

Committee Secretary  
Joint Standing Committee on Treaties  
PO Box 6021  
Parliament House  
Canberra, ACT 2600

18 March 2022

Dear Secretariat,

**RE: *Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland***

The Australian National University Law Reform and Social Justice Research Hub ('ANU LRSJ Research Hub') welcomes the opportunity to provide this Submission to the Joint Standing Committee on Treaties (JSCOT) regarding the *Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland*.<sup>1</sup>

The ANU LRSJ Research Hub falls within the ANU College of Law's Law Reform and Social Justice program, which supports the integration of law reform and principles of social justice into teaching, research and study across the College. Members of the group are students of the ANU College of Law, who are engaged with a range of projects with the aim of exploring the law's complex role in society, and the part that lawyers play in using and improving law to promote both social justice and social stability.

**Summary of Recommendations:**

1. To consider the addition of an Article about smart contracts in 'Chapter 14: Digital Trade' that requires both Parties to maintain the legal validity of smart contracts so that businesses feel empowered to utilise them with greater certainty.
2. Establish a Strategic Dialogue between Parties and their respective peak Small and Medium Enterprise (SMEs) representative bodies to ensure the matters discussed under Chapter 19 accurately reflect the concerns of SMEs.
3. Extend the membership of the Dialogue on Trade and Gender Equality to experts and stakeholders, including members of civil society, business and commercial leaders, experts in trade, entrepreneurs, and NGOs.
4. Require the Dialogue on Trade and Gender Equality to have a minimum of fifty percent female membership.
5. Require the Dialogue on Trade and Gender Equality to meet within twelve months of the date of entry into force of the Free Trade Agreement, and thereafter every two years.
6. Require the Dialogue on Trade and Gender Equality to report every two years to the Committee on Cooperation on the progress of its work toward achieving the objectives of Chapter 24.

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<sup>1</sup> Australia-United Kingdom, [2022] ATNIA 3. (not yet signed) ('*The Free Trade Agreement*').

7. Consider the effects of the Free Trade Agreement on non-binary, transgender, and gender non-confirming individuals, taking care to prevent the terms of the Free Trade Agreement from being interpreted or applied to the exclusion of the gender-diverse community.

If further information is required, please contact us [REDACTED]

On behalf of the ANU LRSJ Research Hub,

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## Introduction

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This Submission addresses a number of issues relating to ‘Chapter 14: Digital Trade’, ‘Chapter 19: Small and Medium-sized Enterprises’, and ‘Chapter 24: Trade and Gender Equality’ of the *Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland* (the ‘Free Trade Agreement’).

Three key areas explored in the Submission include: 1) inclusion of an Article about smart contracts in Chapter 14; 2) implementation mechanisms available to meet the objectives of the Free Trade Agreement concerning Small and Medium Enterprises (SMEs) in Chapter 19; and 3) stronger commitments to action for trade and gender equality in Chapter 24.

### **1. Inclusion of an Article about Smart Contracts in ‘Chapter 14: Digital Trade’**

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The ANU LRSJ Research Hub commends the expansive scope of ‘Chapter 14: Digital Trade’ of the Free Trade Agreement. The ANU LRSJ Research Hub notes that Chapter 14 includes a wide array of critical digital trade topics like electronic signatures, electronic authentication, digital identities, paperless trading, open data, open internet access, online consumer protection, cryptography, and cybersecurity. Other topics like innovation, emerging technologies, and intellectual property are also discussed in Chapters 15 and 20, respectively. However, smart contracts, another critical aspect of digital trade, remains unaddressed in the Free Trade Agreement. The ANU LRSJ Research Hub therefore contends that incorporating an Article about smart contracts in Chapter 14 should be considered. This new article could be modelled on the provisions of ‘Article 14.5: Conclusion of Contracts by Electronic Means’ of Chapter 14, and should aim to require both Parties to maintain the legal validity of smart contracts so that businesses feel empowered to utilise them with greater certainty.

To establish the importance of including an Article about smart contracts in ‘Chapter 14: Digital Trade’, we first explore the conceptualisation of smart contracts. Then, we discuss how smart contracts are recognised in the legal frameworks of Australia and the United Kingdom. Following that, we demonstrate how a wide range of business industries in Australia and the United Kingdom are increasingly utilising smart contracts, thereby highlighting their prevalence and critical importance. We conclude by discussing how the inclusion of an Article about smart contracts in the Free Trade Agreement will align with Australia and the United Kingdom’s government policy priorities.

## 1.1. What is a smart contract?

Smart contracts are self-executing contracts that automate the performance of a contractual agreement through a computer code using blockchain technology.<sup>2</sup> The computer code is programmed with pre-specified functions and conditions (e.g. if..., then...) after which the code automatically performs some or all of the contractual terms of an agreement.<sup>3</sup>

The term ‘smart contract’ was first conceptualised by an American computer scientist, Nick Szabo, in 1994. He defined a smart contract as:

‘a computerised transaction protocol that executes the terms of a contract. The general objectives of smart-contract design are to satisfy common contractual conditions (such as payment terms, liens, confidentiality, and even enforcement), minimise exceptions both malicious and accidental, and minimise the need for trusted intermediaries. Related economic goals include lowering fraud loss, arbitration and enforcement costs, and other transaction costs.’<sup>4</sup>

The ANU LRSJ Research Hub considers that the topic of smart contracts should be included as a separate, new Article in ‘Chapter 14: Digital Trade’. The inclusion of smart contracts should not be assumed to have been covered by implication in the brief discussions of emerging technologies in ‘Chapter 20: Innovation’. This is because although smart contracts utilise the prominent emerging technology of blockchain, they are themselves an important medium of digital trade and thus, should be addressed in a separate Article in ‘Chapter 14: Digital Trade’.

## 1.2. Including an Article about smart contracts in ‘Chapter 14: Digital Trade’ is rational as smart contracts are recognised in the legal frameworks of Australia and the United Kingdom

In Australia, some academics have argued that there is uncertainty in Australian law as to whether smart contracts could be considered as binding legal agreements.<sup>5</sup> Nonetheless, many commentators have established the legal validity of smart contracts in the Australian legal framework by

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<sup>2</sup> Eliza Mik, ‘Smart Contracts: Terminology, Technical Limitations and Real World Complexity’ (2017) 9(2) *Law, Innovation and Technology* 269.

<sup>3</sup> Paul Kallenbach, Jonathon Blackford and Jason Watling, ‘Demystifying Smart Legal Contracts’, *MinterEllison* (Web Page, 2 November 2022).

<<https://www.minterellison.com/articles/demystifying-smart-legal-contracts>>.

<sup>4</sup> Nick Szabo, ‘Smart Contracts’, *Phonetic Sciences, Amsterdam* (Web Page, 1994)

<<https://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/LOTwinterschool2006/szabo.best.vwh.net/smart.contracts.html>> [1].

<sup>5</sup> Alexander Savelyev, ‘Contract Law 2.0: “Smart” Contracts as the Beginning of the End of Classical Contract Law’ (2017) 26(2) *Information and Communications Technology Law* 132; Bernadette Jew, Peter Reeves and George Samman, ‘Smart Contracts: A Key Enabler for Corporate Digitalisation’ (2017) *Digital Business Lawyer* 10; Lawrence Lessig, *Code: Version 2.0* (Basic Books, 2nd ed, 2006) 5; Tim Swanson, *Consensus-as-a-Service: A Brief Report on the Emergence of Permissioned, Distributed Ledger Systems* (Report, 6 April 2015) 15.

persuasively contending that smart contracts are capable of satisfying the doctrinal requirements of contract formation.<sup>6</sup> This contention has been solidified through the provisions of the *Electronic Transactions Act 1999* (Cth), which allows formations of contracts, either in part or wholly through electronic means and communication.<sup>7</sup> Therefore, it is commonly held that smart contracts are valid in the Australian legal framework.<sup>8</sup>

In the United Kingdom, the Jurisdiction Taskforce conducted an investigation into cryptoassets and smart contracts in November 2019.<sup>9</sup> Upon completing the investigation, the Taskforce concluded that smart contracts, in principle, are capable of producing binding legal obligations and are thus enforceable in accordance with their terms.<sup>10</sup>

Following this, the United Kingdom Ministry of Justice requested that the Law Commission of the United Kingdom ('Law Commission') undertake a detailed analysis of smart contracts and understand how they apply to the current common law contractual framework. The Law Commission published its findings on 25 November 2021 and concluded that the current legal framework of the United Kingdom is 'clearly able to facilitate and support the use of smart legal contracts'.<sup>11</sup>

The validity of smart contracts as a legitimate means of digital trade is recognised in the legal frameworks of Australia and the United Kingdom. They should therefore be incorporated under a separate Article in 'Chapter 14: Digital Trade'.

### **1.3. Including an Article about smart contracts in 'Chapter 14: Digital Trade' is desirable as smart contracts are increasingly being used by business industries in Australia and the United Kingdom as a critical means of conducting digital trade**

Some of the industry sectors that utilise smart contracts as a critical means of conducting digital trade are outlined as follows:

- **Public Transportation and E-mobility Sector:**

In the public transportation and e-mobility sector, smart contracts are utilised to process payments through contactless bank cards for riding trams, trains, tubes, buses, e-bikes, and e-scooters.<sup>12</sup> For example, to hire an e-scooter or e-bike from a docking station of companies like Neuron Mobility, Beam or Voi in cities like London, Canberra, Melbourne, and Sydney, an

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<sup>6</sup> Arachichi, 'Chains, Coins and Contract Law: The Validity and Enforceability of Smart Contracts' (2019) 47(1) *Australian Business Law Review* 40; R3 and Norton Rose Fulbright, *Can Smart Contracts be Legally Binding Contracts?: An R3 and Norton Rose Fulbright White Paper* (Report, November 2016) 19.

<sup>7</sup> *Electronic Transactions Act 1999* (Cth); R3 and Norton Rose Fulbright (n 6) 30-32.

<sup>8</sup> Arachichi (n 6); R3 and Norton Rose Fulbright (n 6).

<sup>9</sup> Law Commission of the United Kingdom, 'Smart Contracts', *Law Commission of the United Kingdom* (Web Page) <<https://www.lawcom.gov.uk/project/smart-contracts>>.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> MG Vigliotti, 'What Do We Mean by Smart Contracts? Open Challenges in Smart Contracts' (2021) *Frontiers in Blockchain* <<https://doi.org/10.3389/fbloc.2020.553671>>.

individual connects themselves with a mobile application, scans a QR code, digitally pays through their bank card, and gets the e-bike or the e-scooter released from the docking station. This transaction is only possible through the deployment of smart contracts where the clauses of the contract are performed automatically through blockchain technology without requiring human intervention.<sup>13</sup> Similar smart contract transactions occur when individuals 'touch-on' their public transportation cards (like Victoria's myki or New South Wales's Opal) in a tram or at the electric gates of a train station. These types of smart contract transactions are becoming increasingly popular in the transportation sector as they expedite the commercial process and reduce costs.

- **Australian National Blockchain:**

In August 2018, Herbert Smith Freehills, CSIRO's Data61, and IBM collaborated to establish Australia's first large-scale and cross-industry digital platform called the Australian National Blockchain ('ANB').<sup>14</sup> The platform enables Australian businesses to utilise smart legal contracts using blockchain technology and with a view to improving their business processes as well as reduce transaction costs.<sup>15</sup> The establishment of ANB signifies the growing industry importance and usage of smart contracts in Australia.

- **Legal Sector:**

Some prominent Australian and United Kingdom law firms like Herbert Smith Freehills<sup>16</sup>, King & Wood Mallesons<sup>17</sup>, MinterEllison<sup>18</sup>, Allen and Overy<sup>19</sup>, and Linklaters<sup>20</sup> are all eagerly

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<sup>13</sup> Ibid.

<sup>14</sup> CSIRO, 'New Blockchain-Based Smart Legal Contracts For Australian Businesses', *CSIRO* (Web Page, 29 August 2018)

<<https://www.csiro.au/en/news/news-releases/2018/new-blockchain-based-smart-legal-contracts>>;

Herbert Smith Freehills, 'Herbert Smith Freehills, Data61 And Ibm Create Consortium To Deliver Smart Legal Contracts On Blockchain To Australian Businesses', *Herbert Smith Freehills* (Web Page, 29 August 2018)

<<https://hsfnotes.com/tmt/tag/australian-national-blockchain/#:~:text=Known%20as%20the%20Australian%20National.and%20status%20of%20legal%20contracts>>.

<sup>15</sup> Ibid.

<sup>16</sup> Herbert Smith Freehills, 'Smart Legal Contracts: Developing the Next Generation of Contracting', *Herbert Smith Freehills* (Web Page, July 2020)

<<https://www.herbertsmithfreehills.com/file/47156/download?token= AIRHAQw>>.

<sup>17</sup> Scott Farrell and Claire Warren, 'Smart Derivatives Contracts: From Concept to Construction', *King & Wood Mallesons* (Web Page, 04 October 2018)

<<https://cmkwmlive.kwm.com/en/au/knowledge/insights/smart-derivatives-contracts-from-concept-to-construction-20181004>>.

<sup>18</sup> Paul Kallenbach, Jonathon Blackford and Jason Watling, 'Unlocking Business Value with Smart Legal Contracts', *MinterEllison* (Web Page, 02 November 2020)

<<https://www.minterellison.com/articles/unlocking-business-value-with-smart-legal-contracts>>.

<sup>19</sup> Allen & Overy, 'Allen & Overy Joins the Accord Project', *Allen & Overy* (Web Page, 03 April 2018)

<<https://www.allenoverly.com/en-gb/global/news-and-insights/news/allen-allen-and-overly-joins-the-accord-project-overly-joins-the-accord-project>>.

<sup>20</sup> Linklaters, 'Linklaters Partners with Accord Project to Offer Clients New Smart Contracts', *Linklaters* (Web Page, 25 January 2018)

<<https://www.linklaters.com/en/about-us/news-and-deals/news/2018/linklaters-partners-with-accord-project-to-offer-clients-new-smart-contracts>>.

exploring the applications of smart contracts within their legal practices. They are also assisting businesses and clients to adopt smart contracts in their transactions and processes.

- **Manufacturing and Logistics Sector:**

The manufacturing and logistics sectors in Australia and the United Kingdom are utilising smart contracts to shorten the chain and involvement of third party agents, reduce the time frames of deliveries, track the transportation and movement of goods, and decrease the possibility of theft and logistical damage.<sup>21</sup>

- **Financial Services Sector:**

The financial services sector is one of the largest users of smart contracts.<sup>22</sup> The sector regularly deploys smart contracts for services including, but not limited to, processing payments (including cross-border payments), clearing and settlement of financial instruments, streamlined 'know your customer' certification, and more.<sup>23</sup>

The sectors discussed above are just some of the many that regularly utilise smart contracts in their business operations. Other prominent sectors include food and wine, agriculture, education, and public administration. The prevalence of smart contracts in this wide range of industry sectors highlights how smart contracts are a crucial aspect of digital trade and therefore, should be included in Chapter 14 of the Free Trade Agreement.

#### **1.4. Including an Article about smart contracts in the Free Trade Agreement will align with the government policy priorities of Australia and the United Kingdom**

In February 2020, the Australian Government Department of Industry, Science, Energy and Resources launched the *National Blockchain Roadmap: Progressing towards a blockchain-empowered future* ('the Blockchain Roadmap').<sup>24</sup> The Blockchain Roadmap acts as Australia's official strategy for promoting the research, development, application, and commercialisation of blockchain technology.<sup>25</sup> Similarly, the United Kingdom Government's Department of Business, Energy and Industrial Strategy launched the *UK Innovation Strategy: Leading the future by creating it* (Innovation

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<sup>21</sup> See, eg, Ming Li et al, 'Blockchain-Enabled Logistics Finance Execution Platform For Capital-Constrained E-Commerce Retail' (2020) 60 *Robotics and Computer-Integrated Manufacturing* 101962.

<sup>22</sup> Alexandra Bratanova et al, *Blockchain 2030: A Look at the Future of Blockchain in Australia* (CSIRO Data61 Report, 2019) 19.

<sup>23</sup> A Pal, CK Tiwari and A Behl, 'Blockchain Technology In Financial Services: A Comprehensive Review Of The Literature' (2021) 14(1) *Journal of Global Operations and Strategic Sourcing* 61.

<sup>24</sup> 'Blockchain Roadmap Points The Way To Success', *The Hon Karen Andrews MP* (Web Page, 7 February 2020)

<<https://www.minister.industry.gov.au/ministers/karenandrews/media-releases/blockchain-roadmap-points-way-success>>.

<sup>25</sup> Australian Government Department of Industry, Science, Energy and Resources, *National Blockchain Roadmap: Progressing Towards A Blockchain-Empowered Future* (Strategy, February 2020) <<https://www.industry.gov.au/sites/default/files/2020-02/national-blockchain-roadmap.pdf>>.

Strategy’) in July 2021.<sup>26</sup> The Innovation Strategy shares very similar goals to Australia’s Blockchain Roadmap and aims to foster research and commercialisation of innovative and emerging technologies, including blockchain technology, in the United Kingdom.<sup>27</sup>

Smart contracts, as a medium of digital trade, operate on blockchain technology. Including smart contracts as an Article in ‘Chapter 14: Digital Trade’ has the potential to empower and promote businesses, both in Australia and the United Kingdom, to increase the development, utilisation and commercialisation of blockchain and other related emerging technologies. This would likely result in greater job creation and bilateral trade flow in the blockchain sector (as well as all sectors that utilise smart contracts) in both countries. Therefore, including an Article about smart contracts in ‘Chapter 14: Digital Trade’ of the Free Trade Agreement will be in alignment with both Australian and the United Kingdom Governments’ blockchain and innovation strategies and policy priorities.

**Recommendation 1: To consider the addition of an Article about smart contracts in ‘Chapter 14: Digital Trade’ that requires both the parties to maintain the legal validity of smart contracts so that businesses feel empowered to utilise them with greater certainty.**

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<sup>26</sup> United Kingdom Department of Business, Energy and Industrial Strategy, *UK Innovation Strategy: Leading The Future By Creating It* (Strategy, July 2021)  
<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1009577/uk-innovation-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1009577/uk-innovation-strategy.pdf)>.

<sup>27</sup> Ibid.



## 2. Creating a Strategic Dialogue with SME Representation

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The contribution of small and medium sized enterprises (SMEs) to Australia's growth and prosperity is well documented.<sup>28</sup> Australian exports contribute significantly to Australia's economy as a hedge against weak domestic demand and further in incentivising innovation and productivity growth.<sup>29</sup> SMEs represent 99.5% of Australian-employing businesses.<sup>30</sup> Of these businesses, only 45,528 exported goods in 2016-17, accounting for just 5.3% of all employing SMEs in Australia.<sup>31</sup>

The ANU LRSJ Research Hub commends the recognition afforded in Chapter 19 to the benefits and opportunities derived from cultivating SME participation in international trade. However, there is too little ongoing involvement of SMEs in the implementation of a Trade Agreement which, as a core objective, seeks to address challenges facing SMEs. For Chapter 19 to effectively 'consider the needs of SMEs', 'assess the effects of globalisation on SMEs' and 'examine issues related to SMEs', SMEs must have a direct voice in the decision-making process for the reasons discussed below.<sup>32</sup>

First, the economic conditions which create the challenges and opportunities Chapter 19 seeks to address are too volatile to forgo regular consultations with the SMEs who are directly affected. Formal government inquiries such as the recent Joint Standing Committee on Foreign Affairs, Defence and Trade's 2019 *Inquiry into Access to Free Trade Agreements by Small and Medium Enterprises* ('2019 Inquiry') comprehensively identifies some issues faced by SMEs. However, due to lengthy administrative processes, too often issues such as those identified in the 2019 Inquiry become dated and no longer accurately resemble the reality faced by SMEs. As a consequence of the COVID-19 pandemic, international markets have undergone major transformations since 2019.<sup>33</sup> Recent developments, particularly in the digital trade space with the growth of online platforms present new opportunities for Australian SMEs. A strategic dialogue with private sector representation would ensure regular discussions are properly informed on the current challenges and opportunities facing SMEs, in turn empowering timely government action upon which SMEs can capitalise.

Further, by incorporating SME' representative bodies into the implementation process, the Free Trade Agreement would leverage existing SME networks to give a voice to those without the political capital to meaningfully engage otherwise. Unlike large companies, SMEs typically do not have the resources to effectively engage with new government initiatives and consequently their voices can go

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<sup>28</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of the Commonwealth of Australia, *Inquiry into Access to Free Trade Agreements by Small and Medium Enterprises* (Final Report, February 2019) 13 ('The 2019 Inquiry').

<sup>29</sup> Razib Tuhib, *Modelling the relationship between innovation and exporting: evidence from Australian SMEs*, Office of the Chief Economist research paper no. 3. (2017).

<sup>30</sup> Department of Industry, Innovation & Science (n 21) 1.

<sup>31</sup> Australian Bureau of Statistics, *Characteristics of Australian Exporters, 2016-17* (Catalogue No. 8165.0, 20 June 2018).

<sup>32</sup> *The Free Trade Agreement* (n 1), Art 19.

<sup>33</sup> Yoonkyung Choi, Hyun-ju Kim and Yoon Lee, 'Economic Consequences of the COVID-19 Pandemic: Will it be a Barrier to Achieving Sustainability?' (2022) *14 Sustainability (Basel, Switzerland)* 1629.

unheard.<sup>34</sup> This is of democratic concern. When explaining the free trade agreement stakeholder consultation process, the Australian Department of Foreign Affairs and Trade (DFAT) suggests that ‘implementation concerns [are addressed when] raised by businesses in relevant meetings of committees established under each free trade agreement.’<sup>35</sup> At present, SMEs wishing to raise implementation concerns would require an invitation to a committee the formation for which is at the discretion of the Parties. Analogous to the traditional lobbying avenues, the resources required to participate in such a process are beyond the capacity of most small and medium-sized businesses.

If the object of Chapter 19 is to facilitate and support SME growth, the Parties must thoroughly understand the realities of internationally-oriented SMEs. The ANU LRSJ Research Hub submits the current consultation framework is insufficient to deliver on the Free Trade Agreement’s proposed outcomes. Introducing a Strategic Dialogue similar to those in Chapters 20 and 24 with private SME representation would better achieve the Free Trade Agreement’s aims by directly accommodating the challenges faced by SMEs to provide contemporary information and participate in the democratic process.

**Recommendation 2: Establish a Strategic Dialogue between Parties and their respective peak Small and Medium Enterprise (SME) representative bodies to ensure the matters discussed under Chapter 19 accurately reflect the concerns of SMEs.**

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<sup>34</sup> *The 2019 Inquiry* (n 21).

<sup>35</sup> *The 2019 Inquiry* (n 21), 151; citing Department of Foreign Affairs and Trade, Austrade & Efic, *Submission 12*, 6.

### 3. Committing to Action in Trade and Gender Equality

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The ANU LRSJ Research Hub acknowledges that this is the first Australian free trade agreement including a chapter on trade and gender equality. The inclusion of this Chapter represents an ambitious and significant commitment on behalf of both Parties towards improving gender equality. Success, however, will depend on concrete implementation mechanisms, goals, and objectives against which to monitor and measure progress.<sup>36</sup>

Trade and gender equality is a complex, fluid, and multi-dimensional subject. Achieving the objectives in this Free Trade Agreement will require complementary policies that address issues surrounding access to education, financial resources, digital technologies, information, and infrastructure.<sup>37</sup>

Furthermore, the importance of gender-related data cannot be understated. Data allows policy-makers to identify the barriers to trade and differential effects of trade policy on women and men respectively.<sup>38</sup> Both Parties must engage with the data to the greatest extent possible in order to formulate strategies that are well-designed, well-targeted, and well-implemented.<sup>39</sup> It is from this perspective that the ANU LRSJ Research Hub commends the inclusion of Articles 24.2.3 and 24.2.4, and is hopeful that those cooperative activities will be prioritised after entry into force of the Free Trade Agreement.

Of concern to the ANU LRSJ Research Hub is the potential effectiveness of the Dialogue established under Article 24.3. It is critical for the Dialogue to have a high level of engagement with experts and stakeholders, including members of civil society, business and commercial leaders, experts in trade, entrepreneurs, and NGOs representing women's interests. We therefore contend that membership of the Dialogue should not be limited to Government representatives, but also be open to experts and stakeholders in the wider community. This will enable the experts in trade and gender equality to play a central and permanent role in the development of action plans in this area. It will also ensure that the diverse priorities of civil society, the business community, and government, are balanced. We also contend that the Dialogue should include a minimum of fifty percent female membership. We see it as critical for the Dialogue to be composed of individuals with an inherent understanding of the issues confronting women, particularly those in Australia and the United Kingdom.

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<sup>36</sup> United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and United Nations Conference on Trade and Development (UNCTAD) under the WE EMPOWER Programme, *Gender and Trade - Assessing the Impact of Trade Agreements on Gender Equality: Canada–EU Comprehensive Economic Trade Agreement* (Policy Brief, 2020).

<sup>37</sup> World Trade Organisation and World Bank, *Women and Trade: The role of trade in promoting gender equality* (Report, 2020).

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

**Recommendation 3: Extend the membership of the Dialogue on Trade and Gender Equality to experts and stakeholders, including members of civil society, business and commercial leaders, experts in trade, entrepreneurs, and NGOs.**

**Recommendation 4: Require the Dialogue on Trade and Gender Equality to have a minimum of fifty percent female membership.**

As this Chapter is the first of its kind, care must be taken to prevent action from becoming lost in the aspirational objectives of Article 24.1. We therefore consider it appropriate to introduce greater obligations on the Dialogue, akin to those imposed upon the Strategic Innovation Dialogue established in Chapter 20. These would include a requirement for the Dialogue to meet within twelve months of the date of entry into force of the Free Trade Agreement, and thereafter every two years. Noting that reporting is an important accountability mechanism to ensure sustained progress, we recommend that the Dialogue be required to report to the Committee on Cooperation on the development of its work every two years.

**Recommendation 5: Require the Dialogue on Trade and Gender Equality to meet within twelve months of the date of entry into force of the Free Trade Agreement, and thereafter every two years.**

**Recommendation 6: Require the Dialogue on Trade and Gender Equality to report to the Committee on Cooperation on the progress of its work toward achieving the objectives of Chapter 24 every two years.**

Women and non-binary, transgender, and gender non-confirming individuals are confronted by many similar barriers to trade, and experience an underrepresentation in on-shore and off-shore markets. In implementing a trade strategy targeting gender, both Parties must be conscious of applying the terms of the Free Trade Agreement in a manner that is inclusive of gender-diverse individuals. Many of the goals of Chapter 24, if implemented in an inclusive fashion, may achieve important secondary benefits for the gender-diverse community.

**Recommendation 7: Consider the effects of the Free Trade Agreement on non-binary, transgender, and gender non-confirming individuals, taking care to prevent the terms of the Free Trade Agreement from being interpreted or applied to the exclusion of the gender-diverse community.**