective operation of the ROO and provide an opportunity for review.

### Chapter 4: Customs Procedures

This Chapter sets out customs procedures applying to goods traded between the Parties. The Chapter seeks to ensure that the respective customs administrations of the Parties apply their customs procedures in a predictable, consistent, transparent, impartial and reasonable manner, and review such procedures periodically to further facilitate legitimate trade flows. It encourages procedures that facilitate the clearance of low-risk goods, and provides for the use of advance rulings to give greater certainty to business, and ensures the availability of review and appeal mechanisms to address disputes. The Chapter also seeks to facilitate cooperation and the exchange of information between respective customs administrations.

A Sub-Committee on Customs Procedures will be established to review the effective implementation and operation of the Chapter and identify areas of customs procedures that can be improved to better facilitate trade between Australia and Japan. The Sub-Committee can submit any recommendations to the Joint Committee for consideration or action.



### Chapter 5: Sanitary and Phytosanitary Cooperation

This Chapter builds on the Parties' existing commitments under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. It contains provisions on strengthening information exchange, cooperation and consultation, including through the establishment of a Sub-Committee.

### Chapter 6: Technical Regulations, Standards and Conformity Assessment Procedures

This Chapter builds on the Parties' existing commitments under the WTO Agreement on Technical Barriers to Trade and supports enhanced information exchange, cooperation and consultation, including through the establishment of a Sub-Committee. The Chapter also provides for the Parties to cooperate to facilitate the acceptance of conformity assessment procedures, and where a conformity assessment is not accepted, there are provisions that require the Party to explain the reasons thereof.

### Chapter 7: Food Supply

This Chapter affirms the importance of strengthening the stable and mutually beneficial relationship between Australia and Japan in trade in food. It provides for the Parties to consult with the other Party in the event of a foreseen significant decrease to supply of a food good designated as "essential food" in the accompanying annex (Annex 4). It seeks to limit the introduction or maintenance of prohibitions or restrictions on the exportation or sale for export of any essential food. It sets contact points to support investment in the food sector.

### Chapter 8: Energy and Mineral Resources

This Chapter affirms the importance of strengthening the stable and mutually beneficial relationship between Australia and Japan in the energy and mineral resources sector. It recognises the role that trade, investment and cooperation (including on infrastructure development) play in achieving long term security, and commits Parties to take reasonable measures as may be available to it for that purpose.

The Chapter provides for the Parties to request consultations with the other Party in the event of a severe and sustained disruption to supply of an energy and mineral resource good or threat thereof, and explore appropriate actions to resolve the disruption. It seeks to limit the introduction or maintenance of prohibitions or restrictions on the exportation or sale for export of any energy and mineral resource goods. It sets out transparency and consultation requirements for the implementation of export licensing procedures and regulatory measures.

Annex 5 to the Agreement lists the energy and mineral resource goods to which this Chapter refers.

### Chapter 9: Trade in Services

This Chapter builds on existing WTO services obligations. It provides for improved market access commitments and significantly greater protections for Australian services

suppliers in terms of regulatory transparency and non-discrimination. The Chapter provides for the scheduling of market access commitments on a 'negative' list basis, where each Party lists in schedules of non-conforming measures (NCM Schedules – refer Annexes 6 and 7) specific areas which are carved out from the obligations of the Chapter. Any sectors not listed in the NCM Schedules are subject to the liberalising obligations of the Chapter. Core obligations in the Chapter require each Party to provide market access, national treatment, and most-favoured-nation (MFN) treatment to, and not to impose local presence requirements on, service suppliers of the other Party unless otherwise listed in the NCM Schedules.

Other key obligations in the Chapter provide enhanced certainty and transparency for each Party's services suppliers in relation to licensing requirements and other domestic regulations. Each Party is required not to unduly restrict the use of enterprise names used by other Party's services suppliers. The Chapter incorporates a framework for enhanced cooperation on professional services, including through the facilitation of mutual recognition agreements between professional services bodies in both countries. The Chapter does not apply to services provided in the exercise of governmental authority.

### Chapter 10: Telecommunications Services

This Chapter builds on existing WTO obligations for the sector, particularly in relation to major suppliers of telecommunications that control essential facilities or have a dominant position in the market. The Chapter protects and advances the commercial interests raised by Australian telecommunication businesses during the course of negotiations, including in key areas like resale, submarine cable access and the allocation of telecommunications spectrum. The Chapter requires both Parties to prevent anti-competitive conduct and ensure that major suppliers provide interconnection, leased circuit services and co-location of equipment on reasonable, non-discriminatory terms and conditions.

Other key outcomes include commitments on technology neutrality, number portability and network unbundling. There are strong provisions on transparency and review for regulatory decisions. Regulators must be independent and impartial and properly explain decisions, such as determining which services are subject to regulation and licensing decisions.

### Chapter 11: Financial Services

This Chapter applies to measures affecting financial services suppliers of both Parties as well as to investments in financial institutions. The Financial Services Chapter applies sector-specific disciplines affecting financial services providers and investors from each Party additional to the general provisions applying to financial services suppliers and investors under the Trade in Services and Investment chapters. Such additional provisions include disciplines covering new financial services, self-regulatory organisations, domestic regulation as well as licensing of financial services and products. Importantly, the Chapter provides safeguards to allow either Party to adopt or maintain

measures for prudential reasons. Unlike the Korea-Australia Free Trade Agreement, the Chapter does not provide for the scheduling of market access commitments in a separate annex from the services and investment commitments listed in each Party's NCM Schedules.

### Chapter 12: Movement of Natural Persons

This Chapter provides for coverage of temporary entry of service suppliers and investors, based on each Party's WTO revised services offer from 2005. In relation to movement of natural persons, Australia and Japan have committed to allow temporary entry for business people engaged in bilateral trade and investment. Australia has agreed not to apply labour market testing.

### Chapter 13: Electronic Commerce

This Chapter supports businesses of both Parties in harnessing the efficiencies of electronic commerce, while ensuring the protection of consumers engaging online. Key commitments include:

- **customs duties:** neither Party shall impose customs duties on electronic transmissions between the two countries.
- **domestic regulations:** the Parties undertake to adopt or maintain domestic measures regulating electronic commerce which do not unreasonably prohibit or restrict commerce or its development.
- **electronic signature:** the Parties shall not maintain domestic measures regulating electronic signature that prohibit parties to an electronic transaction from mutually determining the appropriate electronic signature methods for their transaction.
- **online consumer protection:** the Parties undertake to adopt or maintain measures to protect consumers engaged in electronic commerce, which are at least equivalent to those provided for consumers engaged in other forms of commerce. The Parties also recognise the importance of cooperation between their respective national consumer agencies on activities related to cross-border e-commerce.
- **paperless trading:** the Parties agree to endeavour to make publicly available, in electronic form, all trade administration documents and to accept electronic trade administration documents as the legal equivalent of the paper version of those documents.
- **online personal data protection:** the Parties undertake to adopt or maintain measures which ensure the protection of the personal data of the users of electronic commerce.
- **non-discrimination of digital products:** the Parties agree to provide non-discriminatory treatment of digital products of the other Party. This commitment goes no further than similar provisions on non-discrimination of digital products under the Australia-US Free Trade Agreement.

### Chapter 14: Investment

This Chapter enhances protections for investors of both Parties. The key commitments in this Chapter include:



- **non-discrimination** through national treatment and most-favoured-nation (MFN) provisions.
- **minimum standard of treatment:** the foreign investor / investment to be treated in accordance with customary international law, including fair and equitable treatment and full protection and security.
- **expropriation and compensation:** commitment not to expropriate or nationalise a covered investment unless it is undertaken in a non-discriminatory manner, for a public purpose and on payment of prompt, adequate, and effective compensation.
- **transfers:** commitment to allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory.
- **performance requirements:** lists the types of requirements which each Party agrees not to impose as a condition of establishment or operation of an investment in the other Party.
- **senior management and board of directors:** prohibition on requiring the appointment of particular nationalities to senior management positions in businesses that are covered investments.

The Chapter provides for measures which do not conform with the obligations of the Chapter to be scheduled on a 'negative-list' basis. Such non-conforming measures (NCMs) are set out in the NCM Schedules, in Annexes 6 and 7 to JAEPA.

Australia has set the general threshold for screening investment proposals by Japanese non-government investors at \$1078 million. Australia has retained the ability to screen Japanese investments at lower thresholds for sensitive sectors, including media, telecommunications and defence-related industries. Australia has also reserved the right to adopt and maintain measures which will allow the screening of investments in Australian agricultural land from \$15 million and agribusiness from \$53 million.

In JAEPA, Australia and Japan agreed not to include an Investor State Dispute Settlement (ISDS) mechanism. JAEPA does include a review clause which provides for future consideration of an ISDS mechanism.

### Chapter 15: Competition and Consumer Protection

This Chapter supports the trade and investment liberalisation achieved across JAEPA by addressing anti-competitive practices that could otherwise undermine liberalisation. Australia and Japan have committed to:

- take measures to promote competition, including by addressing anti-competitive activities under their respective laws and regulations; and
- ensure that measures taken to promote competition are consistent with the principles of transparency, non-discrimination and procedural fairness.

The Chapter also recognises:

- the importance of cooperation between competition authorities in Japan and Australia to further the promotion of competition;



- that competition can be promoted by ensuring that governments do not provide competitive advantages to state-owned enterprises simply because they are state-owned; and
- that cooperation on matter related to consumer protection enhances consumer welfare in Japan and Australia.

### Chapter 16: Intellectual Property

The chapter on Intellectual Property (IP) reinforces and builds on the Parties' existing rights and obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

Parties are obliged to accord national treatment in relation to the protection of IP rights subject to the exceptions provided in multilateral intellectual property agreements to which either party is or becomes a contracting party.

The chapter contains a number of specific obligations on the protection of intellectual property. In relation to patents, trade marks, designs, and plant varieties it contains undertakings to promote the transparency and administration of those regimes. In relation to copyright, it provides for protection against unauthorised circumvention technological protection measures and also addresses the protection of undisclosed information, Utility Models, and protection against unfair competition.

The provisions on the enforcement of intellectual property provide for the award of damages adequate to compensate for the injury the right holder has suffered in infringement cases. The chapter also includes special requirements related to border measures which ensure that Customs, or the relevant competent authority, is able to deal appropriately with suspected infringing goods. Consistently with Australian law, the chapter provides that criminal penalties must be sufficient to provide a deterrent to future infringements.

The chapter does not affect Australia's Pharmaceutical Benefits Scheme.

A Committee is established under the chapter to monitor and assess the implementation of the chapter, provide a mechanism for discussion any issues related to IP (including GIs), and overseeing ongoing cooperation in relation to the protection and enforcement of IP.

### Chapter 17: Government Procurement

Under this Chapter procuring entities of one Party (at the central level of government and, in Australia's case, States and Territories, and in Japan's case, certain regional governments) are required to afford the suppliers, goods and services of the other Party the same treatment that applies to its domestic suppliers, goods and services.

Annex 13 sets out the specific entities bound by the non-discrimination commitments and other conditions (such as monetary thresholds) that must be met before a procurement is covered by the Chapter. Transactions which are not covered by the Chapter include those under the specific thresholds (set out in the Annex and procurements by

government entities which are not listed in that Annex. In addition the Government Procurement Chapter is limited in application by specific exceptions.

The Chapter also sets out rules and procedures for conducting procurements which are consistent with existing Australian government procurement frameworks, requiring no domestic change.

### Chapter 18: Promotion of a Closer Economic Relationship

This Chapter confirms Australia's and Japan's willingness to promote a closer economic relationship and establishes mechanisms to facilitate this, including a Sub-Committee and contact point.

### Chapter 19: Dispute Settlement

This Chapter includes a binding State-to-State dispute settlement mechanism modelled on previous free trade agreements and the WTO system. Most substantive obligations in JAEPA will be subject to this mechanism, except those in the Chapters on Technical Regulations, Standards and Conformity Assessment Procedures; Sanitary and Phytosanitary Measures; Competition and Consumer Protection; and some aspects of the Movement of Natural Persons Chapter.

### Chapter 20: Final Provisions

The Chapter on Final Provisions governs the way in which JAEPA operates as a treaty. It establishes the processes by which the Agreement will enter into force, how it may be amended and the conditions under which it may be terminated. It also provides for a general review of the Agreement and its operation in the sixth year after its entry into force, or as otherwise agreed by the Parties.