# FREE TRADE AGREEMENT BETWEEN NEW ZEALAND AND THE REPUBLIC OF KOREA

The Government of New Zealand (hereinafter referred to as "New Zealand") and the Government of the Republic of Korea (hereinafter referred to as "Korea") (hereinafter collectively referred to as "the Parties" and individually as "a Party"):
Reinforcing the longstanding ties of friendship and co-operation between them;
Envisaging that a free trade area will create an expanded and secure market for goods and services in their territories; and clear and transparent rules governing their trade; as well as
a stable and predictable environment for business planning and investment, thus enhancing the competitiveness of their firms in global markets;
Encouraging a closer economic partnership that will bring economic and social benefits, create new employment opportunities, and improve living standards for their people;
Seeking to reduce or eliminate the barriers to trade and investment between them, and to avoid creating new barriers to trade or investment between their territories that could reduce the benefits of this Agreement;
Desiring to strengthen a mutually beneficial co-operative framework to foster creativity and innovation, protect intellectual property rights, and promote stronger linkage in and between dynamic sectors of their economies; Recognising that expanding the economic relationship can assist in promoting sustainable development in its economic, social and environmental dimensions;
Recognising the desire to enhance their co-operation on labour and environmental matters of mutual interest;
Recognising their right to regulate, and to introduce new regulations on the supply of goods, services and investment in order to meet government policy objectives, and preserving their flexibility to safeguard the public welfare;
Building on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral, regional, and bilateral agreements and arrangements to which both Parties are party;
Committed to the Asia-Pacific Economic Cooperation (APEC) goals and principles, and to furthering the Parties' economic leadership in the Asia Pacific region, in particular by seeking to reduce barriers to trade and investment in the region; and
Recognising the continued importance of working together to support the wider multilateral and regional economic liberalisation processes under way, and the contributions these processes can make to the Parties' economic growth; Have agreed as follows:

# Chapter 1. Initial Provisions and Definitions

## Article 1.1. Establishment of the Free Trade Area

Consistent with Article XXIV of GATT 1994 and Article V of GATS, the Parties hereby establish a free trade area.

## Article 1.2. Relation to other Agreements

1. Each Party affirms its existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.
2. Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and other agreements to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with customary rules of public international law. (1)

(1) For the purposes of the application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments, or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of this paragraph.

## Article 1.3. Extent of Obligations

Each Party is fully responsible for the observance of all provisions in this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by regional and local government and authorities.

## Article 1.4. Audio-visual Co-production

1. The Parties recognise that audio-visual co-productions, including films, animation and broadcasting programmes, can significantly contribute to the development of the audio-visual industry and to the intensification of cultural and economic exchanges between them.
2. The Parties hereby agree on the Agreement between the Republic of Korea and New Zealand concerning Audio-Visual Co-Production, which is annexed to this Agreement. 1 For the purposes of the application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments, or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of this paragraph.

## Article 1.5. Definitions

For the purposes of this Agreement, unless otherwise specified: Agreement means the Free Trade Agreement between the Republic of Korea and New Zealand;
Agreement on Agriculture means the Agreement on Agriculture, in Annex 1A to the WTO Agreement;
Anti-dumping Agreement means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, in Annex 1A to the WTO Agreement;
APEC means the Asia-Pacific Economic Cooperation; covered investment means, with respect to a Party, an investment, as defined in Chapter 10 (Investment), in its territory of an investor of the other Party that is in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter; customs administration means: (a) for Korea, the Ministry of Strategy and Finance and the Korea Customs Service (KCS), or its respective successor; and (b) for New Zealand, the New Zealand Customs Service, or its successor;
customs duty includes any duty or charge of any kind imposed on, or in connection with, the importation of a good of the other Party, including any form of surtax or surcharge imposed on or in connection with such importation, but does not include any:
(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, or any equivalent provision of a successor agreement to which both Parties are party;
(b) anti-dumping, countervailing or safeguard duties applied consistently with WTO obligations and the provisions of this Agreement; or
(c) fee or other charge in connection with importation commensurate with the cost of the service rendered; Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, in Annex 1A to the WTO Agreement; days means calendar days;
enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation; enterprise of a Party means an enterprise constituted or organised under a Party`s law; existing means in effect on the date of entry into force of this Agreement;
freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;
GATS means the General Agreement on Trade in Services, in Annex 1B to the WTO Agreement; GATT 1994 means the General Agreement on Tariffs and Trade 1994, in Annex 1A to the WTO Agreement;
goods of a Party means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree and includes originating goods of a Party;
HS Code or Harmonized System means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Description and Coding System signed at Brussels on 14 June 1983, as amended;
Import Licencing Agreement means the Agreement on Import Licencing Procedures, in Annex 1A to the WTO Agreement;
Joint Commission means the Joint Commission established under Chapter 18 (Institutional Provisions); measure includes any law, regulation, procedure, requirement, or practice; measures adopted or maintained by a Party means any measure of a Party taken by:
(a) central, regional or local governments or authorities; and
(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
national means a natural person who is:
(a) for Korea, a Korean national within the meaning of the Nationality Act, or its successor legislation; and
(b) for New Zealand, a New Zealand national or a permanent resident under its laws. originating means qualifying under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);
person means a natural person or an enterprise;

preferential tariff treatment means the customs duty rate applicable to an originating good, pursuant to the Parties' respective Tariff Schedules set out in Annex 2-A (Tariff Schedule);
Safeguards Agreement means the Agreement on Safeguards, in Annex 1A to the WTO Agreement; sanitary or phytosanitary measure means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;
SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, in Annex 1A to the WTO Agreement;
state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party;
TBT Agreement means the Agreement on Technical Barriers to Trade, in Annex 1A to the WTO Agreement;
territory means:
(a) for Korea, the land, maritime, and air space under its sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its law; and
(b) for New Zealand, the territory of New Zealand and the Exclusive Economic Zone, seabed and subsoil over which it exercises sovereign rights with respect to natural resources in accordance with international law, but does not include Tokelau;
TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, in Annex 1C to the WTO Agreement;
WTO means the World Trade Organization; and WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

# Chapter 2. Market Access for Goods

## Article 2.1. Definitions

For the purposes of this Chapter:
advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;
commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than the amount specified in a Party's laws, regulations or procedures governing temporary admission, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or use except as commercial samples;
consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purposes of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation; duty-free means free of customs duty;
goods intended for display or demonstration includes their component parts, ancillary apparatus, and accessories;
goods temporarily admitted for sports purposes means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;
import licensing means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party; and
printed advertising materials means those goods classified in Chapter 49 of the HS Code, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicise, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

## Article 2.2. Scope and Coverage

Except as otherwise provided in this Agreement, this Chapter applies to trade in all goods between the Parties.

# Section A. National Treatment

## Article 2.3. National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretive notes, and to this end Article III of GATT 1994 and its interpretive notes are incorporated into and

made part of this Agreement, mutatis mutandis.

# Section B. Elimination of Customs Duties

## Article 2.4. Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 2-A.
3. If at any moment a Party reduces its applied most-favoured-nation (hereinafter referred to as "MFN") customs duty rate after the date of entry into force of this Agreement, that duty rate shall apply as regards trade covered by this Agreement if and for as long as it is lower than the customs duty rate calculated in accordance with its Schedule in Annex 2-A.
4. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in their Schedules in Annex 2-A. An agreement by the Parties to accelerate the elimination of customs duties on originating goods shall supersede any duty rate determined pursuant to their Schedules in Annex 2-A for such goods and shall enter into force following approval by each Party in accordance with Chapter 18 (Institutional Provisions) and their respective applicable legal procedures.
5. For greater certainty, a Party may raise a customs duty to the level established in its Schedule in Annex 2-A following a unilateral reduction.
6. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 2-A. A Party considering doing so shall announce (1) its intention to do so as early as practicable before the new rate of customs duty takes effect.

(1) Including through the internet or in print form.

## Article 2.5. Temporary Admission of Goods

1. Each Party shall grant customs duty-free temporary admission for the following goods, regardless of their origin:
(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;
(b) goods intended for display or demonstration;
(c) commercial samples and advertising films and recordings; and
(d) goods admitted for sports purposes, including racing or other similar events.
2. Each Party shall, on the request of the person concerned and for reasons its customs administration considers valid, extend the time limit for temporary admission beyond the period initially fixed.
3. Neither Party shall condition the duty-free temporary admission of goods referred to in paragraph 1, other than to require that such goods:
(a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;
(b) not be sold, leased, disposed of, or transferred while in its territory;
(c) be accompanied by a security which is consistent with the importing Party's obligations under the international customs conventions to which it has acceded;
(d) be capable of identification when imported and exported;
(e) be exported on or before the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, or within one year, unless extended;
(f) be admitted in no greater quantity than is reasonable for its intended use; and
(g) be otherwise admissible into the Party's territory under its domestic laws.
4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its domestic laws.
5. Each Party, through its customs administration, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.
6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs authorised point of departure other than that through which it was admitted.

7. Each Party shall relieve the importer or other person responsible for a good admitted under this Article of liability for failure to export a temporarily admitted good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

## Article 2.6. Goods Re-entered after Repair or Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that reenters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether the repair or alteration:
(a) could be performed in the territory of the Party from which the good was exported for repair or alteration; or
(b) has increased the value of the good.
2. Neither Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.
3. For the purposes of this Article, "repair or alteration" does not include an operation or process that:
(a) destroys a good's essential characteristics or creates a new or commercially different good; or
(b) transforms an unfinished good into a finished good.

## Article 2.7. Duty-free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

With the exception of tobacco products, each Party shall grant customs duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:
(a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party; or
(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither the materials nor the packets form part of a larger consignment.

## Article 2.8. Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party shall adopt or maintain 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 territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, mutatis mutandis.
2. Neither Party shall, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.
3. For greater certainty, paragraph 2 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purposes of facilitating communications between its regulatory authorities and that person. 4. For the purposes of paragraph 2, "distributor" means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.
5. Where a Party proposes to adopt an export prohibition or restriction on foodstuffs or energy and mineral resources in accordance with paragraph 2(a) of Article XI of GATT 1994, the Party shall:
(a) seek to limit such proposed prohibition or restriction to the extent necessary, giving due consideration to its possible effects on the other Party's foodstuffs or energy and mineral resources security;
(b) publish, as far in advance as practicable, information to the other Party of such proposed prohibition or restriction and its reasons together with its nature and expected duration; and
(c) on request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to the proposed prohibition or restriction.

## Article 2.9. Non-tariff Measures

1. Further to Chapter 17 (Transparency), the Parties recognise the importance of ensuring the transparency of non-tariff measures permitted in Article 2.8.1 and that any such measures should not create an unnecessary obstacle to trade between the Parties.
2. To this end, the Committee on Trade in Goods established under Article 2.15 shall, when a Party identifies a specific non-tariff measure, review that measure. The Committee on Trade in Goods shall review the non-tariff measure only after either Party objectively demonstrates that the relevant co-ordination mechanism, technical meeting, committee or working group, if any, that is most closely related to such a measure has failed to produce a satisfactory resolution within a reasonable period of time.

3. The Committee on Trade in Goods shall, for the non-tariff measure referred to in paragraph 2 consider approaches that may better facilitate trade between the Parties and present to the Parties the results of its consideration, including any recommendations, preferably within 12 months. If necessary, the results of the consideration and recommendations of the Committee on Trade in Goods shall be submitted to the next meeting of the Joint Commission for consideration or action.

### Article 2.10. Import Licensing

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement. (2)
2. Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing import licensing procedures, if any. The notification shall:
(a) include the information specified in Article 5 of the Import Licensing Agreement; and
(b) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.
3. Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government website or in a single official journal. To the extent possible, the Party shall do so at least 20 days before the new procedure or modification takes effect.
4. Neither Party shall apply an import licensing procedure to a good of the other Party unless the Party has complied with the requirements of paragraphs 2 and 3 with respect to that procedure.
5. Each Party shall answer promptly and to the extent possible all reasonable enquiries from the other Party concerning the granting and denying of import licences, including in relation to the criteria employed. The importing Party shall also consider publication of such criteria.
6. Where a Party has denied an import license application in relation to trade in goods between the Parties, it shall, on the request of the applicant and within a reasonable period of receiving that request, explain the reasons for denying the application.

(2) For the purposes of this paragraph and for greater certainty, in determining whether a measure is inconsistent with the Import Licensing Agreement, the Parties shall apply the definition of "import licensing" contained in that Agreement.

### Article 2.11. Administrative Fees and Formalities

1. Each Party shall ensure that fees, charges, formalities and requirements imposed in connection with the importation and exportation of goods are consistent with Article VIII:1 of GATT 1994 and its interpretive notes.
2. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.
3. Each Party shall make available and maintain through the internet a current list of the fees and charges it imposes in connection with importation or exportation.

### Article 2.12. Export Duties, Taxes, or other Charges

Neither Party shall adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

## Section E. Administration and Implementation of Tariff-Rate Quotas

### Article 2.13. Administration and Implementation of Tariff-rate Quotas

1. Each Party shall implement and administer the tariff-rate quotas (hereinafter referred to as "TRQ") set out in Appendix 2-A-1 in accordance with Article XIII of GATT 1994, including its interpretive notes, and the Import Licensing Agreement.
2. Each Party shall ensure its procedures for administering its TRQs are transparent, made available to the public, timely, non-discriminatory, responsive to market conditions, minimally burdensome to trade, and reflect end-user preferences.
3. Any enterprise or person of a Party that fulfils the importing Party's legal and administrative requirements shall be eligible to be considered for a quota allocation under the Party's TRQs.
4. Over the course of each year, the importing Party's administering authority shall publish, in a timely fashion on its designated publicly available website, utilisation rates and remaining available quantities for each TRQ. If either Party uses a first-come, first-served at the border administration method, it shall publish, within 10 days, that the TRQ has been filled. 5. Each Party shall identify the entity or entities responsible for administering its TRQs and promptly notify the other Party of any amendments to the entity or entities.

6. Each Party shall notify the other Party of any new or modified administration of a TRQ established in Appendix 2-A-1 prior to its application. On the written request of a Party, the Parties shall exchange information or initiate consultations promptly regarding a Party's administration of its TRQs to arrive at a mutually satisfactory agreement on administration. The Parties shall consider prevailing supply and demand conditions in the consultations.
7. Except as otherwise provided in Appendix 2-A-1, each Party shall make the entire quota quantity established in the Appendix available to quota applicants beginning on the date the Agreement enters into force during the first year, and on the first business day of each year thereafter.
8. If either Party uses a first-come, first-served at the border administration method, the over-quota tariff rates shall not be applied to products en-route prior to the importing Party's authorities having reported the tariff quota as being filled under paragraph
4. Such products shall have a contract settled during the quota year in question. Products en-route shall be counted in the TRQ volumes for the subsequent calendar year.

# Section F. Agricultural Safeguard Measures

## Article 2.14. Agricultural Safeguard Measures

1. Notwithstanding Article 2.4, a Party may apply a safeguard measure, in the form of a higher import duty on an originating agricultural good listed in that Party's Schedule in Annex 2-B, if the aggregate volume of imports of that good in any year exceeds a trigger level as set out in Annex 2-B.
2. The duty under paragraph 1 shall not exceed the lesser of:
(a) the prevailing MFN applied rate;
(b) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or
(c) the duty rate set out in Annex 2-B.
3. Neither Party shall apply or maintain an agricultural safeguard measure under this Article and at the same time apply or maintain, with respect to the same good:
(a) a safeguard measure under this Agreement;
(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement; or
(c) an Agriculture Safeguard measure taken under the Agreement on Agriculture.
4. A Party shall maintain an agricultural safeguard measure under this Section only until the end of the calendar year in which it applies the measure.
5. A Party shall implement any agricultural safeguard measure in a transparent manner. Within 60 days after applying a measure, the Party applying the measure shall notify the other Party in writing and provide it with relevant data concerning the measure. On the written request of the other Party, the Party applying the measure shall consult with the Party whose good is subject to the measure regarding the application of the measure. A Party shall ensure that the remaining volume of imports available before application of the safeguard is published regularly in a manner which is readily accessible to the other Party and traders.
6. A good which is en-route on the basis of a contract settled before the agricultural safeguard measure is applied shall be exempted from the application of the safeguard measure provided that it may be counted in the volume of imports of the good in question during the following calendar year for the purposes of triggering the provisions of paragraph 1 in that calendar year.
7. The implementation and operation of this Article may be the subject of discussion and review in the Committee on Trade in Goods established under Article 2.15.

# Section G. Institutional Provisions

## Article 2.15. Committee on Trade In Goods

1. The Parties hereby establish a Committee on Trade in Goods (hereinafter referred to as "the Committee"), comprising representatives of each Party.
2. The Committee shall meet on the request of a Party or the Joint Commission to consider any matter arising under this Chapter, or Chapter 7 (Trade Remedies). Meetings of the Committee may be conducted in person or via teleconference, via video-conference or through any other means mutually determined by the Parties.
3. The Committee's functions shall include:
(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;
(b) reviewing implementation of the Chapters referred to in paragraph 2;
(c) addressing tariff and non-tariff barriers to trade in goods between the Parties; and
(d) where appropriate, referring matters considered by the Committee to the Joint Commission.

### Article 2.16. Contact Points and Consultations

1. Each Party shall designate a contact point to facilitate communication between the Parties on any matter relating to this Chapter.
2. Where a Party considers that any proposed or actual measure of the other Party may materially affect trade in goods between the Parties, that Party may, through the contact point, request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure. The other Party shall respond promptly to such requests for information and consultations.

# Chapter 3. Rules of Origin and Origin Procedures

## Section A. Rules of Origin

### Article 3.1. Definitions

For the purposes of this Chapter: aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seed stock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;
CIF value means the value of an imported good at the time of importation, inclusive of freight, insurance, packing and other costs incurred in transporting the good to the importation port;
exporter means a person located in the territory of a Party from where a good is exported by such a person;
FOB means the free-on-board value of a good, inclusive of the cost of transport to the port or site of final shipment abroad;
Generally Accepted Accounting Principles means recognised consensus or substantial authoritative support given in the territory of a Party with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements.
Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;
good means any merchandise, product, article, or material;
identical and interchangeable goods and materials means goods and materials of the same kind and commercial quality, possessing the same technical and physical characteristics, and which cannot be distinguished from one another by a mere visual examination for origin purposes; material means a good that is used or consumed in the production of, or physically incorporated into, another good;
material that is self-produced means a material that is produced by a producer of a good and used or consumed in the production of that good;
non-originating good or non-originating material means a good or material that does not qualify as originating under this Chapter;
origin declaration means an appropriate statement as to the origin of the goods made by the exporter or producer;
producer means a person who engages in the production of a good in the territory of a Party; and
production means methods of obtaining goods, including growing, mining, harvesting, fishing, breeding, raising, trapping, hunting, manufacturing, cultivating, extracting, gathering, collecting, capturing, farming, processing, or assembling a good.

### Article 3.2. Originating Goods

For the purposes of this Agreement, a good shall be treated as originating if it meets all the applicable requirements of this Chapter and:
(a) is wholly obtained or produced within the meaning of Article 3.3;
(b) is produced entirely in the territory of one or both of the Parties using non-originating material that conforms to a change in tariff classification, a Regional Value Content (as provided for in Article 3.4) or other requirements as specified in Annex 3-A; or
(c) is produced entirely in the territory of one or both of the Parties, exclusively from originating materials.

### Article 3.3. Wholly Obtained or Produced Goods

For the purposes of Article 3.2(a) the following goods shall be considered as wholly obtained or produced:
(a) minerals and other naturally occurring substances taken or extracted from the territory of a Party;
(b) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown and harvested, picked or gathered in the territory of a Party;

(c) live animals born and raised in the territory of a Party;
(d) goods obtained from live animals born and raised in the territory of a Party;
(e) goods obtained from hunting, trapping, fishing, aquaculture, gathering, or capturing conducted within the land, internal waters and territorial sea of a Party;
(f) goods of sea-fishing and other marine life taken from the Exclusive Economic Zone of a Party under that Party's applicable law, or from the high seas in accordance with international law, by a vessel registered or recorded with a Party and entitled to fly the flag of that Party;
(g) goods produced on board a factory ship from the goods referred to in subparagraph (f), provided such factory ship is registered or recorded with a Party and entitled to fly its flag;
(h) goods other than goods of sea-fishing and other marine life, taken or extracted from the seabed, ocean floor, or subsoil, outside the territory of one or both of the Parties by a Party or a person of a Party, provided that the Party or person of the Party has rights to exploit that seabed, ocean floor, or subsoil in accordance with Part XI of the United Nations Convention on the Law of the Sea;
(i) waste and scrap derived from:
(i) production or consumption in the territory of a Party provided that such waste and scrap is fit only for the recovery of raw materials; or
(ii) used goods collected in the territory of a Party provided that such goods are fit only for the recovery of raw materials;
(j) goods collected from the territory of a Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts or raw materials; or
(k) goods produced entirely in the territory of a Party exclusively from goods referred to in this Article or from their derivatives.

## Article 3.4. Regional Value Content

1. Where Annex 3-A provides for a regional value content requirement, the formula for calculating the regional value content shall be either:
(a) Build-down formula

$$RVC = \frac{FOB - VNM}{FOB} \times 100$$

(b) Build-up formula

$$RVC = \frac{VOM}{FOB} \times 100$$

where,
RVC is the regional value content, expressed as a percentage;
FOB is the free-on-board value of the good as defined in Article 3.1;
VNM is the value of non-originating materials, other than indirect materials, acquired and used by the producer in the production of the good;
VNM does not include the value of a material that is self-produced; and VOM is the value of originating materials.
2. All costs considered for the calculation of regional value content shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.
3. When an originating good is used in the subsequent production of another good, no account shall be taken of the non-originating materials contained in the originating good for the purposes of determining the originating status of the subsequently produced good.
4. When a non-originating good is used in the subsequent production of another good, an account shall be taken only of the non-originating materials contained in the non-originating good for the purposes of determining the originating status of the subsequently produced good.

## Article 3.5. Value of Materials

1. The value of the materials shall be:
(a) for a material imported directly by the producer of a good: the CIF value at the time of importation of the material;
(b) for a material acquired by the producer in the territory where the good is produced: the transaction value; or
(c) for a self-produced material or where the relationship between the producer of the good and the seller of the material influence the price actually paid or payable for the material: the sum of all costs incurred in the production of the material, including general expenses. Additionally, it will be possible to add an amount for profit equivalent to the profit added in the normal course of trade.
2. For originating materials, the following expenses, where not included under paragraph 1, may be added to the value of the material:
(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory

or between the territories of the Parties to the location of the producer;
(b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and
(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.
3. For non-originating materials, the following expenses, where included under paragraph 1, may be deducted from the value of the material:
(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of the Parties to the location of the producer;
(b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;
(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and
(d) the cost of originating materials used in the production of the non-originating material in the territory of a Party. (1)
4. The values referred to above shall be determined pursuant to the Customs Valuation Agreement. The principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions.

(1) For greater certainty and for the purposes of Articles 3.5.2(a) and 3.5.3(a) “costs of freight” includes the costs of all types of freight, including in-land freight incurred within a Party’s territory, regardless of the mode of transportation.

## Article 3.6. Accumulation

1. Originating goods or materials of a Party, incorporated into a good in the territory of the other Party, shall be considered as originating in the territory of the other Party.
2. A good is originating where the good is produced in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements in Article 3.2 and all other applicable requirements in this Chapter. 1 For greater certainty and for the purposes of Articles 3.5.2(a) and 3.5.3(a) "costs of freight" includes the costs of all types of freight, including in-land freight incurred within a Party's territory, regardless of the mode of transportation.

## Article 3.7. De Minimis

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3-A is nonetheless originating if:
(a) the value of all non-originating materials that have been used or consumed in the production of the good and do not satisfy the applicable change in tariff classification requirement does not exceed 10 percent of the FOB value of the good; and
(b) the good meets all other applicable requirements in this Chapter.
2. The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement.
3. Paragraph 1 shall only apply to goods classified in Chapters 1 through 14 of the HS code where the non-originating material is used or consumed in the production of another good and the process involves more than simple (2) mixing.
4. A good classified in Chapters 50 through 63 of the HS Code that does not undergo a change in tariff classification is nonetheless considered as originating where;
(a) the weight of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification does not exceed 10 percent of the total weight of the good; or
(b) the value of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good.

(2) “Simple” generally describes activities which need neither special skills nor special machines, apparatus or equipment, especially produced or installed for carrying out the activities.

## Article 3.8. Identical and Interchangeable Goods and Materials

In determining whether a good is originating, any identical and interchangeable goods and materials shall be distinguished

by:
(a) physical separation of the goods and materials; or
(b) an inventory management method recognised in the Generally Accepted Accounting Principles of the exporting Party, such as averaging, last-in-firstout ("LIFO") or first-in-first-out ("FIFO").

## Article 3.9. Accessories, Spare Parts, Tools and Instructional or Information Material

The origin of the accessories, spare parts, tools and instructional or other information materials presented with a good at the time of importation:
(a) shall be considered part of that good and disregarded if the good is subject to a change in tariff classification requirement; and
(b) shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good, if the good is subject to a regional value content requirement, provided that:
(a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the good; (3) and
(b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

(3) The Parties understand that accessories, spare parts, tools and instructional or other information materials may or may not be identified separately on the same invoice as the good with which they are presented.

## Article 3.10. Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers in which a good is packaged for retail sale, when classified together with that good, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 3-A.
2. If a good is subject to a regional value content requirement, the value of packaging materials and containers described in paragraph 1 shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

## Article 3.11. Packing Materials and Containers for Transportation and Shipment

1. The packing materials and containers for transportation and shipment shall not be taken into account in determining the origin of the good.
2. Packing materials and containers for transportation and shipment do not include the packaging materials and containers in which a good is packaged for retail sale.

## Article 3.12. Preferential Tariff Treatment

Preferential tariff treatment under this Agreement shall be applied to goods that satisfy the requirements of this Chapter.

## Article 3.13. Indirect Materials

1. An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in accounting records of the producer of the good.
2. For the purposes of this Article, "indirect materials" means a good used or consumed in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:
(a) fuel and energy;
(b) tools, dies, and moulds;
(c) spare parts and materials used in the maintenance of equipment and buildings;
(d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
(e) gloves, glasses, footwear, clothing, safety equipment, and supplies;
(f) equipment, devices, and supplies used for testing or inspecting the goods;
(g) catalysts and solvents; and
(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be

demonstrated to be a part of that production.

### Article 3.14. Non-qualifying Operations and Processes

Notwithstanding the other provisions of this Chapter, a good or material shall not be considered originating merely by reason of having undergone one or more of the following operations or processes:
(a) preserving operations to ensure that the products remain in good condition during transport and storage;
(b) changes of packaging, breaking-up and assembly of packages;
(c) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
(d) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
(e) sharpening, simple grinding or crushing or simple cutting;
(f) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging; or
(g) simple assembly of parts of articles to constitute a complete article or disassembly of goods into parts.

### Article 3.15. Outward Processing Zones on the Korean Peninsula

Notwithstanding Article 3.2, the Parties agree that certain goods shall be considered to be originating even if they have undergone working or processing outside Korea, on materials exported from Korea and subsequently re-imported there, provided that the working or processing is done in the areas designated by the Parties pursuant to Annex 3-B.

### Article 3.16. Direct Transport

1. An originating good shall retain its originating status as determined under Article 3.2 provided that it is directly transported to the importing Party without passing through the territory of a non-Party.
2. An originating good that is transported through the territory of a non-Party shall not retain its originating status, if the good:
(a) has undergone any subsequent production or other operation outside the territories of the Parties other than unloading, temporary storage, splitting up of loads for transport reasons, reloading or any other operation necessary to preserve it in good condition or to transport it to the importing Party; (4) or
(b) has been released from customs control in the territory of a non-Party.

(4) Maintenance and supplementary work may be conducted in a bonded area of the importing Party in accordance with its domestic laws and regulations.

### Article 3.17. Compliance

Compliance with the requirements of this Section shall be determined in accordance with the provisions of Section B as applicable.

## Section B. Operational Procedures

### Article 3.18. Claims for Preferential Tariff Treatment

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:
(a) request preferential tariff treatment at the time of importation of an originating good, if required by the importing Party's customs administration;
(b) make a written declaration, if it deems necessary, that the good qualifies as an originating good;
(c) have the evidence of origin in its possession at the time the declaration is made;
(d) provide, on the request of that Party's customs administration, a copy of the origin declaration and such other documentation relating to the importation of the good in accordance with the domestic laws and regulations of the importing Party; and
(e) promptly make a corrected declaration in a manner required by the customs administration of the importing Party and pay any duties owing where the importer has reason to believe that an origin declaration on which an entry declaration was based contains information that is not correct.
2. Each Party shall, in accordance with its domestic laws and regulations, provide that, where a good would have qualified as

an originating good when it was imported into the territory of that Party, the importer of the good may, within a period of at least one year or for such longer period specified by the importing Party's domestic laws and regulations after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of the following to the customs administration of the importing Party:
(a) an origin declaration that the good qualifies as an originating good; and
(b) such other evidence as the customs administration may require to satisfactorily evidence the preferential tariff treatment claimed.

## Article 3.19. Evidence of Origin

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on a written or electronic origin declaration by the exporter or producer.
2. The origin declaration may be in the forms set out in the Implementing Arrangement on Rules of Origin Operational Procedures attached to this Chapter as Annex 3-C. The Implementing Arrangement may be revised or modified by mutual decision of the Parties.
3. The origin declaration shall include the following information:
(a) the name of the certifying person, including as necessary, contact details for obtaining other identifying information;
(b) the importer of the good (if known);
(c) the exporter of the good (if different from the producer);
(d) the producer of the good (if known);
(e) the six-digit tariff classification(s) under the Harmonized System and a description of the good;
(f) the rule of origin under which the good(s) qualifies;
(g) date of the origin declaration; and
(h) in the case of a blanket declaration issued as set out in paragraph 7(b), the period that the origin declaration covers.
4. The origin declaration shall be completed in English.
5. Each Party shall provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign an origin declaration on the basis of:
(a) its knowledge of whether the good qualifies as an originating good;
(b) its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or
(c) a completed and signed origin declaration for the good voluntarily provided to the exporter by the producer.
6. Nothing in paragraph 5 shall be construed to require a producer to provide an origin declaration to an exporter.
7. Each Party shall provide that an origin declaration, duly completed and signed by an exporter or a producer in the territory of the other Party, is applicable to:
(a) a single importation of one or more goods into the other Party's territory; or
(b) multiple importations of identical goods into the other Party's territory that occur within a period specified, not exceeding 12 months from the date of original declaration.
8. The origin declaration referred to in paragraph 2 shall be valid for two years from the date on which the origin declaration was signed.
9. For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept an origin declaration that has been completed and signed prior to that date by the exporter or producer of that good.

## Article 3.20. Waiver of an Origin Declaration

Notwithstanding Article 3.18, an origin declaration shall not be required for:
(a) an importation of a good whose customs value does not exceed 1,000 US dollars or its equivalent amount in the importing Party's currency, or such higher amount as the importing Party may establish; or
(b) an importation of a good into the territory of the importing Party for which the importing Party has waived the requirement for an origin declaration, provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the origin declaration requirements of Articles 3.18 and 3.19.

## Article 3.21. Discrepancies and Formal Errors

1. Where the origin of the good is not in doubt, the discovery of minor discrepancies in documentation shall not invalidate the origin declaration, if it does in fact correspond to the goods submitted.
2. For multiple goods declared under the same origin declaration, a problem encountered with one of the goods listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining goods listed in the

origin declaration.

## Article 3.22. Record Keeping Requirements

1. Each Party shall provide that:
(a) an exporter or a producer in its territory that completes and signs an origin declaration shall maintain in its territory, for five years after the date on which the origin declaration was signed or for such longer period as the Party may specify, all records necessary to demonstrate that the good for which the exporter or producer provided the origin declaration was an originating good, which may consist inter alia of the following:
(i) direct evidence of the processes carried out by the exporter or producer to obtain the goods concerned, contained for example in accounts for internal bookkeeping;
(ii) documents proving the originating status of materials used, issued or made out in a Party where these documents are used, as provided for in its domestic laws;
(iii) documents proving the working or processing of materials in a Party, issued or made out in a Party where these documents are used, as provided for in its domestic laws; or
(iv) the origin declaration proving the originating status of materials used, completed in a Party; and
(b) an importer claiming preferential tariff treatment for a good imported into the Party`s territory shall maintain in that territory, for five years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the origin declaration, as the Party may require relating to the importation of the good.
2. Each Party shall provide that an importer, exporter, or producer may choose to maintain the records specified in paragraph 1 in any medium that allows for prompt retrieval, including, but not limited to, digital, electronic, optical, magnetic, or written form.

## Article 3.23. Obligations Regarding Exportation

1. Where an exporter or producer in a Party's territory that has completed and signed an origin declaration has reason to believe that it has provided an erroneous or false origin declaration or any other such erroneous or false evidence, the exporter or producer shall give notice as soon as possible to the customs administrations of the importing and exporting Party, as well as to the importer, of any change that would affect the accuracy or validity of an origin declaration.
2. The exporter or producer that has provided an origin declaration shall provide a copy of such documents to the exporting Party`s customs administration upon request.

## Article 3.24. Origin Verification

1. When there is a reasonable doubt as to the origin of a good, for the purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good, the customs administration of the importing Party may conduct a verification process by means of:
(a) written requests for additional information from the importer;
(b) written requests for additional information from the exporter or producer of the exporting Party; or
(c) visits to the premises of an exporter or a producer in the territory of the other Party, along with the customs administration of the exporting Party, to observe the facilities and the production processes of the good and to review the records referring to origin including accounting files. Officials of the customs administration of the exporting Party may attend as observers on such verification visits.
2. For the purposes of subparagraph 1(b), all the information requested by the customs administration of the importing Party and responded to by the customs administration of the exporting Party shall be communicated in English.
3. For the purposes of subparagraphs 1(a) and 1(b), where the importer, exporter or producer does not answer the written request for additional information made by the importing Party, within a period of 90 days from the date on which it was received, the importing Party may deny the preferential tariff treatment.
4. For the purposes of subparagraph 1(c):
(a) prior to conducting a verification visit, the importing Party shall:
(i) deliver a written notification of its intention to conduct the visit to the exporter or producer whose premises are to be visited and the customs administration of the other Party; and
(ii) obtain the written consent of the exporter or producer whose premises are to be visited; and
(b) where an exporter or producer has not given its written consent to a proposed verification visit within 30 days of the receipt of notification pursuant to subparagraph (a), the notifying Party may deny preferential tariff treatment to the relevant good.
5. Where, at the time of importation, the customs administration of the importing Party has a reasonable doubt as to the origin of the good, the good may be released upon payment of a deposit or the payment of non-preferential duties, pending the outcome of the verification process. Such deposit or duties paid shall be refunded once the outcome of the verification

process confirms that the good qualifies as an originating good.
6. A Party may suspend preferential tariff treatment to an importer on any subsequent import of a good when the customs administration has previously determined that an identical good was not eligible for such treatment, until it is demonstrated that the good complies with the provisions of this Chapter.
7. The Party conducting the verification visit shall provide to the exporter or producer and the importer whose goods are subject to the verification, a written determination of whether or not the goods in question qualify as originating. Any suspended preferential tariff treatment shall be reinstated upon the determination that goods qualify as originating goods.
8. The exporter or producer shall have 30 days from the date of receipt of the written determination pursuant to paragraph 7 to provide in writing comments or additional information regarding the eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination shall be communicated to the exporting customs administration within 30 days from the date of receipt of the comments or additional information from the exporter or producer.
9. The importing Party shall, within one year from the start of the verification process, notify the exporting Party, in writing, of the results of the determination on the origin of the good, as well as the legal basis and findings of fact on which the determination was made.

### Article 3.25. Denial of Preferential Tariff Treatment

The customs administration of the importing Party may, in accordance with its domestic laws and regulations, deny a claim for preferential tariff treatment when:
(a) the good does not qualify as an originating good; or
(b) the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter.

### Article 3.26. Direct Transport -compliance

Compliance with the direct transport provisions set out in Article 3.16 may be evidenced by providing any proper document, including but not limited to relevant commercial shipping or freight documents.

### Article 3.27. Third-party Invoicing

A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party.

## Chapter 4. Customs Procedures and Trade Facilitation

### Article 4.1. Scope and Objectives

1. This Chapter shall apply, in accordance with the Parties' respective international obligations and customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.
2. The objectives of this Chapter are to:
(a) simplify and harmonise customs procedures of the Parties;
(b) ensure predictability, consistency and transparency in the application of customs law, including administrative procedures of the Parties;
(c) ensure the efficient and expeditious clearance of goods and movement of means of transport;
(d) facilitate trade between the Parties; and
(e) promote co-operation between the customs administrations, within the scope of this Chapter.

### Article 4.2. Definitions

For the purposes of this Chapter: customs law means any legislation administered, applied, or enforced by the customs administration of a Party; customs procedures means the treatment applied by each customs administration to goods and means of transport that are subject to customs control; express consignments means all goods imported by an enterprise operating a consignment service for the expeditious international movement of goods who assumes liability to the customs administration for those goods; means of transport means various types of vessels, vehicles, aircraft and pack-animals which enter or leave the territory carrying persons or goods; and WCO means the World Customs Organization.

### Article 4.3. Transparency and Enquiry Points

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent, and facilitate

trade.
2. Each customs administration shall publish all customs law and any administrative procedures it applies or enforces.
3. Each customs administration shall designate one or more enquiry points to deal with inquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the other customs administration. Information concerning the procedures for making such inquiries shall be easily accessible to the public.
4. Each customs administration will endeavour to provide the other customs administration with timely notice of any significant modification of customs law or procedures governing the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

## Article 4.4. Facilitation and Harmonisation

1. The Parties shall facilitate the clearance of goods in administering their procedures in accordance with the provisions of this Chapter.
2. Customs procedures of each Party shall conform, where possible, to the standards and recommended practices of the WCO, including the WCO Customs Data Model and related WCO recommendations and guidelines.
3. Each Party shall work towards the implementation of initiatives that harmonise the data requirements of its respective agencies associated with the importation, exportation or transit of goods, and minimise the submission of trade data.
4. Each customs administration shall provide a focal point, electronic or otherwise, through which its traders may submit all required information in order to obtain clearance of goods with the objective of allowing importers and exporters to present all required data to one agency.

## Article 4.5. Use of Automated Systems

1. The customs administrations shall apply information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within the WCO.
2. The customs administrations shall use information technology that expedites procedures for the release of goods, including the submission and processing of information and data before arrival of the shipment, as well as electronic or automated systems for risk management and targeting.
3. The Parties shall endeavour to ensure the simultaneous inspection of goods by the competent national authorities when goods are entering or leaving the Parties' customs territory at a single time and place.

## Article 4.6. Risk Management

1. Each customs administration shall focus resources on high-risk shipments of goods and facilitate the clearance, including release, of low-risk goods in administering customs procedures. Customs administrations shall exchange information related to applied techniques on risk management, in accordance with Article 4.13.
2. To enhance the flow of goods across the borders of the Parties, each customs administration shall regularly review these procedures.

## Article 4.7. Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.
2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:
(a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs law, and to the extent possible release the goods within 48 hours of arrival;
(b) provide for advance electronic submission and processing of information before physical arrival of goods to enable the release of goods on arrival;
(c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and
(d) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs administration of the applicable customs duties, taxes, and fees.
3. Each Party shall endeavour to adopt and maintain a system under which goods in need of urgent clearance can undergo customs procedures, 24 hours in every day including holidays.

## Article 4.8. Express Consignments

Each Party shall adopt or maintain expedited customs procedures for express consignments while maintaining appropriate

customs control and selection.
These procedures shall:
(a) provide expedited customs procedure for express consignments, and where applicable, use the WCO Guidelines for the Immediate Release of Consignments;
(b) provide for the electronic submission and processing of information necessary for the release of an express consignment before the express consignment arrives;
(c) allow submission of a single document covering all goods contained in a shipment transported by an express consignments service, through, if possible, electronic means;
(d) to the extent possible, provide for clearance of certain goods with a minimum of documentation;
(e) under normal circumstances, provide for clearance of express consignments within four hours after submission of the necessary customs documents, provided the consignments have arrived;
(f) apply without regard to weight or customs value; and
(g) under normal circumstances, provide that no customs duties will be assessed on, nor will formal entry documents be required for express consignments valued at 100 US dollars or less. (1)

(1) Notwithstanding this subparagraph, a Party may require that express consignments be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may require formal entry documents for restricted goods.

## Article 4.9. Advance Rulings

1. Each Party shall issue, through its customs administration, prior to the importation of a good into its territory, a written advance ruling on the written request of an importer in its territory, or an exporter or producer in the territory of the other Party (2) with regard to:
(a) tariff classification;
(b) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and
(c) such other matters as the Parties may agree.
2. Each Party shall adopt or maintain procedures for advance rulings, which shall:
(a) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to issue an advance ruling; 1 Notwithstanding this subparagraph, a Party may require that express consignments be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may require formal entry documents for restricted goods.
2 For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.
(b) provide that its customs administration may, at any time during the course of issuing an advance ruling, request that the applicant provide additional information within a specified period;
(c) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling; and
(d) provide that the ruling be issued, in the national language of the issuing customs administration, to the applicant expeditiously on receipt of all necessary information.
3. On receipt of all necessary information, each Party shall issue an advance ruling:
(a) with respect to tariff classification, within 40 days or such shorter time period specified in domestic legislation; or
(b) with respect to origin, within 90 days.
4. A Party may reject a request for an advance ruling where the additional information requested by it in accordance with paragraph 2(b) is not provided within a specified time.
5. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review.
6. Subject to paragraph 7, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory within a period of three years from the date of that ruling or such other period specified in legislation of the importing Party.
7. A Party may modify or revoke an advance ruling upon a determination that:
(a) the ruling was based on an error of fact or law;
(b) the information provided is false or inaccurate;
(c) there is a change in domestic laws consistent with this Agreement; or
(d) there is a change in a material fact, or circumstances on which the ruling is based.
8. The issuing Party may modify or revoke an advance ruling retroactively only if the ruling was based on inaccurate or false information.
9. Subject to any confidentiality requirements in its domestic laws, each Party shall publish, including on the internet, its

advance rulings.
10. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs administration may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

2For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

## Article 4.10. Review and Appeal

1. Each Party shall provide that the importer, exporter or any other person affected by administrative rulings, determinations or decisions, have access to:
(a) a level of administrative review of determinations independent of the official or office responsible for the decision under review; and
(b) judicial review of administrative determinations subject to its domestic laws and regulations.
2. The producer or exporter in the territory of the other Party may provide, upon a request by the reviewing authority to the producer or exporter, information directly to the Party conducting the administrative review. The exporter or producer providing the information may ask the Party conducting the administrative review to treat that information as confidential in accordance with the rules applicable in that Party.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

## Article 4.11. Customs Co-operation

1. The Parties shall enhance their co-operation in customs and customs related matters.
2. The Parties affirm their commitment to the facilitation of the legitimate movement of goods, and to the improvement of customs techniques and procedures in accordance with the provisions of this Agreement.
3. The Parties shall co-operate in achieving compliance with their respective domestic laws and regulations pertaining to:
(a) the implementation and operation of the provisions of this Agreement governing importation or exportation, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment, and verification procedures;
(b) the extent practicable, assisting each other in the tariff classification, valuation and determination of origin for preferential tariff treatment, of imported goods; and (c) other customs matters as the Parties may agree.

## Article 4.12. Bilateral Customs Consultation

1. Without prejudice to Article 4.14, each customs administration may at any time request consultations with the other customs administration on any matter arising from the operation or implementation of this Chapter and of Chapter 3 (Rules of Origin and Origin Procedures). Such consultations shall be conducted through the relevant contact points established in paragraph 3, and shall take place within 30 days of the request, unless the customs administrations of the Parties mutually determine otherwise.
2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Customs Committee established under Article 4.14 for consideration.
3. Each customs administration shall designate one or more contact points for the purposes of this Chapter and of Chapter 3 (Rules of Origin and Origin Procedures), and provide details of such contact points to the other Party. Customs administrations of the Parties shall notify each other promptly of any changes to the details of their contact points.
4. Customs administrations may consult each other on any trade facilitation issues arising from procedures to secure trade and the movement of means of transport between the Parties.
5. Consultations pursuant to this Article are without prejudice to the rights of the Parties under Chapter 19 (Dispute Settlement) or under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

## Article 4.13. Confidentiality

1. Any information collected for the purposes of this Chapter, or Chapter 3 (Rules of Origin and Origin Procedures), which has been designated as confidential by the person or Party who provided it shall not be used for purposes other than the administration and enforcement of determinations of origin, and of customs matters, except with the permission of the person or Party who provided the confidential information.
2. Notwithstanding paragraph 1, information that is collected for the purposes of this Chapter, or Chapter 3 (Rules of Origin and Origin Procedures) may be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to

comply with customs related laws and regulations implementing this Chapter or Chapter 3 (Rules of Origin and Origin Procedures). The person or Party who provided the information will be notified in advance of such use.

### Article 4.14. Customs Committee

1. The Parties hereby establish a Customs Committee (hereinafter referred to as "the Committee"), comprising officials of each Party responsible for customs matters and rules of origin.
2. The Committee shall ensure the proper functioning of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures), and examine all issues arising from their implementation.
3. The functions of the Committee shall include:
(a) ensuring the effective, uniform and consistent administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedure);
(b) maintaining Annexes 2-A (Tariff Schedule) and 3-A (Product Specific Rules of Origin) on the basis of the neutral transposition of the Harmonized System;
(c) advising the Joint Commission of proposed solutions to address issues related to:
(i) interpretation, application and administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures); (ii) tariff classification and customs valuation related to the determination of origin;
(iii) calculation of the Regional Value Content; and (iv) issues arising from the adoption by either Party of operational practices not in conformity with this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) that may affect adversely the flow of trade between the Parties;
(d) adopting customs practices and standards which facilitate trade between the Parties, according to international standards;
(e) settling any disputes related to the interpretation, application and administration of this Chapter, including tariff classification; and
(f) making proposals regarding the modification of Parties' Schedules in Annexes 2-A (Tariff Schedule) and 3-A (Product Specific Rules of Origin) to the Joint Commission for approval under Article 18.2 (Functions of the Joint Commission).
4. The Committee shall adopt its own rules of procedure. The Committee shall meet within one year of entry into force of this Agreement, and then as it deems necessary.
5. The Committee may formulate resolutions, recommendations or opinions which it considers necessary for the attainment of the common objectives and the sound functioning of the mechanisms established in this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

### Article 4.15. Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

### Article 4.16. Tariff Classification

The Parties shall apply the International Convention on the Harmonized Commodity Description and Coding System done on 24 June 1986, to goods traded between them.

## Chapter 5. Sanitary and Phytosanitary Measures

### Article 5.1. Objectives

The objectives of this Chapter are to:
(a) protect human, animal or plant life or health in the territory of the Parties while minimising negative effects on trade between the Parties;
(b) enhance the Parties' implementation of the SPS Agreement, taking into account international standards, guidelines and recommendations developed by the relevant international organisations; and
(c) enhance mutual co-operation between the Parties, including discussing sanitary and phytosanitary matters, and collaboration in the relevant international organisations.

### Article 5.2. Scope

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

## Article 5.3. Rights and Obligations

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

## Article 5.4. Committee on Sanitary and Phytosanitary Matters

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters (hereinafter referred to as "the Committee") which shall include representatives of the competent authorities of the Parties.
2. The Committee shall discuss, monitor and review the implementation of this Chapter, including arrangements for co-operative activities, expert dialogue to identify and address relevant technical and scientific issues, and any other relevant sanitary and phytosanitary matters.
3. The Committee shall, to the extent possible, endeavour to facilitate consultation between the Parties to resolve any differences of interpretation of the provisions of this Chapter.
4. The Committee shall meet within one year of the entry into force of this Agreement and subsequently at times mutually agreed by the Parties. The Committee may meet in person, via teleconference, via video conference, or through any other means, as agreed by the Parties. The Committee may address issues through correspondence, including via electronic communication. The Committee shall keep a written record of its decisions.
5. For the proper operation of the Committee and the exchange of relevant information between the Parties, the Parties shall designate their contact points as follows:
(a) for Korea, the Ministry of Agriculture, Food and Rural Affairs or its successor; and
(b) for New Zealand, the Ministry for Primary Industries or its successor.

## Article 5.5. Sanitary and Phytosanitary Contact Points

1. The contact points designated in accordance with Article 5.4.5 shall function as a channel for communication on sanitary and phytosanitary matters affecting trade between the Parties.
2. The contact points shall exchange information regarding any significant, sustained or recurring pattern of non-compliance with a Party's sanitary and phytosanitary measures and any appropriate remedial action to be undertaken by the other Party.
3. At the same time as notification is provided to the WTO in accordance with paragraph 6(a) of Annex B of the SPS Agreement, a contact point shall notify provisional protection measures taken when a situation arises or threatens to arise which will have a serious and urgent impact on human, animal or plant life or health in that Party.
4. On the request of a Party, a contact point shall endeavour to provide an explanation of a sanitary and phytosanitary measure which may be considered by the other Party to have a significant impact on trade between the Parties.
5. The contact points shall exchange information on any significant food safety issues, or changes in animal or plant life or health status, or any significant structural changes in competent authorities, or legal changes in the sanitary and phytosanitary system of each Party.

## Article 5.6. Dispute Settlement

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

# Chapter 6. Technical Barriers to Trade

## Article 6.1. Objectives

The objectives of this Chapter are to:
(a) increase and facilitate trade through enhancing the Parties' implementation of the TBT Agreement and building on the work of APEC on standards and conformance;
(b) ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade between the Parties;
(c) reduce, where possible, costs associated with trade between the Parties;
(d) promote regulatory co-operation to manage risks to health, safety and the environment; and
(e) enhance mutual understanding and co-operation between the Parties.

## Article 6.2. Definitions

1. For the purposes of this Chapter: designation means the authorisation of a conformity assessment body to perform

conformity assessment procedures, by a body with the authority to designate, monitor, suspend or withdraw designation, or remove suspension of conformity assessment bodies within the territories of the Parties.
2. The definitions set out in Annex 1 of the TBT Agreement are incorporated into and made part of this Chapter, mutatis mutandis.

## Article 6.3. Scope and Coverage

1. This Chapter applies to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter does not apply to:
(a) technical specifications prepared by a governmental body for its production or consumption requirements which are covered by Chapter 13 (Government Procurement), to the extent they apply; or
(b) sanitary or phytosanitary measures which are covered by Chapter 5 (Sanitary and Phytosanitary Measures).

## Article 6.4. Rights and Obligations

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, of which Articles 2 through 9 are incorporated into and made part of this Agreement, mutatis mutandis.

## Article 6.5. International Standards

1. Each Party shall use relevant international standards, guides and recommendations, to the extent provided in Articles 2.4 and 5.4 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures.
2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its determination on the principles set out in "Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement", adopted on 13 November 2000 by the WTO Committee on Technical Barriers to Trade (Annex 2 to PART 1 of G/TBT/1/Rev11), and any subsequent development thereof.
3. The Parties shall encourage co-operation between their respective organisations in areas of mutual interest, in the context of their participation in international standardising bodies, to ensure that international standards developed within such organisations are trade facilitating and do not create unnecessary obstacles to international trade.

## Article 6.6. Equivalence of Technical Regulations

1. Consistent with the TBT Agreement, each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.
2. A Party shall, on the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.
3. Each Party shall give positive consideration to a request by the other Party to negotiate arrangements for achieving the equivalence of technical regulations referred to in paragraph 1.
4. A Party shall, on the request of the other Party, explain the reasons why it has not accepted a request by the other Party to negotiate such arrangements.
5. The Parties shall strengthen communications and co-ordination with each other, where appropriate, in the context of discussions on the equivalence of technical regulations and related issues in international fora, such as the WTO Committee on Technical Barriers to Trade.

## Article 6.7. Conformity Assessment Procedures

1. Each Party shall ensure that, where it requires a positive assurance of conformity, the required procedures are not more strict than is necessary, and grant access for suppliers from the other Party under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, as provided in Article 5.1 of the TBT Agreement.
2. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. Such mechanisms include:
(a) facilitating recognition of co-operative arrangements between accreditation agencies from each other's territory;
(b) implementing mutual recognition of the results of conformity assessment procedures performed by bodies located in each other's territory with respect to specific technical regulations;

(c) recognising existing regional, international and multilateral recognition agreements and arrangements between or among accreditation bodies or conformity assessment bodies;
(d) recognising accreditation procedures for qualifying conformity assessment bodies;
(e) designating conformity assessment bodies or recognising the other Party's designation of conformity assessment bodies;
(f) unilaterally recognising the results of conformity assessment procedures performed in the other Party's territory; and
(g) accepting a supplier's declaration of conformity.
3. The Parties shall intensify their exchange of information on acceptance mechanisms with a view to facilitating the acceptance of conformity assessment results.
4. A Party shall, on the request of the other Party, explain the reasons why it has not accepted the results of any conformity assessment procedure performed in the territory of the other Party.
5. The Parties may consult on such matters as the technical competence of conformity assessment bodies designated or recognised by a Party, as appropriate, to enhance confidence in the continued reliability of each other's conformity assessment results.
6. Each Party shall give positive consideration to a request by the other Party to negotiate arrangements to facilitate acceptance of conformity assessment procedures, as referred to in paragraph 2.
7. Where a Party declines a request under paragraph 6, it shall, upon request, explain its reasons.

## Article 6.8. Joint Co-operation

1. The Parties shall strengthen their co-operation in the field of standards, technical regulations, and conformity assessment procedures with a view to:
(a) increasing the mutual understanding of their respective systems;
(b) enhancing co-operation between the Parties' regulatory agencies in achieving health, safety and environmental objectives; and
(c) facilitating access to their respective markets.
2. Recognising the important relationship between good regulatory practices and trade facilitation, the Parties shall co-operate on regulatory issues, which may include:
(a) promotion of good regulatory practice based on risk management principles;
(b) exchange of information with a view to improving the quality and effectiveness of their technical regulations;
(c) development of joint initiatives for managing risks to health, safety or the environment, and preventing deceptive practices;
(d) building understanding and capacity to promote better regulatory compliance; and (e) exchange of market surveillance information, where appropriate.
3. The Parties shall seek to identify, develop, and, as appropriate, conclude trade facilitating initiatives that are appropriate for particular issues or sectors, including:
(a) transparency;
(b) alignment with international standards;
(c) harmonisation or equivalence of technical regulations;
(d) mechanisms to facilitate acceptance of conformity assessment procedures conducted in the territory of the other Party; and
(e) understandings reached on compliance issues.
4. Any initiatives referred to in paragraph 3 may include the use of asymmetrical approaches where appropriate.
5. On the request of the other Party, a Party shall give favourable consideration to any sector-specific proposal that the other Party makes for further co-operation under this Chapter.
6. The Parties shall implement paragraphs 1 through 5 by establishing work programmes, on a case by case basis, by working groups established under Article 6.10.2(j).

## Article 6.9. Transparency

1. In order to enhance the opportunity for the other Party to provide meaningful comments on a proposed technical regulation or conformity assessment procedure, a Party publishing a notice or transmitting a notification in accordance with Article 2.9, 2.10, 5.6 or 5.7 of the TBT Agreement shall include an explanation of the objectives and the rationale for the proposal and how it addresses those matters.
2. At the same time as it notifies WTO Members of the proposal in accordance with the TBT Agreement:
(a) Korea shall transmit the notification referred to in paragraph 1 electronically to New Zealand's enquiry point established under Article 10 of the TBT Agreement ; and
(b) New Zealand shall transmit the notification referred to in paragraph 1 electronically to Korea's contact point established under Article 6.10.5.
3. Each Party should allow at least 60 days after it transmits a notification in accordance with Article 2.9 or 5.6 of the TBT

Agreement for the other Party to make comments on the proposal in writing.
4. Where goods are covered by an annex or an implementing arrangement to which Article 6.12 applies and a Party takes a measure to manage an urgent problem that it considers those goods may pose to health, safety or the environment, it shall notify the other Party immediately, through the contact points established under Article 6.10.5, of the measure and the reasons for the imposition of the measure.
5. On the request of the other Party, a Party shall provide the other Party with information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

## Article 6.10. Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hereinafter referred to as "the Committee"), which shall comprise representatives of the Parties. The Committee may meet in person, via teleconference, via video-conference or through any other means, as agreed by the Parties.
2. The functions of the Committee shall include:
(a) promoting and monitoring the implementation and administration of this Chapter;
(b) enhancing co-operation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
(c) ensuring appropriate steps are taken promptly to address any issue that a Party may raise related to the development, adoption, application, or enforcement of technical regulations or conformity assessment procedures;
(d) considering any sector-specific proposal a Party makes for further co-operation between regulatory authorities, accreditation bodies or conformity assessment bodies, including, where appropriate, between governmental and nongovernmental conformity assessment bodies located in the Parties' territories;
(e) considering a request that a Party recognise the results of conformity assessment procedures conducted by bodies in the other Party's territory, including a request for the negotiation of an agreement, in a sector nominated by that other Party;
(f) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
(g) on the request of the other Party, promptly facilitating technical discussions on any matter arising under this Chapter, which shall be without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement);
(h) taking any other steps the Parties consider will enhance their implementation of the TBT Agreement and facilitate trade in goods between them;
(i) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to the Chapter in light of those developments; and
(j) establishing working groups to undertake specific tasks under this Chapter.
3. The Parties shall take such reasonable measures as may be available to them to ensure that representatives of bodies responsible for the technical regulations, standards or conformity assessment procedures that are the subject of the technical discussions under paragraph 2(g) participate in those discussions.
4. The Committee shall meet within one year of entry into force of this Agreement, or at times mutually agreed by the Parties.
5. The Committee shall be coordinated by the following contact points:
(a) for Korea, the Korean Agency for Technology and Standards, or its successor; and
(b) for New Zealand, the Ministry of Business, Innovation and Employment, or its successor.
6. The contact points may communicate by any agreed method that is appropriate for the efficient and effective discharge of their functions.
7. The Parties shall notify each other promptly of any change of their contact points or any changes to the details of the relevant officials.
8. The contact points shall work jointly in order to facilitate implementation of this Chapter and co-operation between the Parties in all matters pertaining to this Chapter.

## Article 6.11. Information Exchange

A Party shall provide any information or explanation requested by the other Party pursuant to this Chapter in print form or electronically within a reasonable period. A Party shall endeavour to respond to each such request within 60 days.

## Article 6.12. Annexes and Implementing Arrangements

1. The Parties may conclude annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessment procedures applicable to goods traded between them.
2. The Parties may, through the Committee, conclude implementing arrangements setting out:

(a) details for the implementation of the annexes to this Chapter; and
(b) arrangements resulting from work programmes established under Article 6.8.6.
3. The Parties shall take account of any existing bilateral, regional and multilateral arrangements concerning technical regulations and conformity assessment procedures that both Parties participate in when developing annexes and implementing arrangements.
4. Where implementing arrangements have been concluded, they shall be applied to trade between the Parties.
5. The Parties agree to maintain a programme of ongoing review and enhancement of annexes and implementing arrangements.
6. The Parties shall facilitate dialogue on mutual recognition agreements or arrangements for conformity assessment, and discuss the feasibility of developing mutual recognition agreements or arrangements.
The Parties shall give due consideration to any sector specific proposal made by either Party.(1)

(1) Korea's interests in this regard include telecommunication equipment, electrical and electronic equipment, electromagnetic compatibility and medical devices. New Zealand's interests in this regard include alcoholic beverages.

# Chapter 7. Trade Remedies

## Article 7.1. Definitions

For the purposes of this Section:
**bilateral safeguard measure** means a measure described in Article 7.2;
**domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party, or those whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;
**provisional bilateral safeguard measure** means a measure described in Article 7.4;
serious injury means a significant overall impairment in the position of a domestic industry;
**threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and
**transition period** means, in relation to a particular good, the period from the date of entry into force of this Agreement until five years after the date of the elimination or the completion of the reduction period of the customs duties in accordance with that Party's Schedule of tariff commitments in Annex 2-A (Tariff Schedule).

## Article 7.2. Application of a Bilateral Safeguard Measure

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing a like or directly competitive good, the Party may:
(a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement;
(b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
(i) the most-favoured-nation (hereinafter referred to as "MFN") applied rate of duty on the good in effect at the time the bilateral safeguard measure is applied; or
(ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement; or
(c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of duty to a level that, for each season, does not exceed the lesser of:
(i) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date of application of the bilateral safeguard measure; or
(ii) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date of entry into force of this Agreement.

## Article 7.3. Conditions and Limitations

1. A Party shall apply a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with the procedures and requirements provided for in Articles 3 and 4.2 of the Safeguards Agreement, and to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.
2. A Party shall notify the other Party in writing upon initiation of an investigation described in paragraph 1 and shall consult

with the other Party as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the bilateral safeguard measure.
3. Each Party shall ensure that its competent authorities complete any such investigation within one year of its date of initiation.
4. Neither Party shall apply or maintain a bilateral safeguard measure:
(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;
(b) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of the applying Party determine, in conformity with the procedures specified in this Article, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a bilateral safeguard measure, including the period of initial application and any extension thereof, shall not exceed three years; or
(c) beyond the expiration of the transition period, except with the consent of the other Party.
5. Neither Party shall apply a bilateral safeguard measure more than once against the same good.
6. No bilateral safeguard measure or provisional bilateral safeguard measure shall be applied against a particular good while a global safeguard measure under Article XIX of GATT 1994 and the Safeguard Agreement in respect of that good is in place. In the event that a global safeguard measure is taken in respect of a particular good, any existing bilateral safeguard measure or provisional bilateral safeguard measure which is taken against that good in accordance with this Section shall be terminated.
7. Where the expected duration of a bilateral safeguard measure is over one year, the applying Party shall progressively liberalise it at regular intervals.
8. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule to Annex 2-A (Tariff Schedule), would have been in effect but for the bilateral safeguard measure.

## Article 7.4. Provisional Bilateral Safeguard Measure

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a provisional bilateral safeguard measure in accordance with a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and cause or threaten to cause serious injury to its domestic industry.
2. Before applying a provisional bilateral safeguard measure, the applying Party shall notify the other Party and shall immediately initiate consultations after applying the provisional bilateral safeguard measure.
3. The duration of any provisional bilateral safeguard measure shall not exceed 200 days, during which time the applying Party shall comply with the requirements of Article 7.3.1.
4. The applying Party shall promptly refund any additional customs duties collected as a result of a provisional bilateral safeguard measure if the investigation conducted in accordance with Article 7.3.1 does not result in a finding that the requirements of Article 7.2 have been met. The duration of any provisional measure shall be counted as part of the period described in Article 7.3.4(b).

## Article 7.5. Compensation

1. No later than 30 days after it applies a bilateral safeguard measure, a Party shall afford an opportunity for the other Party to consult with it regarding appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The applying Party shall provide such compensation as the Parties mutually agree.
2. If the Parties are unable to agree on compensation within 30 days after consultations begin in accordance with paragraph 1, the Party against whose originating good the bilateral safeguard measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the bilateral safeguard measure.
3. The applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions in accordance with paragraph 2 shall terminate on the date the bilateral safeguard measure terminates.

## Article 7.6. Global Safeguard Measures

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement and the Agreement on Agriculture. This Agreement shall not confer any additional rights or impose any additional obligations on the Parties with respect to measures applied under Article XIX of GATT 1994 and the Safeguards Agreement or the Agreement on Agriculture, except that a Party applying such a measure under Article XIX of GATT 1994 and the Safeguards Agreement

may exclude imports of an originating good of the other Party from the measure if such imports are not a cause of serious injury or threat thereof.

### Article 7.7. Anti-dumping and Countervailing Measures

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing measures. Except as otherwise provided in this Chapter, nothing in this Agreement shall be construed to confer any additional rights or impose any additional obligations on a Party with respect to anti-dumping or countervailing measures.
2. In order to enhance transparency in the implementation of the WTO Agreement:
(a) the Parties confirm their current practice of counting toward the average, all individual margins, whether positive or negative, when anti-dumping margins are established on the weighted average-to-weighted average basis or transaction-to-transaction basis, or weighted average-to-transaction basis, and share their expectation that such practice will continue; (1) and
(b) the Party making such a decision to impose any anti-dumping duties pursuant to Article 9.1 of the Anti-Dumping Agreement, shall normally apply the "lesser duty" rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry.

(1) This is without prejudice to the position each Party takes in the WTO's Doha Development Agenda negotiations on Rules.

### Article 7.8. Notification and Consultations

1. After receipt by a Party's competent authorities of a properly documented anti-dumping application relating to imports from the other Party and before proceeding to initiate an investigation, the Party shall give written notice, at the earliest possible opportunity, to the other Party, and immediately after initiating an investigation shall afford the other Party an adequate opportunity to make inquiries and representations regarding the application.
2. As soon as possible after an application for countervailing measures is accepted by the competent authorities of a Party, and in any event before the initiation of an investigation, and if products of the other Party may be subject to such investigation, the other Party shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

### Article 7.9. Undertakings

1. After a Party's competent authorities initiate an anti-dumping or countervailing duty investigation, that Party shall give written notice, which shall include information about the availability of undertakings, to the other Party.
2. In an anti-dumping investigation, where a Party's competent authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, that Party shall, to the extent possible, inform exporters of the other Party about the availability of undertakings and extend reasonable consideration to undertakings requested by the exporters of the other Party.
3. In a countervailing duty investigation, where a Party's competent authorities have made a preliminary affirmative determination of subsidisation and injury caused by such subsidisation, that Party shall inform the other Party, and to the extent possible exporters of the other Party, about the availability of undertakings and extend reasonable consideration to undertakings requested by the other Party or the exporters of the other Party. 1 This is without prejudice to the position each Party takes in the WTO's Doha Development Agenda negotiations on Rules.

## Chapter 8. Cross-border Trade In Services

### Article 8.1. Objectives

The objectives of this Chapter are to:
(a) facilitate expansion of trade in cross-border services on a mutually advantageous basis; and
(b) improve the efficiency and transparency of the Parties' respective services sectors and competitiveness of their export trade working towards progressive liberalisation, while recognising the right of the Parties to regulate, including to introduce new regulations to support government policy objectives which reflect local circumstances, and the role of governments in providing and funding public services, giving due respect to national policy objectives including where these reflect local circumstances.

### Article 8.2. Definitions

For the purposes of this Chapter:
aircraft repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
computer reservation system services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
cross-border trade in services means the supply of a service:
(a) from the territory of a Party into the territory of the other Party;
(b) in the territory of a Party to the service consumer of the other Party; or
(c) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party, but does not include the supply of a service in the territory of a Party by a covered investment or an investment of an investor of the other Party as defined in Article 10.2 (Definitions);
enterprise means an enterprise as defined in Article 1.5 (Definitions), and a branch of an enterprise; enterprise of a Party means an enterprise constituted or organised under domestic laws of a Party, and a branch located in the territory of a Party and carrying out business activities there; financial services means any service of a financial nature including those defined in paragraph 5(a) of the Annex on Financial Services of GATS;
natural person of the other Party means:
(a) with respect to natural persons of Korea, a Korean national within the meaning of the Nationality Act, or its successor legislation; and
(b) with respect to natural persons of New Zealand, a New Zealand national or a permanent resident under its domestic laws;
selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;
services includes any service in any sector except services supplied in the exercise of governmental authority;
service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers; service supplier of a Party means a person of that Party that seeks to supply or supplies a service; and
specialty air services means air services which are non-transportation air services, such as aerial firefighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

## Article 8.3. Scope

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:
(a) the production, distribution, marketing, sale, and delivery of a service;
(b) the purchase or use of, or payment for, a service;
(c) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;
(d) the presence of persons of a Party for the supply of a service in the territory of the other Party; and
(e) the provision of a bond or other form of financial security as a condition for the supply of a service.
2. Articles 8.6 and 8.10 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment. (1)
3. This Chapter shall not apply to:
(a) financial services as defined in Article 8.2;
(b) government procurement;
(c) services supplied in the exercise of governmental authority;
(d) subsidies or grants provided by a Party or a state enterprise thereof, including government-supported loans, guarantees, and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers, except as provided for in Article 8.9;
(e) measures affecting natural persons seeking access to the employment market of a Party;
(f) measures regarding citizenship, nationality, residence or employment on a permanent basis; or
(g) measures affecting air transport services or related services in support of air services except that this Chapter shall apply to measures affecting:
(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
(ii) the selling and marketing of air transport services;
(iii) computer reservation system services; and

(iv) specialty air services.

(1) For greater certainty, the scope of application of Articles 8.6 and 8.10 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope specified in this Article, subject to any applicable non-conforming measures and exceptions.

## Article 8.4. National Treatment

Each Party shall accord to services and service suppliers of the other Party, treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers.

## Article 8.5. Most-favoured-nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of a non-Party.

## Article 8.6. Market Access

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:
(a) impose limitations on:
(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test;
(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
(iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (2) or
(iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(2) This sub-subparagraph does not cover measures of a Party that limit inputs for the supply of services.

## Article 8.7. Local Presence

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 territory as a condition for the supply of cross-border trade in services.

## Article 8.8. Non-conforming Measures

1. Articles 8.4 through 8.7 shall not apply to:
(a) any existing non-conforming measure that is maintained by a Party at:
(i) the central level of government, as set out by that Party in its Schedule to Annex I; or
(ii) a local level of government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 8.4 through 8.7.
2. Articles 8.4 through 8.7 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out in its Schedule to Annex II.

## Article 8.9. Subsidies

1. Except as provided for in this Article, subsidies related to trade in services shall not be covered by this Chapter.
2. The Parties shall consider the issue of disciplines on the possible trade distorting effects of subsidies in relation to trade in services in the light of any disciplines agreed under Article XV of GATS, with a view to the incorporation of such disciplines

into this Agreement.
3. On the request of a Party that considers it is adversely affected by a subsidy related to trade in services of the other Party, the Parties shall enter into consultations on such matters.

## Article 8.10. Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Where authorisation is required for the supply of a service, the competent authorities of that Party shall:
(a) in the case of an incomplete application, on the request of the applicant, identify the necessary additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
(b) within a reasonable period of time after the submission of an application is considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;
(c) on the request of the applicant, provide, without undue delay, information concerning the status of the application under consideration; and
(d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing, and upon request and without undue delay, provide the reasons for such action. Consistent with the denying Party's domestic laws and regulations, the applicant shall have the possibility of resubmitting, at its discretion, a new application.
3. Paragraph 2 shall not apply to authorisation requirements that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out in its Schedules to Annexes I and II.
4. With a view to ensuring that measures adopted or maintained by a Party relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to cross-border trade in services, each Party shall ensure that such measures are:
(a) based on objective and transparent criteria, such as competence and the ability to supply the service;
(b) not more burdensome than necessary to ensure the quality of the service; and
(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.
5. Each Party shall maintain or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures which, on the request of an affected services supplier, provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
6. The provisions of paragraph 5 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
7. In determining whether a Party is in conformity with its obligations under paragraph 4, account shall be taken of international standards of relevant international organisations applied by that Party.
8. Subject to any measures a Party adopts or maintains with respect to sectors, subsectors, or activities regarding professional services as set out in its Schedules to Annexes I and II, each Party shall provide adequate procedures to verify the competence of professionals of the other Party.
9. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties shall co-ordinate on such negotiations, as appropriate.

## Article 8.11. Recognition (3)

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party or a non-Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 8.5 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.
3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education or experience obtained, requirements met, or

licenses or certifications granted in the territory of the other Party should be recognised.
4. Neither Party shall accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

(3) For greater certainty, Annex 8-A applies to this Article.

## Article 8.12. Education Co-operation

1. The Parties recognise the importance of education as a factor of social and national development as well as a means for facilitating a closer partnership between the Parties.
2. The Parties shall designate contact points to facilitate dialogue and exchange of information on education co-operation.
3. The Parties shall encourage and facilitate dialogue and co-operation on issues of mutual interest in the field of education to benefit both Parties.

## Article 8.13. Payments and Transfers

1. A Party shall not apply restrictions on international transfers and payments for current transactions related to cross-border trade in services.
2. Each Party shall permit such payments and transfers relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of the payment or transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a payment or transfer through the equitable, non-discriminatory, and good faith application of its domestic laws and regulations relating to:
(a) bankruptcy, insolvency, or the protection of the rights of creditors;
(b) issuing, trading, or dealing in securities, futures, options, or derivatives;
(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
(d) criminal or penal offences;
(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
(f) social security, public retirement or compulsory savings schemes; or
(g) taxation.

## Article 8.14. Denial of Benefits

1. Subject to notification (4) to the other Party, a Party may deny the benefits of this Chapter to:
(a) a service supplier of the other Party where the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the territory of the other Party; or
(b) a service supplier of the other Party where the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of the other Party.
2. A Party that denies benefits pursuant to paragraph 1 shall enter into consultations promptly following notification on the request of the other Party.
Such consultations shall be without prejudice to the Parties' rights under Chapter 19 (Dispute Settlement) and under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

(4) A Party shall, to the extent practicable, provide such notification to the other Party prior to denying the benefits of this Chapter.

## Article 8.15. Committee on Services

1. For the purposes of ensuring the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Services (hereinafter referred to as "the Committee") to consider any matter arising under this Chapter and Chapter 9 (Temporary Entry of Business Persons).
2. The Committee shall:
(a) consider any matters related to the implementation of this Chapter and Chapter 9 (Temporary Entry of Business Persons);
(b) review the implementation and operation of this Chapter and Chapter 9 (Temporary Entry of Business Persons);
(c) explore measures for the further expansion of cross-border trade in services and movement of business persons between the Parties;

(d) facilitate dialogue on professional services issues, and review efforts to develop reciprocal recognition outcomes where mutual interests have been identified; and (e) take any other action it decides appropriate for the implementation of this Chapter and Chapter 9 (Temporary Entry of Business Persons).
3. The Committee shall meet within one year of entry into force of this Agreement and subsequently thereafter as mutually agreed by the Parties.
4. The Committee may establish, where appropriate, working groups to facilitate exchanges on specific topics affecting cross-border trade in services, including professional services. Individual working groups may seek input from public bodies or industry representatives.
5. The Committee may meet via teleconference, via video-conference or through any other means as mutually agreed by the Parties. Should the Parties decide to meet in person, the venue for the meetings shall, unless the Parties otherwise decide, alternate between the Parties.
4 A Party shall, to the extent practicable, provide such notification to the other Party prior to denying the benefits of this Chapter.

### Article 8.16. Work Programme on Financial Services

Unless the Parties otherwise agree, the Parties will meet within three years of entry into force of this Agreement to discuss the feasibility and convenience of incorporating financial services into this Agreement.

### Article 8.17. Telecommunication Services

1. The rights and obligations of the Parties in respect of telecommunications shall be governed by the Annex on Telecommunications of GATS, which is hereby incorporated into and made part of this Chapter, mutatis mutandis.
2. The Parties affirm their commitment to the principles set forth in the WTO Basic Telecommunications Reference Paper as attached in Annex 8-B.

## Chapter 9. Temporary Entry of Business Persons

### Article 9.1. Objectives

The objectives of this Chapter are to:
(a) facilitate the temporary entry of business persons of either Party engaged in the conduct of trade and investment between the Parties;
(b) establish streamlined and transparent immigration procedures for applications made by business persons of the other Party; and
(c) provide for rights and obligations additional to those set out in Chapters 8 (Cross-Border Trade in Services) and 10 (Investment) in relation to the temporary entry of business persons between the Parties, while recognising the need to ensure border security and to protect the domestic labour force and permanent employment in the territories of the Parties.

### Article 9.2. Definitions

For the purposes of this Chapter:
business person means a natural person of a Party who is engaged in trade in goods, the provision of services or the conduct of investment;
business visitor means a natural person of either Party who is not seeking to enter the labour market of the other Party, whose principal place of business, actual place of remuneration, and
predominant place of accrual of profits remain outside the territory of the other Party and is:
(a) a goods seller, being a business person who is seeking temporary entry into the territory of the other Party to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public;
(b) a service seller being a business person who is a sales representative of a service supplier of that Party and is seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly; or
(c) an investor of a Party, as defined in Chapter 10 (Investment), or a duly authorised representative of an investor of a Party, seeking temporary entry into the territory of the other Party to establish, expand, monitor or dispose of an investment of that investor.
commercial presence means any type of business or professional establishment, including through:
(a) the constitution, acquisition or maintenance of an enterprise; or

(b) the creation or maintenance of a branch or a representative office, within the territory of a Party;
contractual service supplier means a business person of a Party who:
(a) possesses appropriate educational and other qualifications relevant to the service to be provided;
(b) is engaged in the supply of a contracted service as an employee of a juridical person that has no commercial presence in the other Party, where the juridical person obtains a service contract from a juridical person of the other Party;
(c) has been an employee of the juridical person for a period of not less than one year immediately preceding the date of application for admission. The juridical person has to obtain a service contract for a period not exceeding one year from a juridical person in the other Party, who is the final consumer of the service which is supplied. The contract shall comply with the domestic laws and regulations of the other Party; and
(d) receives no remuneration from a juridical person located in the other Party; granting Party means a Party who receives an application for temporary entry from a business person of the other Party who is covered by Article 9.3; immigration formality means a visa, permit, pass or other document or electronic authority allowing a natural person of a Party to enter, reside or work in the territory of the granting Party;
independent service supplier/professional means a natural person of a Party who:
(a) is a self-employed services supplier working on a contractual basis, without a requirement for commercial presence; (b) has advanced technical or professional skills and a valid contract which enables them to work in the territory of the other Party; and
(c) has a qualification resulting from three or more years of formal post-secondary school education leading to a recognised degree or diploma in the field in which the natural person wishes to supply their services; installer and servicer means a natural person who is an installer or servicer of machinery or equipment, where such installation or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract;
intra-corporate transferee means an executive, manager or a specialist who is an employee of a service supplier or investor of a Party with a commercial presence in the territory of the other Party and who have been so employed for a period not less than one year immediately preceding the date of the application for temporary entry where:
(a) executive means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual supply of a service nor the operation of an investment;
(b) manager means a natural person within an organisation who primarily directs the organisation or a department of the organisation;
supervises and controls the work of other supervisory, professional or managerial employees; has the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the supply of the service or the operation of an investment; and
(c) specialist means a natural person within an organisation who possesses knowledge at an advanced level of technical expertise and proprietary knowledge on the services, research, equipment, techniques, or management of the organisation;
natural person of a Party means:
(a) for Korea, a Korean national within the meaning of the Nationality Act, or its successor legislation, or a permanent resident of Korea; and
(b) for New Zealand, a New Zealand national or a permanent resident under its domestic laws; and
temporary entry means entry into the territory of a Party by a business person covered by this Chapter of the other Party without the intent to establish permanent residence.

## Article 9.3. Scope

1. This Chapter shall apply, as set out in each Party's Schedule of specific commitments in Annex 9-A or 9-B to measures affecting the temporary entry of business persons of a Party into the territory of the other Party. Such business persons may include:
(a) business visitors;
(b) independent service suppliers/professionals;
(c) intra-corporate transferees;
(d) installers and servicers; or
(e) contractual service suppliers.
2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.
3. Nothing in this Chapter or Chapter 8 (Cross-Border Trade in Services) or 10 (Investment) shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory,

including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the commitments made by a Party under this Agreement.
The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing commitments made by a Party under this Agreement.

## Article 9.4. Grant of Temporary Entry

1. Each Party shall, in accordance with that Party's Schedule of specific commitments in Annex 9-A or 9-B, grant temporary entry to business persons of the other Party who are otherwise qualified for entry in accordance with Article 9.3.
2. Each Party shall set out in Annexes 9-A and 9-B a Schedule containing its commitments for the entry and temporary stay in its territory of business persons of the other Party. These Schedules of specific commitments shall specify the conditions and limitations for entry and temporary stay, including the requirements and length of stay, for each category of business persons included in each Party's Schedule of specific commitments.
3. Where a Party makes a commitment under paragraphs 1 and 2, that Party shall grant temporary entry or extension of temporary stay to business persons of the other Party provided those business persons:
(a) follow prescribed application procedures for the immigration formality sought; and
(b) meet all relevant eligibility requirements for entry to the granting Party.
4. Temporary entry granted pursuant to this Chapter shall not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorising the temporary entry.
5. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with domestic laws. Neither Party shall, except as provided for in its Schedule of specific commitments in Annex 9-A or 9-B, require labour market tests or other procedures of similar effect, or impose or maintain any numerical restriction relating to temporary entry as a condition for entry.

## Article 9.5. Transparency

Each Party shall:
(a) publish, such as on its immigration website, by the date of entry into force of this Agreement, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable business persons of the other Party to become acquainted with its requirements; and
(b) upon modifying or amending an immigration measure that affects the temporary entry of business persons, ensure that the information published pursuant to this Article is updated by the date of entry into force of that modification or amendment.

## Article 9.6. Expeditious Application Procedures

1. Where an application for an immigration formality is required by a Party, the Party shall process expeditiously complete applications for immigration formalities or extensions thereof, received from business persons of the other Party covered by Article 9.3.
2. Upon receipt of an application for temporary entry that has been completed and submitted in accordance with its domestic laws and regulations, a Party shall, without undue delay, make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.
3. On the request of an applicant, a Party in receipt of a completed application for temporary entry shall provide, without undue delay, information concerning the status of the application.

## Article 9.7. Dispute Settlement

1. The Parties shall endeavour to favourably resolve, through consultations or negotiations between the Parties, any differences or dispute arising out of the implementation of this Chapter.
2. A Party shall not initiate proceedings under Chapter 19 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:
(a) the matter involves a pattern of practice; and
(b) the business person has exhausted any available administrative remedies regarding the particular matter.
3. The remedies referred to in paragraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the relevant competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

## Article 9.8. Relation to other Chapters

Except for this Chapter, Chapters 1 (Initial Provisions and Definitions), 18 (Institutional Provisions), 19 (Dispute Settlement) to the extent permitted by Article 9.7, 20 (General Provisions and Exceptions) and 21 (Final Provisions), and Articles 17.2 (Publication), 17.4 (Administrative Proceedings) and 17.5 (Notification and Provision of Information), nothing in this Agreement shall impose any obligation on a Party regarding its immigration measures.

# Chapter 10. Investment

## Article 10.1. Objectives

The objectives of this Chapter are to encourage and promote the flow of investment between the Parties on a mutually advantageous basis, under conditions of transparency within a stable framework of rules to ensure the protection and security of investments by investors of the other Party within each Party's territory, while recognising the right of the Parties to regulate and the responsibility of governments to protect public health, safety and the environment.

## Article 10.2. Definitions

For the purposes of this Chapter:
appointing authority means:
(a) in the case of arbitration under the ICSID or ICSID Additional Facility Rules in Article 10.20.3(a) and (b), the Secretary-General of ICSID, and in the case of arbitration under the UNCITRAL Rules in Article 10.20.3(c), the Secretary General of the Permanent Court of Arbitration; or
(b) any person as agreed between the disputing parties; claimant means an investor of a Party that is a party to an investment dispute with the other Party; disputing parties means the claimant and the respondent;
disputing party means either the claimant or the respondent;
enterprise means an enterprise as defined in Article 1.5 (Definitions), and a branch of an enterprise;
enterprise of a Party means an enterprise constituted or organised under the domestic laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;
ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;
ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March, 1965;
investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
(a) an enterprise;
(b) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
(c) bonds, including government issued bonds, debentures, and loans (1) and other forms of debt, and rights derived therefrom;
(d) futures, options and other derivatives;
(e) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
(f) intellectual property rights;
(g) rights conferred pursuant to law or contract such as concessions, licences, authorisations, and permits;(2) (3) and
(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges; (4)
investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;
investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party;

provided that in any dispute related to an investment of an investor of the Party, a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;
New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958;
non-disputing Party means a Party that is not a party to an investment dispute;
protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's domestic laws and regulations, including classified government information; respondent means a Party against which a claim is made under Section B; and
UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, as

revised in 2010 or as subsequently agreed between the Parties.

(1) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

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

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

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

# Section A. Investment

## Article 10.3. Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to:
(a) investors of the other Party;
(b) covered investments; and
(c) with respect to Articles 10.11 and 10.13, all investments in the territory of the Party.
2. For greater certainty, the provisions of this Chapter do not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.
3. This Chapter shall not apply to services supplied in the exercise of governmental authority, as defined in Article 8.2 (Definitions).
4. This Chapter shall not apply to financial services as defined in Article 8.2 (Definitions).

## Article 10.4. Relation to other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

## Article 10.5. National Treatment

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

## Article 10.6. Most-favoured-nation Treatment

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

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, including those in Section B.

## Article 10.7. Minimum Standard of Treatment (5)

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment, including fair and equitable treatment and full protection and security.
2. For greater certainty, the concepts of fair and equitable treatment and full protection and security set out in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment and do not create additional substantive rights. The obligation in paragraph 1 to provide:
(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the general principle of law of due process; and
(b) "full protection and security" requires each Party to take such measures as may be reasonably necessary in the exercise of its police powers to ensure the protection and security of the investment.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article. 5 This Article shall be interpreted in accordance with Annex 10-A.

(5) This Article shall be interpreted in accordance with Annex 10-A.

## Article 10.8. Treatment In Case of Armed Conflict or Civil Strife

1. Notwithstanding Article 10.15.5(b), each Party shall accord to investors of the other Party, and to covered investments, treatment no less favourable than that which the Party accords to its own investors and their investments, or investors of any non-Party and their investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to war or other armed conflict, or revolt, insurrection, riot, or other civil strife.
2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:
(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. (6) Any compensation shall be prompt, adequate, and effective in accordance with paragraphs 2 through 4 of Article 10.9.
3. Paragraph 1 does not apply to existing measures relating to subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, that would be inconsistent with Article 10.5 but for Article 10.15.5(b).

(6) For great certainty, in the event of providing both restitution and compensation, their combined value shall not exceed the loss suffered.

## Article 10.9. Expropriation and Compensation (7)

1. Neither Party shall nationalise or expropriate a covered investment either directly or indirectly through measures equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation"), except:
(a) for a public purpose;
(b) in a non-discriminatory manner;
(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and (d) in accordance with due process of law.
2. Compensation shall:
(a) be paid without delay;
(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (hereinafter referred to as "the date of expropriation")
(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and (d) be fully realisable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair

market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:
(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus
(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 11 (Intellectual Property Rights).(8)

(7) This Article shall be interpreted in accordance with Annex 10-B.

(8) For greater certainty, the Parties recognise that, for the purposes of this Article, the term “revocation” of intellectual property rights includes the cancellation or nullification of such rights, and the term “limitation” of intellectual property rights includes exceptions to such rights.

## Article 10.10. Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
(a) contributions to capital, including the initial contribution;
(b) profits, dividends, interest, capital gains, royalty payments, management fees, and technical assistance and other fees;
(c) proceeds from the sale of all or any part of a covered investment or from the partial or complete liquidation of a covered investment;
(d) payments made under a contract entered into by the investor, or a covered investment, including payments made pursuant to a loan agreement;
(e) payments made pursuant to Articles 10.8 and 10.9;
(f) payments arising out of the settlement of a dispute; and
(g) earnings and other remuneration of personnel engaged from abroad in connection with that investment.
2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its domestic laws and regulations relating to:
(a) bankruptcy, insolvency, or the protection of the rights of creditors;
(b) issuing, trading, or dealing in securities, futures, options, or derivatives;
(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
(d) criminal or penal offenses;
(e) ensuring compliance with orders or judgements in judicial or administrative proceedings;
8 For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of such rights, and the term "limitation" of intellectual property rights includes exceptions to such rights.
(f) social security, public retirement or compulsory savings schemes; or
(g) taxation.

## Article 10.11. Performance Requirements

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking: (9)
(a) to export a given level or percentage of goods or services;
(b) to achieve a given level or percentage of domestic content;
(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or
(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.
2. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation,or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:
(a) to achieve a given level or percentage of domestic content;
(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
3. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
4. Paragraph 1(f) does not apply:
(a) when a Party authorises use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
(b) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws.10
5. Paragraphs 1(a) through (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.
6. Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.
7. Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
8. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.
9. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(9) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of this paragraph.

(10) The Parties recognise that a patent does not necessarily confer market power.

## Article 10.12. Senior Management and Boards of Directors

1. Neither Party shall require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## Article 10.13. Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

## Article 10.14. Denial of Benefits

1. Subject to notification (11) to the other Party, a Party may deny the benefits of this Chapter to:
(a) investors of the other Party and to the investments of that investor where the investment is being made by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the territory of the other Party; or
(b) investors of the other Party and to the investments of that investor where the investment is being made by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of the other Party.
2. A Party that denies benefits pursuant to paragraph 1 shall enter into consultations promptly following notification on the request of the other Party.
Such consultations shall be without prejudice to the Parties' rights under Chapter 19 (Dispute Settlement) and under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

(11) A Party shall, to the extent practicable, provide such notification to the other Party prior to denying the benefits of this Chapter.

## Article 10.15. Non-conforming Measures

1. Articles 10.5, 10.6, 10.11 and 10.12 shall not apply to: 11 A Party shall, to the extent practicable, provide such notification to the other Party prior to denying the benefits of this Chapter.
(a) any existing non-conforming measure that is maintained by a Party at:
(i) the central level of government, as set out by that Party in its Schedule to Annex I; or
(ii) a local level of government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.5, 10.6, 10.11 and 10.12.
2. Articles 10.5, 10.6, 10.11 and 10.12 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.
3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 10.5 and 10.6 do not apply to any measure that is an exception to, or derogation from, a Party's obligations under the TRIPS Agreement, as specifically provided for in that agreement.
5. Articles 10.5, 10.6 and 10.12 do not apply to:
(a) government procurement; or
(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance. 6. The Parties will endeavour to progressively remove the non-conforming measures.

## Article 10.16. Special Formalities and Information Requirements

1. Nothing in Article 10.5 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.
2. Notwithstanding Articles 10.5 and 10.6, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes.
The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## Article 10.17. Subrogation

1. If a Party (or any agency, institution, statutory body or corporation designated by it) makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity against non-commercial risks it has granted in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.
2. Where a Party (or any agency, institution, statutory body or corporation designated by it) has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act

on behalf of the Party (or any agency, institution, statutory body or corporation designated by it) making the payment, pursue those rights and claims against the other Party.

# Section B. Investor State Dispute Settlement

## Article 10.18. Settlement of Investment Disputes between a Party and an Investor of the other Party

1. This Section shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach by the former Party of an obligation under Section A directly concerning a covered investment of the investor of that other Party, provided that such breach causes loss or damage to the investor or its investments.
2. This Section shall not apply to investment disputes which have occurred prior to the entry into force of this Agreement.
3. A national possessing the nationality or citizenship of a Party shall not pursue a claim against that Party under this Section. If a national also possesses the nationality or citizenship of a non-Party, he or she shall be deemed to be exclusively a national of the state of his or her dominant and effective nationality.

## Article 10.19. Consultation and Negotiation

1. In the event of an investment dispute, the claimant and the respondent shall, as far as possible, seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.
2. The claimant shall deliver to the respondent a written request for consultations setting forth a brief description of facts regarding the measure or measures at issue.
3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

## Article 10.20. Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 10.19.2, the claimant, on its own behalf, may submit to arbitration under this Section a claim:
(a) that the respondent has breached an obligation under Section A, relating to the management, conduct, operation, or sale or other disposition of a covered investment; and
(b) that the claimant has incurred loss or damage by reason of, or arising out of, that breach.
2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (hereinafter referred to as a "notice of intent").
The notice of intent shall specify:
(a) the name and address of the claimant;
(b) for each claim, the provision of Section A alleged to have been breached and any other relevant provisions of this Agreement;
(c) the legal and factual basis for each claim; and (d) the relief sought and the approximate amount of damages claimed.
3. A claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:
(a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;
(b) the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;
(c) the UNCITRAL Arbitration Rules; or
(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.
4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of, or request for, arbitration (thereinafter referred to as "notice of arbitration"):
(a) referred to in the ICSID Convention is received by the Secretary-General;
(b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General;
(c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to in the UNCITRAL Arbitration Rules, are received by the respondent; or
(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent. A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.
5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.
6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or
(b) the claimant's written consent for the appointing authority to appoint that arbitrator.

## Article 10.21. Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.
2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of:
(a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
(b) Article II of the New York Convention for an "agreement in writing".

## Article 10.22. Conditions and Limitations on Consent of Each Party

1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date the claimant first acquired, or should have first acquired, knowledge, whichever is the earlier, of a breach of an obligation under Section A causing loss or damage to the claimant.
2. No claim shall be submitted to arbitration under this Section unless:
(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
(b) the notice of arbitration is accompanied by the claimant's written waiver of any right to initiate or continue before any administrative tribunal or court under the domestic laws of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.20.
3. Notwithstanding paragraph 2(b), the claimant may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's rights and interests during the pendency of the arbitration.

## Article 10.23. Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The appointing authority shall serve as appointing authority for an arbitration under this Section.
3. If an arbitral tribunal has not been established within 75 days of the date on which the claim was submitted to arbitration, the appointing authority, on the request of either disputing party, shall appoint, at its own discretion, the arbitrator or arbitrators not yet appointed. The appointing authority shall not appoint a national or permanent resident of either Party as the presiding arbitrator unless the disputing parties otherwise agree.
4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:
(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; and
(b) a claimant referred to in Article 10.20.1 may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal.

## Article 10.24. Place of Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.20.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.
2. On the request of a disputing party, and unless the disputing parties otherwise agree, the tribunal may determine the location of meetings, including consultations and hearings, taking into consideration appropriate factors, including the convenience of the parties and the arbitrators, the location of the subject matter, and the proximity of evidence. The preceding sentence is without prejudice to any appropriate factors a tribunal may consider under paragraph 1.

## Article 10.25. Interpretation of Agreement

1. The tribunal shall, on the request of the respondent, request a joint interpretation of the Joint Commission of any provision of this Agreement that is in issue in a dispute. The Joint Commission shall submit in writing any joint decision declaring its interpretation to the tribunal within 60 days of delivery of the request.
2. A joint decision issued under paragraph 1 by the Joint Commission shall be binding on the tribunal, and any award must be consistent with that joint decision. If the Joint Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue on its own account.
3. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement. On the request of a disputing party, the non-disputing Party shall resubmit its oral submissions in writing.

## Article 10.26. Conduct of the Arbitration

1. The tribunal shall have the authority to accept and consider written amicus curiae submissions that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party. In determining whether to accept such a filing, the tribunal shall consider, among other things, the extent to which the amicus curiae has a significant interest in the proceeding. The tribunal shall provide the disputing parties with an opportunity to respond to such written submissions.
2. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 10.30:
(a) such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment);
(b) on receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor;
(c) in deciding an objection under this paragraph, the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant Article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute; or
(d) the respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 3.
3. In the event that the respondent so requests within 45 days of the tribunal being constituted, the tribunal shall decide on an expedited basis an objection under paragraph 2 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.
4. When it decides a respondent's objection under paragraph 2 or 3, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.
5. A respondent shall not assert as a defence, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.
6. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal shall not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.20. For the purposes of this paragraph, an order includes a recommendation.
7. In any arbitration conducted under this Section, on the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and non-disputing Party. Within 60 days of the tribunal transmitting its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60 day comment period.
8. The interim review procedure of disputing parties for the proposed decision or award in paragraph 7 shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 9.

9. If a separate multilateral agreement enters into force between the Parties that establishes an appellate body for the purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review decisions and awards rendered under this Article and Article 10.30 in arbitrations commenced after the multilateral agreement enters into force between the Parties.
10. Unless the disputing parties otherwise agree, consistent with the applicable arbitration rules, English and Korean shall be the official languages to be used in the entire arbitration proceedings, including all hearings, submissions, decisions, and awards.

## Article 10.27. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 through 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them publicly available:
(a) the notice of intent;
(b) the notice of arbitration;
(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Articles 10.25.3 and 10.26.1;
(d) minutes or transcripts of hearings of the tribunal, where available; and
(e) orders, awards, and decisions of the tribunal.
2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure which may include closing the hearing for the duration of any discussion of protected information.
3. Nothing in this Section, including paragraph 4(d), requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 20.2 (Security Exceptions) or 20.7 (Disclosure of Information).
4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:
(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;
(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the information. Only the redacted version shall be disclosed in accordance with paragraph 1;
(d) the tribunal, subject to paragraph 3, shall decide any objection by a disputing party regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may:
(i) withdraw all or part of its submission containing such information; or
(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c) In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under sub-subparagraph (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under sub-subparagraph (ii) of the disputing party that first submitted the information; and
(e) On the request of a respondent, the Joint Commission shall consider issuing a decision in writing regarding a determination by the tribunal that information claimed to be protected was not properly designated. If the Joint Commission issues a decision within 60 days of such a request, it shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision.
If the Joint Commission does not issue a decision within 60 days, and provided that the non-disputing Party submits a written statement to the Joint Commission within that period that it agrees with the tribunal's determination, the tribunal's determination shall remain in effect.
5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

## Article 10.28. Governing Law

1. Subject to paragraph 2, when a claim is submitted under Article 10.20.1, the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. A decision of the Joint Commission on the interpretation of a provision of this Agreement under Article 18.2.2 shall be binding on a tribunal, and any decision or award

issued by a tribunal must be consistent with that decision.

## Article 10.29. Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.20.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the appointing authority and to all the disputing parties sought to be covered by the order and shall specify in the request: (a) the names and addresses of all the disputing parties sought to be covered by the order;
(b) the nature of the order sought; and
(c) the grounds on which the order is sought.
3. Unless the appointing authority finds within 30 days of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.
4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:
(a) one arbitrator appointed by agreement of the claimants;
(b) one arbitrator appointed by the respondent; and
(c) the presiding arbitrator appointed by the appointing authority, provided, however, that the presiding arbitrator shall not be a national of either Party.
5. If, within 60 days of the appointing authority receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the appointing authority, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the appointing authority shall endeavour to appoint a national of the respondent, and if the claimants fail to appoint an arbitrator, the appointing authority shall endeavour to appoint a national of the non-disputing Party.
6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.20.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:
(a) assume jurisdiction over, and hear and determine together, all or part of the claims;
(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
(c) instruct a tribunal previously established under Article 10.23 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:
(i) that tribunal, on the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
(ii) that tribunal shall decide whether any prior hearing shall be repeated.
7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.20.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:
(a) the name and address of the claimant;
(b) the nature of the order sought; and (c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the appointing authority.
8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.
9. A tribunal established under Article 10.23 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.
10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.23 be stayed, unless the latter tribunal has already adjourned its proceedings.

## Article 10.30. Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:
(a) monetary damages and any applicable interest; and
(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any

applicable interest in lieu of restitution.
2. For greater certainty, when an investor of a Party submits a claim to arbitration under Article 10.20.1, it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.
3. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.
4. A tribunal shall not award punitive damages.
5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
6. Subject to paragraph 7 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
7. A disputing party shall not seek enforcement of a final award until:
(a) in the case of a final award made under the ICSID Convention:
(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
(ii) revision or annulment proceedings have been completed; and
(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.20.3(d):
(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or
(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.
8. Each Party shall ensure that an award can be recognised and enforced in its jurisdiction. 9. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

## Article 10.31. Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-D.

## Annex 10-A. CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 10.7 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.7, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

## Annex 10-B. EXPROPRIATION

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

2. Expropriation may be either direct or indirect:

(a) direct expropriation occurs when a Party takes an investor’s property outright, by nationalisation or other direct expropriation through formal transfer of title or outright seizure; and

(b) indirect expropriation occurs when a Party takes an investor’s property through an action or a series of actions which have an effect equivalent to direct expropriation, without formal transfer of title or outright seizure.

3. The determination of whether an action or a series of actions by a Party, in a specific

fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

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

(b) whether the government action breaches the government’s prior binding written commitment to the investor whether by contract, licence or other legal document; and

(c) the character of the government action including its objectives and context. (1)

4. In order to constitute indirect expropriation, the Party's deprivation of the investor's property must be so severe in the

light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith.

5. Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilisation (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations. (2)

(1) For actions taken by Korea, a relevant consideration could include whether the investor bears a disproportionate burden such as a special sacrifice that exceeds what the investor or investment should be expected to endure for the public interest.

(2) For greater certainty, the list of "legitimate public welfare objectives" in this paragraph is not exhaustive.

## Annex 10-C. SUBMISSION OF A CLAIM TO ARBITRATION

**Korea**

1. Notwithstanding Article 10.22.2, an investor of New Zealand shall not submit to arbitration under Section B a claim that Korea has breached an obligation under Section A, if the investor has alleged that breach of an obligation under Section A in any proceedings before a court or administrative tribunal of Korea.

2. For greater certainty, where an investor of New Zealand makes an allegation that Korea has breached an obligation under Section A before a court or administrative tribunal of Korea, that election shall be final, and the investor shall not thereafter allege that breach in an arbitration under Section B.

## Annex 10-D. SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B

**Korea**

Notices and other documents in disputes under Section B shall be served on Korea by delivery to:

International Legal Affairs Division

Ministry of Justice of the Republic of Korea Building #1, Government Complex-Gwacheon 47, Gwanmun-ro, Gwacheon-si, Gyeonggi-do Republic of Korea

**New Zealand**

Notices and other documents in disputes under Section B shall be served on New Zealand by delivery to:

The Secretary

Ministry of Foreign Affairs and Trade 195 Lambton Quay

Private Bag 18-901

Wellington

New Zealand

## Annex 10-E. TAXATION AND EXPROPRIATION

The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 10-B and the following considerations:

(a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

(b) a taxation measure that is consistent within internationally recognised tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;

(c) a taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and

(d) a taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

# Chapter 11. Intellectual Property Rights

## Article 11.1. Definitions

For the purposes of this Chapter:
intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement, namely copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout designs (topographies) of integrated circuits; protection of undisclosed information; and also includes the protection of plant varieties.

## Article 11.2. Basic Principles

1. The Parties recognise the importance of intellectual property in promoting economic and social development, particularly in the digital economy, technological innovation and trade.
2. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

## Article 11.3. General Provisions

1. Each Party shall provide in its territory to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce those rights do not themselves become barriers to legitimate trade.
2. A Party may provide for more extensive protection and enforcement of intellectual property rights under its law than this Chapter requires, provided that the additional protection and enforcement are not inconsistent with this Chapter. 3. The Parties affirm their existing rights and obligations under the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both Parties are party.
4. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property rights and any benefits derived from such rights. (1)
5. The obligation provided for in paragraph 4 is subject to:
(a) the limitations and exceptions provided in the TRIPS Agreement and those multilateral agreements concluded under the auspices of World Intellectual Property Organization (hereinafter referred to as "WIPO"); and
(b) the relevant reservations permitted by those multilateral agreements concluded under the auspices of WIPO.
6. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that:
(a) provide certainty over the protection and enforcement of intellectual property rights;
(b) minimise the administrative costs required for businesses to comply with its intellectual property system; and
(c) facilitate international trade through the dissemination of ideas, technology and creative works.
7. The Parties shall be free to establish their own regime for the exhaustion of intellectual property rights.

(1) For the purposes of this Chapter, a ‘national' of a Party shall include, in respect of the relevant right, any person of that Party that would meet the criteria for eligibility for protection of that right provided for in the agreements referred to in Article 11.5.1 and the TRIPS Agreement.

## Article 11.4. Trademarks

1. Neither Party shall require, as a condition of registration, that trademarks be visually perceptible, nor shall either Party deny registration of a trademark solely on the grounds that its sign is composed of a sound or a scent. (2)
2. Each Party shall provide that trademarks shall include collective marks and certification marks.
3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, at least for goods or services that are identical or similar to those goods or services with respect to which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, for identical goods or services, the likelihood of confusion shall be presumed.

4. Each Party may provide 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 interests of the owner of the trademark and of third parties.
5. Neither Party shall require, as a condition for determining that a trademark is a well-known mark, that the trademark has been registered in the territory of that Party or in another jurisdiction. Additionally, neither Party shall deny remedies or relief with respect to well-known marks solely because of the lack of:
(a) a registration;
(b) inclusion on a list of well-known marks; or
(c) prior recognition of the trademark as well-known.
6. Article 6bis of the Paris Convention for the Protection of Industrial Property, done on 20 March 1883 shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark,3 whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.
7. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion, or mistakes, or deception, risk of association of the trademark with a well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.
8. Each Party shall provide a system for the registration of trademarks in which the reasons for a refusal to register a trademark shall be communicated in writing and may be provided electronically to the applicant, who will have the opportunity to contest such refusal and to appeal a final refusal judicially. Each Party shall provide that third parties may oppose the registration of a trademark. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.
9. Each Party shall provide that initial registration and each renewal of a registration of a trademark shall be for a term of no less than 10 years.
10. Neither Party shall require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.
11. Each Party shall provide a system that permits owners to assert rights in trademarks and interested parties to challenge rights in trademarks through administrative or judicial means, or both.

(2) A Party may require an adequate description, which can be represented graphically, of the trademark.

(3) For the purposes of determining whether a trademark is well-known, neither Party shall require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods and services.

## Article 11.5. Copyright and Related Rights

1. Each Party shall comply with Articles 1 through 21 of the Berne Convention for the Protection of Literary and Artistic Works, done at 24 July 1971 (hereinafter referred to as the "Berne Convention") and the Appendix thereto. However, the Parties shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of the Berne Convention or the rights derived therefrom.
2. Each Party shall provide that authors, (4) producers of phonograms, and broadcasting organisations (5) have the right to authorise or prohibit all reproduction of their works, phonograms and broadcasts (6) in any manner or form.
3. Each Party shall provide performers with the right to prohibit the reproduction of a fixation of a performance (7) where such fixation has been made without the authorisation of the performer.
4. Each Party may provide for limitations or exceptions to the rights described in paragraphs 2 and 3 in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.
5. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by copyright and related rights holders in connection with the exercise of their rights under each Party's domestic laws and that restrict acts, in respect of their works, which are not authorised by the copyright and related rights holders concerned or permitted by law.
6. Each Party may provide for exceptions and limitations to measures implementing paragraph 5 in accordance with its domestic laws and the relevant international agreements to which it is party.
7. Each Party shall provide for adequate and effective legal protection against any person knowingly performing any of the following acts knowing, or having reasonable grounds to know, that by doing so, it will induce, enable, facilitate or conceal an infringement of any copyright or related rights as provided by the domestic laws of the Party:
(a) the removal or alteration of any electronic rights management information (8) without authority; or

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public, without authority, of works or copies of the works or other subject matter protected under this Chapter knowing that electronic rights management information has been removed or altered without authority.

(4) A Party may provide that an author includes a person by whom the arrangements necessary for the making of a phonogram are undertaken.

(5) For the purpose of this Chapter, authors, performers, producers of phonograms and broadcasting organisations refer also to any successors in title.

(6) With respect to the protection of phonograms, a Party may apply the criterion of fixation instead of the criterion of publication. With respect to the protection of broadcasts, a Party may protect broadcasts only if the headquarter of the broadcasting organisation is situated in the other Party's territory and the broadcast was transmitted from a transmitter situated in the other Party's territory.

(7) With respect to this Chapter, a "performance" means a performance fixed in a phonogram unless otherwise specified.

(8) For the purposes of this Chapter, “rights management information” means any information provided by right holders which identifies the work or other subject matter covered by this Chapter, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

## Article 11.6. Enforcement

1. Each Party shall ensure that the measures, procedures and remedies are available under the Parties' legislation so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter.
2. Each Party shall provide for effective enforcement procedures to curtail repetitive copyright and related rights infringement by means of the internet.

## Article 11.7. Contact Points

The Parties shall designate contact points to facilitate communications between the Parties on any matter covered by this Chapter, and provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

## Article 11.8. Exchange of Information

1. A Party shall, on the request of the other Party, provide information relating to:
(a) any new laws that enter into effect in relation to intellectual property;
(b) changes to, and developments in, the implementation of intellectual property systems aimed at promoting the effective and efficient registration or grant of intellectual property rights; and
(c) developments in approaches to intellectual property rights enforcement.
2. Any information provided under this Article shall be conveyed through the contact points referred to in Article 11.7.
8 For the purposes of this Chapter, "rights management information" means any information provided by right holders which identifies the work or other subject matter covered by this Chapter, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

## Article 11.9. Co-operation

1. The Parties agree to co-operate with a view to ensuring effective protection of intellectual property rights and eliminating trade in goods or services infringing intellectual property rights subject to their respective laws, rules, regulations and government policies.
2. The Parties shall encourage and facilitate the development of contacts and co operation between the Parties' respective government agencies, educational institutions, and other organisations with an interest in the field of intellectual property

rights.
3. A Party shall, on the request of the other Party, give due consideration to any specific co-operation proposal made by the other Party relating to the protection or enforcement of intellectual property rights.
4. Any proposal for co-operation shall be conveyed through the contact points referred to in Article 11.7.

### Article 11.10. Genetic Resources, Traditional Knowledge and Folklore

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

### Article 11.11. Consultations

1. A Party may at any time request consultations with the other Party with a view to seeking a timely and mutually satisfactory resolution in relation to any intellectual property issue, including enforcement, within the scope of this Chapter.
2. Such consultations shall be conducted through the Parties' designated contact points, and shall commence within 30 days of the receipt of the request for consultations, unless the Parties mutually determine otherwise. In the event that consultations fail to resolve any such issue, the requesting Party may refer the issue to the Joint Commission for consideration.
3. Any action taken pursuant to paragraphs 1 and 2 is without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement) or under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

## Chapter 12. Competition and Consumer Policy

### Article 12.1. Objectives

1. The Parties recognise the strategic importance of creating and maintaining open and competitive markets that promote economic efficiency and consumer welfare.
2. To this end each Party is committed to reducing and removing impediments to trade and investment including through:
(a) application of competition statutes to all forms of business activity, including both private and public business activities; and
(b) application of competition statutes in a manner that does not discriminate between or among economic entities, nor between origin and destination of the production.
3. The Parties recognise that anti-competitive business conduct may frustrate the benefits arising from this Agreement. The Parties undertake to apply their respective competition laws in a manner consistent with this Chapter so as to avoid the benefits of this Agreement in terms of the liberalisation process in goods and services being diminished or cancelled out by anticompetitive business conduct.

### Article 12.2. Definitions

For the purposes of this Chapter: anti-competitive business conduct means activities that restrict or distort competition in the territory of a Party as a whole or in a substantial part thereof, such as:
(a) anti-competitive agreements, concerted practices or arrangements between enterprises and decisions by associations of enterprises as specified in the Parties' respective competition laws;
(b) any abuse of market power by one or more enterprises of a dominant position; and
(c) mergers or other structural combinations of enterprises which significantly impede effective competition, particularly as a result of the creation or reinforcement of a dominant position in the territory.
These activities may relate to goods and services and may be carried out by any enterprise irrespective of the ownership of that enterprise; competition authority means:
(a) for Korea, the Korea Fair Trade Commission or its successor; and
(b) for New Zealand, the New Zealand Commerce Commission or its successor; competition laws means:
(a) for Korea, the Monopoly Regulation and Fair Trade Act and its implementing regulations and amendments;
(b) for New Zealand, the Commerce Act 1986 and its implementing regulations and amendments; and
(c) any changes that the above mentioned instruments may undergo after the entry into force of this Agreement; and consumer protection laws means:
(a) for Korea, the Framework Act on Consumer, the Fair Labeling and Advertising Act, the Consumer Protection in Electronic Commerce, Etc. Act and their implementing regulations and amendments;
(b) for New Zealand, the Fair Trading Act 1986 and its implementing regulations and amendments; and
(c) any changes that the above mentioned instruments may undergo after the entry into force of this Agreement.

## Article 12.3. Implementation

1. Each Party shall maintain competition laws that proscribe anti-competitive business conduct with the objective of promoting economic efficiency and consumer welfare. These laws and their enforcement shall be consistent with the principles of transparency, comprehensiveness, non-discrimination and procedural fairness.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.
3. Each Party shall provide any person subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to be heard and to present evidence, and to seek review of the sanction or remedy in a court of that Party.
4. With regard to transparency, each Party shall make available to the other Party information concerning exemptions provided under its competition laws. Any such exemptions shall be transparent and undertaken on the grounds of public policy or public interest.

## Article 12.4. Co-operation

1. The Parties recognise the importance of co-operation and co-ordination between their respective authorities to promote effective enforcement of competition laws and to fulfil the objectives of this Agreement.
2. Accordingly, the Parties shall co-operate in relation to the enforcement of their respective competition laws and policy, including through technical co-operation, notification, consultation, and exchange of information.

## Article 12.5. Notification

1. Each Party, through its contact points referred to in Article 12.8, shall notify the competition authority of the other Party of an enforcement activity regarding anti-competitive conduct if it:
(a) is liable to substantially affect the other Party's important interests;
(b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of the other Party; or
(c) concerns anti-competitive conduct taking place principally in the territory of the other Party.
2. Provided that it is not contrary to the competition laws of the Party and does not affect any investigation being carried out, notification shall be given at an early stage of the enforcement activity.

## Article 12.6. Consultations and Exchange of Information

1. To foster mutual understanding or to address specific matters that arise under this Chapter, the Parties shall, on the request of either Party, enter into consultations on any competition-related issue adversely affecting trade or investment between Parties.
2. Without prejudice to its full freedom of ultimate decision, the Party to which a request for consultations has been addressed shall endeavour to give full and sympathetic consideration to the concerns expressed by the requesting Party.
3. Each Party shall, on the request of the other Party, endeavour to provide information to the other Party to facilitate effective enforcement of their respective competition laws, provided that it is subject to the standards of confidentiality applicable in each Party.
4. No Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party that provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party before such disclosure is made. The Parties may agree to the public release of information that they do not consider confidential.

## Article 12.7. Technical Co-operation

The Parties may, subject to resources, provide each other with technical co-operation related to the implementation of competition laws and policy. Such technical co-operation activities may include:
(a) exchange of personnel for training purposes;
(b) participation of personnel as lecturers or consultants at training courses on competition laws and policies organised by the competition authorities of the Parties; and
(c) any other form of technical co-operation as mutually decided by the competition authorities of the Parties.

## Article 12.8. Contact Points

Each Party shall designate one or more contact points for the purposes of this Chapter and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any changes to the details of their contact points.

### Article 12.9. Cross-border Consumer Protection

1. The Parties recognise the importance of co-operation and co-ordination on matters related to their consumer protection laws in order to enhance consumer welfare. Accordingly, the Parties shall co-operate, in appropriate cases of mutual concern, in the enforcement of their consumer protection laws, including in such areas as the monitoring of international scams.
2. Nothing in this Article shall limit the discretion of the competition authority of a Party to decide whether to take action in response to a request by an authority of the other Party, nor shall it preclude any of these authorities from taking action with respect to any particular matter.
3. The Parties affirm their commitment to provide protection in their territories from deceptive practices or the use of false or misleading descriptions in trade. 4. Each Party shall provide the legal means under its domestic laws to prevent false, deceptive or misleading labelling of products within its territory.

### Article 12.10. Dispute Settlement

Neither Party shall have recourse to any dispute settlement procedures under this Agreement for any matters arising under this Chapter.

## Chapter 13. Government Procurement

### Article 13.1. General Provisions and Objectives

1. The Parties recognise their shared interest in promoting international liberalisation of government procurement markets and continued co-operation on procurement matters in APEC and other appropriate international fora.
2. The Parties recognise the importance of conducting government procurement in accordance with the fundamental principles of the APEC Non-Binding Principles on Government Procurement of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination, in order to maximise competitive opportunities for suppliers of the Parties.

### Article 13.2. Definitions

For the purposes of this Chapter:
build-operate-transfer contract and public works concession contract mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of such works for the duration of the contract;
commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes; construction service means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (hereinafter referred to as "CPC");
electronic auction means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
in writing or written means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;
limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
measure means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the entity intends to use more than once;
offset means any condition or undertaking that encourages local development or improves a Party`s balance of payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;
open tendering means a procurement method whereby all interested suppliers may submit a tender;

person means a natural person or a legal person;
procuring entity means an entity covered in Annex 13-A;
publish means to disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public;
qualified supplier means a supplier that a procuring entity recognises as having satisfied the conditions for participation;
selective tendering means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
services includes construction services, unless otherwise specified; standard means a document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;
supplier means a person or group of persons that provides or could provide goods or services; and technical specification means a tendering requirement that:
(a) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
(b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

## Article 13.3. Scope and Coverage

Application of Agreement
1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.
2. For the purposes of this Chapter, "covered procurement" means procurement for governmental purposes: (a) of goods, services, or any combination thereof:
(i) as specified in Annex 13-A; and
(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
(b) by any contractual means, including purchase;
lease; rental or hire purchase, with or without an option to buy; and build-operate-transfer contracts; and public works concession contracts;
(c) for which the value, as estimated in accordance with this Article, equals or exceeds the relevant threshold specified in Annex 13-A, at the time of publication of a notice in accordance with Article 13.11;
(d) by a procuring entity; and
(e) that is not otherwise excluded from coverage under this Chapter.
3. Except where otherwise provided in Annex 13-A, this Chapter does not apply to:
(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
(b) non-contractual agreements or any form of assistance that a Party provides, including co-operative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
(c) the 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, including loans and government bonds, notes and other securities;
(d) public employment contracts; or
(e) procurement conducted:
(i) for the specific purpose of providing international assistance, including development aid;
(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.
4. Where a procuring entity, in the context of covered procurement, requires persons not covered under Annex 13-A to procure in accordance with particular requirements, Article 13.4 shall apply mutatis mutandis to such requirements.
Valuation
5. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall:
(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and
(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
(i) premiums, fees, commissions and interest; and

(ii) where the procurement provides for the possibility of options, the total value of such options.
6. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts"), the calculation of the estimated maximum total value shall be based on:
(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity`s preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or
(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity`s fiscal year.
7. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:
(a) in the case of a fixed-term contract:
(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; or
(c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

## Article 13.4. General Principles

Non-Discrimination
1. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering the goods or services of either Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers.
2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:
(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.
3. When conducting covered procurement by electronic means, a procuring entity shall:
(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access. Use of Electronic Means Conduct of Procurement
4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:
(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;
(b) avoids conflicts of interest; and
(c) prevents corrupt practices. Rules of Origin
5. For the purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party. Offsets
6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce any offset. Measures Not Specific to Procurement
7. Paragraphs 1 and 2 shall not apply to:
(a) customs duties and charges of any kind imposed on, or in connection with, importation;
(b) the method of levying such duties and charges; or
(c) other import regulations or formalities and measures affecting trade in services, other than measures governing covered procurement.

## Article 13.5. Exceptions to the Chapter

1. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.
2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order, or safety;
(b) necessary to protect human, animal or plant life or health;
(c) necessary to protect intellectual property; or
(d) relating to goods or services of persons with disabilities, of philanthropic or not for profit institutions, or of prison labour.
3. The Parties understand that paragraph 2(b) includes environmental measures necessary to protect human, animal or plant life or health.

## Article 13.6. Disclosure of Information

Provision of Information to Parties
1. On the request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and obtaining agreement of, the Party that provided the information. Non-Disclosure of Information
2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers. (1)
3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:
(a) would impede law enforcement; (b) might prejudice fair competition between suppliers;
(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
(d) would otherwise be contrary to the public interest.

(1) Nothing in this paragraph shall be construed to require New Zealand to withhold information from disclosure in a manner contrary to the Official Information Act 1982, or any successor legislation.

## Article 13.7. Publication of Information on Procurement Measures

Each Party shall promptly publish:
(a) its measures relating to government procurement covered by this Chapter; and
(b) any modifications to such measures in the same manner as the original publication.

## Article 13.8. Qualification of Suppliers

Registration Systems and Qualification Procedures
1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.
2. Each Party shall ensure that:
(a) its procuring entities make efforts to minimise differences in their qualification procedures; and
(b) where its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.
3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement. Selective Tendering
4. Where a procuring entity intends to use selective tendering, the entity shall:
(a) include in the notice of intended procurement at least the information specified in Article 13.11.2(a), (b), (f), (g), (j), and (k) and invite suppliers to submit a request for participation; and (b) provide, by the commencement of the time-period for tendering, at least the information specified in Article 13.11.2(c), (d), (e), (h), and (i) to the qualified suppliers that it notifies as specified in Article 13.12.4(b).
5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5. Multi-Use Lists
7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is: (a) published annually; (b) where published by electronic means, made available continuously; and

(c) published in the appropriate medium listed in Annex 13-A.
8. The notice provided for in paragraph 7 shall include:
(a) a description of the goods or services, or categories thereof, for which the list may be used;
(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;
(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and
(e) an indication that the list may be used for procurement covered by this Chapter.
9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:
(a) states the period of validity and that further notices will not be published; and
(b) is published by electronic means and is made available continuously during the period of its validity.
10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short period of time.
11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in Article 13.12, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders. Information on Procuring Entity Decisions
12. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application. 13. Where a procuring entity rejects a supplier`s request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on the request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

## Article 13.9. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.
2. In establishing the conditions for participation, a procuring entity:
(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party; and
(b) may require relevant prior experience where essential to meet the requirements of the procurement.
3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:
(a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and
(b) base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.
4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:
(a) bankruptcy;
(b) false declarations;
(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
(d) final judgments in respect of serious crimes or other serious offences;
(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or
(f) failure to pay taxes.

## Article 13.10. Limited Tendering

1. Provided that it does not use this provision for the purposes of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 13.8, 13.9, 13.11, 13.12, 13.14, and 13.15 only under any of the following circumstances:
(a) where,

(i) no tenders were submitted or no suppliers requested participation;
(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
(iii) no suppliers satisfied the conditions for participation; or
(iv) the tenders submitted have been collusive, provided that the requirements of the tender documentation are not substantially modified;
(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
(i) the requirement is for a work of art;
(ii) the protection of patents, copyrights or other exclusive rights; or
(iii) due to an absence of competition for technical reasons;
(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement, where a change of supplier for such additional goods or services:
(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
(e) for goods purchased on a commodity market;
(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or
(h) where a contract is awarded to a winner of a design contest provided that:
(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and
(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.
2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

## Article 13.11. Notices

Notice of Intended Procurement
1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Annex 13-A except in the circumstances described in Article 13.10. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice. The notices shall, for procuring entities covered under Annex 13-A, be accessible by electronic means free of charge through a single point of access during the entire period established for tendering.
2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:
(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement; (d) a description of any options;
(e) the time-frame for delivery of goods or services or the duration of the contract;
(f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
(g) where applicable, the address and the final date for the submission of requests for participation in the procurement;
(h) the address and the final date for the submission of tenders;
(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;
(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement; and

(k) where, pursuant to Article 13.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender.
Summary Notice
3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English. The summary notice shall contain at least the following information:
(a) the subject-matter of the procurement;
(b) the final date for the submission of tenders or, where applicable, the final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and
(c) the address from which documents relating to the procurement may be requested. Notice of Planned Procurement 4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Annex 13-A as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

## Article 13.12. Time-periods

General
1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:
(a) the nature and complexity of the procurement;
(b) the extent of subcontracting anticipated; and
(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.
2. Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.
Deadlines
3. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.
4. Except as provided for in paragraphs 5 through 8, a procuring entity shall establish that the final date for the submission of tenders shall be not less than 40 days from the date on which:
(a) in the case of open tendering, the notice of intended procurement is published; or
(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.
5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 4 to not less than 10 days where:
(a) the procuring entity has published a notice of planned procurement as described in Article 13.11.4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
(i) a description of the procurement;
(ii) the approximate final dates for the submission of tenders or requests for participation;
(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
(iv) the address from which documents relating to the procurement may be obtained; and
(v) as much of the information that is required for the notice of intended procurement under Article 13.11.2 as is available;
(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or
(c) a state of urgency duly substantiated by the procuring entity renders the time-period for tendering established in accordance with paragraph 4 impracticable.
6. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 4 by five days for each one of the following circumstances:
(a) the notice of intended procurement is published by electronic means;
(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; or
(c) the entity accepts tenders by electronic means.
7. The use of paragraph 6, in conjunction with paragraph 5, shall in no case result in the reduction of the time-period for tendering established in accordance with paragraph 5 to less than 10 days from the date on which the notice of intended

procurement is published.
8. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 4 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 4 to not less than 10 days.

## Article 13.13. Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade. 2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
(b) base the technical specification on international standards, where such standards exist, or otherwise on national technical regulations, recognised national standards or building codes.
3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.
4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.
5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.
6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment.

## Article 13.14. Tender Documentation

1. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:
(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;
(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
(c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
(f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorised to be present;
(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and
(h) any dates for the delivery of goods or the supply of services.
2. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.
3. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.
4. A procuring entity shall promptly:
(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers. Modifications
5. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or re-issues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:
(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and
(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

## Article 13.15. Treatment of Tenders and Awarding of Contracts

Treatment of Tenders
1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers. Awarding of Contracts
4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
(a) the most advantageous tender; or
(b) where price is the sole criterion, the lowest price.
6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

## Article 13.16. Post-award Information

Information Provided to Suppliers
1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to Article 13.6 a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender. Publication of Award Information
2. No later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Annex 13-A. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:
(a) a description of the goods or services procured;
(b) the name and address of the procuring entity;
(c) the name and address of the successful supplier;
(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract; (e) the date of award; and
(f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 13.10, a description of the circumstances justifying the use of limited tendering. Maintenance of Documentation, Reports and Electronic Traceability
3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:
(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 13.10; and
(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

## Article 13.17. Domestic Review of Supplier Complaints

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement in which they have, or have had, an interest. Where appropriate, a Party may encourage suppliers to seek clarification from its entities with a view to facilitating the resolution of any such complaints.
2. Each Party shall provide suppliers of the other Party with non-discriminatory, timely, transparent and effective access to an administrative or judicial body competent to hear or review complaints of alleged breaches of the procuring Party's laws, regulations, procedures and practices regarding procurement in the context of procurements in which they have, or have had, an interest.
3. Each Party shall make information on complaint mechanisms generally available.
4. Each Party shall adopt or maintain procedures that provide for:
(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and
(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

### Article 13.18. Use of Electronic Communications In Procurement

1. The Parties shall seek to provide opportunities for government procurement to be undertaken through the internet. 2. In order to facilitate commercial opportunities for its suppliers under this Chapter, each Party shall maintain a single electronic portal for access to comprehensive information on government procurement supply opportunities in its territory, and information on measures relating to government procurement shall be made available. The contact point or points from whom suppliers can obtain information on government procurement shall either be specified in Annex 13-A, or be set out in the information on the single electronic portal.
3. The Parties shall encourage, to the extent possible, the use of electronic means for the provision of tender documents and receipt of tenders.
4. The Parties shall endeavour to ensure that policies and procedures for the use of electronic means in procurement are adopted that:
(a) protect documentation from unauthorised and undetected alteration; and
(b) provide appropriate levels of security for data on, and passing through, the procuring entity's network.
5. Each Party shall encourage its entities to publish as early as possible in the fiscal year information regarding the entities` indicative procurement plans on the electronic portal referred to in paragraph 2.

### Article 13.19. Amendments, Modifications and Rectifications of Annex

1. Where a Party proposes to make minor rectifications or other modifications of a purely formal or minor nature to Annex 13-A, it shall notify the other Party in writing. Such rectifications or modifications shall become effective 30 days from the date of notification, unless there is an objection from the other Party. The other Party shall not be entitled to compensatory adjustments.
2. Where a Party proposes to make a modification to Annex 13-A on the grounds that government control or influence over an entity has been effectively eliminated as a result of corporatisation and commercialisation or privatisation, it shall notify the other Party in writing. The proposed modification shall become effective 30 days from the date of notification, unless there is an objection from the other Party. The other Party shall not be entitled to compensatory adjustments.
3. Where the other Party objects to a proposed modification or rectification, it shall notify the modifying Party of its objection in writing within 30 days of the notification of the proposed modification or rectification and include the reason for its objection.
4. The Parties shall seek to resolve any objection through technical consultations, which shall be without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement).
5. Where a Party proposes to make an amendment for reasons other than those stated in paragraphs 1 and 2, it shall notify the other Party in writing and provide appropriate compensatory adjustments in order to maintain a level of coverage comparable to that existing prior to the amendment. The proposed amendment shall become effective in accordance with Article 21.4 (Amendments).
6. The Joint Commission shall by decision update Annex 13-A to reflect any amendment, modification or rectification that has become effective in accordance with paragraphs 1 through 5.

## Chapter 14. Agriculture, Forestry and Fisheries Co-operation

## Article 14.1. Objectives

The objectives of this Chapter are to facilitate the establishment of closer co-operation aimed, inter alia, at:
(a) enhancing the partnership aspects of this Agreement and advancing closer collaboration in areas of mutual interest;
(b) promoting understanding and strengthening of the trade and economic relationship in the agriculture, forestry and fisheries sectors; and
(c) building upon the existing agriculture and forestry co-operative arrangements between the Parties aimed at;
(i) increasing co-operation in areas of mutual interest;
(ii) facilitating trade and investment, including by exploring new opportunities in the agriculture, forestry and fisheries sectors;
(iii) facilitating the role of research, science, technology and education in the agriculture, forestry and fisheries sectors;
(iv) encouraging the important role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development; and
(v) promoting adherence to international rules and obligations.

## Article 14.2. Scope

1. The Parties affirm the importance of all forms of co-operation in contributing towards implementation of the objectives and principles of this Agreement.
2. Co-operation between the Parties under this Chapter will supplement any co-operation activities related to agriculture, forestry and fisheries between the Parties pursuant to other Chapters of this Agreement and existing co-operative arrangements (1) between the Parties.

(1) *Arrangement between the Korean Ministry of Agriculture and Forestry and the New Zealand Ministry of Agriculture and Forestry on Agricultural Cooperation, done on 26 April 2007 and the Arrangement between the Forestry Administration of the Republic of Korea and the Ministry of Forestry of New Zealand regarding Cooperation in the Field of Forestry done on 29 April 1997.*

## Article 14.3. Co-operative Activities

1. In pursuit of the objectives in Article 14.1, the Parties will encourage and facilitate, as appropriate, relevant activities, which may include, but are not limited to:
(a) policy dialogue on agricultural, forestry and fisheries policy issues and exchanges of information on ways to promote and expand trade and investment in agriculture, forestry and fisheries sectors, including in the areas of:
(i) research, science, technology and education to support government objectives for the agriculture, forestry and fisheries sectors;
(ii) sustainable production systems, including for example climate change impacts, mitigation and adaptation, and the role of the agriculture, forestry and fisheries sectors in contributing to low-carbon green growth; or (iii) economic and trade issues as they relate to the agriculture, forestry and fisheries sectors;
(b) private sector engagement in the agriculture, forestry and fisheries sectors in areas of mutual economic interest; and (c) other co-operative activities such as:
(i) technical co-operation;
(ii) joint research programs and projects;
(iii) exchange of experts, researchers, students and relevant professionals;
(iv) conferences, seminars and workshops; or (v) collaborative training exercises, in particular for students and graduates from educational institutions in the fields of agriculture, forestry and fisheries.
2. Co-operative activities shall be identified and agreed by the Parties, taking into account initiatives and activities taking place in international fora. To this end, the Parties shall conclude an Implementing Arrangement setting out the details of specific co-operative activities under this Chapter, and their implementation.

## Article 14.4. Agriculture

The Parties, recognising the importance of promoting co-operative relationships between Korean and New Zealand farmers and agribusinesses, shall undertake co-operative activities on any agricultural matter the Parties agree to be appropriate, which may include, but are not limited to:
(a) agricultural industries, including livestock production and processing industries, cropping, horticulture, irrigated agriculture and natural fibre production;
(b) agricultural reforms and policies;

(c) agricultural economics;
(d) generational change and farm succession planning;
(e) rural development;
(f) environmental and natural resource economics and management;
(g) nutrition, including the agronomic and genetic enhancement of plant, animal and human nutrition;
(h) sustainable and conservation farming techniques; and
(i) any other agricultural matter as may be identified and agreed by the Parties.

## Article 14.5. Forestry

The Parties, recognising that mutually beneficial co-operation and a strong trade relationship will enhance stability of supply, shall endeavour to co-operate in the field of forestry. Areas of co-operation may include:
(a) promotion of trade in timber products;
(b) investment in the forestry sector;
(c) development, utilisation and sustainable management of forest resources;
(d) the impact of climate change on forestry resources;
(e) forest fire management and control;
(f) forest thinning;
(g) forestry pest control;
(h) farm forestry;
(i) combating illegal logging and the associated trade; and
(j) any other areas of co-operation as may be identified and agreed by the Parties.

## Article 14.6. Fisheries and Aquaculture

1. The Parties, recognising the economic and environmental importance of the sustainable management of fisheries resources, shall endeavour to support and encourage investment and participation in each other's fisheries sectors, consistent with the necessary regulatory requirements.
2. The Parties shall endeavour to co-operate, as appropriate, in the field of fisheries and aquaculture. Areas of co-operation may include the exchange of information regarding sustainable management of fisheries resources, for example in relation to:
(a) marine pests;
(b) recreational fishing;
(c) the impact of climate change on marine ecosystems;
(d) fisheries economics and resource management;
(e) policy and regulatory requirements, including with respect to the Parties' Exclusive Economic Zones;
(f) illegal, unreported and unregulated fishing; and
(g) any other fisheries and aquaculture matter as may be identified and agreed by the Parties.
3. The Parties will consider a possible fisheries co-operation arrangement.

## Article 14.7. Security of Food Supply

1. The Parties recognise the importance of maintaining a stable and reliable food supply and the fulfilment of food security objectives.
2. The Parties shall explore, as appropriate, opportunities to co-operate in the area of global food security, including through relevant regional and international fora.
3. Recognising the important role that trade and investment plays in achieving long-term food security, the Parties shall, as appropriate, encourage productive and mutually beneficial trade and investment in agriculture and food.
4. In the event of a severe and sustained disruption to supply of staple foods and feed grain relevant to the Parties, the Parties shall enter into consultations, on the request of a Party, through appropriate co-operative mechanisms, which may include the Committee on Agriculture, Forestry and Fisheries Co-operation, to exchange information on, and to examine the factors relevant to, the situation. The Parties shall endeavour to take any appropriate actions available to them that would contribute to the resolution of the situation through such consultations. 5. Where a Party seeks to introduce a prohibition or restriction on the exportation, or sale for export, of any foodstuff that it exports to the other Party, it shall, on the request of the other Party, enter into consultations with a view to giving due consideration at the Committee on Agriculture, Forestry and Fisheries Co-operation as to the effects of such prohibition or restriction, and possible alternatives. When an export prohibition or restriction is introduced, the Parties shall enter into consultations, on the request of a Party with a view to early resolution of any differences.

### Article 14.8. Committee on Agriculture, Forestry and Fisheries Co-operation

1. The Parties hereby establish a Committee on Agriculture, Forestry and Fisheries Cooperation (hereinafter referred to as "the Committee") to oversee implementation of this Chapter. The Committee shall consider any matter relating to the objectives and implementation of this Chapter including:
(a) supporting and strengthening contact between the Parties, including their respective government agencies, industry, institutions, and other organisations;
(b) designating contact points to facilitate communication between the Parties, who shall, as appropriate, work with government agencies, private sector representatives and educational and research institutions on the operation of this Chapter;
(c) resolving any differences or disputes in respect of the interpretation or application of this Chapter or any Implementation Arrangements concluded under it;
(d) exploring additional areas of co-operation; and
(e) any other functions as may be agreed by the Parties.
2. The Committee shall meet every year in principle, or as otherwise agreed by the Parties. The date, location, and agenda of each meeting shall be jointly decided through consultations between the contact points.

### Article 14.9. Resources

1. With the aim of contributing to the fulfilment of the objectives of this Chapter, and recognising that co-operative activities as envisaged in the Chapter will be able to be implemented effectively only when financed with adequate resources, the Parties shall provide, within the limits of their own capacities and through their own channels, adequate resources to support such co-operative activities.
2. The Committee shall consider the provision of resources for the specific co-operative activities that it identifies.

### Article 14.10. Resolution of Differences and Disputes

1. The Parties shall, to the extent possible, seek to resolve any differences or disputes arising in respect of the interpretation or application of this Chapter or any Implementation Arrangements concluded under it through consultations, with a view to resolution in a timely manner.
2. If consultations fail to resolve the matter, the Parties shall refer it to the Committee, which shall have the exclusive authority for resolving any differences or disputes in respect of the interpretation or application of this Chapter or any Implementation Arrangements concluded under it.
3. For greater certainty, notwithstanding paragraph 2, the Committee may, as appropriate, seek the guidance of the Joint Commission.

## Chapter 15. Labour

### Article 15.1. Objectives

The objectives of this Chapter are to:
(a) promote the common aspiration that free trade and investment should lead to job creation, decent work and meaningful jobs for workers, with terms and conditions of employment that adhere to the principles in the International Labour Organization (hereinafter referred to as the "ILO") Declaration of Fundamental Principles and Rights at Work and its Follow-Up, 1998 (hereinafter referred to as the "ILO Declaration"), and the ILO Declaration on Social Justice for a Fair Globalization, 2008;
(b) promote and achieve better understanding of each Party's labour systems, sound labour policies and practices, and the improved capacity and capability of each Party, including their relevant stakeholders, through increased cooperation and dialogue;

(c) promote the improvement of working conditions and living standards within the respective Parties' territories and protect, enhance and enforce basic workers' rights; and (d) enable the discussion and exchange of views on labour issues of mutual interest or concern with a view to reaching consensus on those issues.

### Article 15.2. General Principles

1. The Parties reaffirm their obligations as members of the ILO and their commitments under the ILO Declaration. Each Party shall strive to adopt and maintain in its laws, regulations, policies and practices thereunder, the following principles

embodied in the ILO Declaration:
(a) freedom of association and the effective recognition of the right to collective bargaining;
(b) the elimination of all forms of forced or compulsory labour;
(c) the effective abolition of child labour; and
(d) the elimination of discrimination in respect of employment and occupation.
2. Each Party shall respect the other Party's sovereign right to set its own policies and national priorities and to set, administer and enforce its own labour laws, regulations and practices according to those policies and priorities.
3. The Parties shall not fail to effectively enforce their labour laws, including those they adopt or maintain in accordance with paragraph 1, through a sustained or recurrent action or inaction, in a manner affecting trade or investment between the Parties. The Parties recognise that each Party retains the right to exercise discretion with respect to the distribution of enforcement resources and to make decisions regarding the allocation of resources to enforcement.
4. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its laws or regulations implementing paragraph 1, in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with the principles set out in paragraph 1.
5. Each Party shall ensure that its labour laws, regulations, policies and practices shall not be used for trade protectionist purposes.

## Article 15.3. Procedural Guarantees and Public Awareness

1. Each Party shall ensure that the processes and institutions for the operation and enforcement of its labour laws, regulations, policies and practices, including administrative, quasi-judicial, or judicial tribunals, are appropriately accessible by persons with a recognised interest under its law, transparent, fair and equitable.
2. Each Party shall promote public awareness of its labour laws, regulations, policies and practices domestically, and may develop mechanisms as appropriate to inform its public of activities undertaken pursuant to this Chapter in accordance with its laws, regulations, policies and practices.
3. The Parties recognise the desirability of clear, well understood and broadly consulted labour laws, regulations, policies and practices.

## Article 15.4. Institutional Arrangements

Contact Points
1. Each Party shall designate a contact point for labour matters within its labour ministry to facilitate communication between the Parties. Labour Committee
2. The Parties hereby establish a Labour Committee (hereinafter referred to as "the Committee"). The Committee shall include appropriate senior officials or their designates from the labour ministry and other appropriate agencies and ministries of each Party.
3. The Committee shall:
(a) establish an agreed work programme of co-operative activities;
(b) oversee and evaluate the agreed co-operative activities;
(c) serve as a forum for dialogue on labour matters of mutual interest;
(d) review the operation and outcomes of this Chapter; and
(e) take any other action it decides appropriate for the implementation of this Chapter.
4. The Committee shall meet within one year after the date this Agreement enters into force, and thereafter as necessary, to discuss matters of common interest and oversee the implementation of this Chapter, including the co-operative activities set out in Article 15.5. Public Participation
5. The Committee and each Party individually may consult or seek the advice of relevant stakeholders or experts over matters relating to the implementation of this Chapter.

## Article 15.5. Co-operation

1. Recognising the importance of co-operating on trade-related aspects of labour policies in order to achieve the objectives of this Agreement, the Parties commit to establishing close co-operation through co-operative activities in areas of mutual interest as set out in paragraphs 2 and 3.
2. The Parties have established the following indicative list of areas of potential cooperation, which may be pursued at bilateral, regional or multilateral levels. The areas of co-operation may include, but are not limited to:
(a) legislation and practice related to the principles and rights contained in the ILO Declaration;
(b) labour-management relations;
(c) working conditions;
(d) occupational safety and health;

(e) human resources development;
(f) labour statistics;
(g) programmes, methodologies and experience regarding productivity improvement; and
(h) such other matters as the Parties may agree.
3. Co-operative activities may be implemented through a variety of means, which may include, but should not be limited to:
(a) exchanges of delegations, experts, scholars, teachers and instructors, including study visits and other technical exchanges;
(b) exchanges of information on standards, regulations and procedures and best practices to enhance mutual understanding of labour laws and institutions of the Parties;
(c) organisation of joint conferences, seminars, workshops, meetings, training sessions and outreach and education programmes; (d) development of collaborative projects or demonstrations;
(e) joint research projects, studies and reports;(f) co-operation within international fora such as the ILO on labour-related issues; and
(g) other forms of technical exchanges or co-operation to which the Parties may agree.
4. To facilitate co-operation, the Parties shall, as a first step after entry into force of this Agreement, exchange lists of their initial priorities, or areas of interest.
5. Any co-operative activities agreed to pursuant to paragraph 3 shall take into consideration each Party's labour priorities and needs as well as the resources available. Any specific activity or project launched by mutual determination may also be documented in a separate arrangement. (1)
6. Each Party may, as appropriate, invite the participation of its unions and employers or other persons and organisations of its country in identifying potential areas for cooperation, and undertaking co-operative activities.

(1) A separate arrangement may include for example a project or activity undertaken in conjunction with an international organisation or institution.

### Article 15.6. Consultation

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every attempt through dialogue, consultation and cooperation to resolve any issue that might affect its operation. The Parties may seek advice

# Chapter 16. Environment

## Article 16.1. Objectives

The objectives of this Chapter are to:
(a) promote an integrated approach to sustainable development, recognising that the goals of achieving economic growth, social wellbeing and a healthy environment are mutually supportive;
(b) encourage and promote sound environment policies to achieve a high level of environmental protection and the sustainable management of natural and infrastructure resources;
(c) encourage the creation of enabling settings for the promotion of trade and investment opportunities for environmental goods and services, including energy-related technologies that contribute to the protection of the environment;
(d) improve the capacities and capabilities of the Parties to address trade-related environmental issues, including climate change; and
(e) achieve a better understanding of each Party's environment systems, including policies and practices, scientific knowledge and technological developments, and strengthen the broader relationships of the Parties.

## Article 16.2. General Principles

1. Each Party shall strive actively to ensure that its laws and policies provide for and encourage high levels of environmental protection and promote the sustainable management of natural and infrastructure resources.
2. Each Party shall respect the other Party's sovereign right to establish its own policies and national priorities, and to adopt, modify, administer and enforce its own environmental laws, regulations, policies and practices according to its priorities.
3. Each Party shall ensure that its environmental laws, regulations, policies and practices are consistent with and effectively implement its international commitments on environmental protection, including those established by multilateral environment agreements to which it is party.
4. Each Party shall ensure that its environmental laws, regulations, policies and practices shall not be used for trade protectionist purposes.

5. Each Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date this Agreement enters into force.
6. Each Party shall not weaken or reduce the environmental protections afforded in its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws or regulations in a manner affecting trade or investment between the Parties.
7. Each Party shall promote public awareness of its environmental laws, regulations, policies and practices domestically, and ensure that the processes and institutions for the operation and enforcement of its environmental laws and regulations are fair, equitable and transparent.

## Article 16.3. Multilateral Environmental Agreements

1. The Parties recognise the value and importance of international environmental governance and agreements as a response of the international community to global or regional environmental problems, including climate change.
2. The Parties shall strive to enhance the mutual supportiveness between multilateral environmental agreements to which both Parties are party and international trade rules.
3. In the event a Party proposes to take a measure to comply with its obligations under a multilateral environment agreement that may directly and adversely affect the other Party's trade or investment, either Party may seek to engage in dialogue to resolve the matter.

## Article 16.4. Trade Favouring Environment

1. The Parties recognise the importance of trade and investment in environmental goods and services beneficial to the environment in their economies as a contribution to sustainable development.
2. The Parties resolve to make efforts to facilitate and promote trade and investment in environmental goods and services beneficial to the environment, including environmental technologies, renewable energy, and energy-efficient goods and services.

## Article 16.5. Transparency

Further to Article 17.4 (Administrative Proceedings), the Parties, in accordance with their respective domestic laws, agree to develop, introduce and implement any measures aimed at protecting the environment that affect trade between the Parties in a transparent manner, with due notice and public consultation, and with appropriate and timely communication to and consultation with non-state actors, including the private sector.

## Article 166. Review of Environmental Impacts

Each Party shall, as appropriate, share information with the other Party regarding its experiences in assessing and addressing any environmental effects of this Agreement.

## Article 167. Institutional Arrangements

Contact Points
1. Each Party shall designate an office within its ministry responsible for environment related matters that shall serve as the contact point with the other Party to facilitate communication between the Parties and for the implementation of this Chapter, including coordination of environmental co-operation activities pursuant to Article 16.8.
Environment Committee
2. The Parties hereby establish an Environment Committee (hereinafter referred to as "the Committee"). The Committee shall comprise senior officials or their designates from the ministry responsible for environment related matters and other appropriate agencies or ministries of each Party.
3. The Committee shall:
(a) establish an agreed work programme of co-operative activities;
(b) oversee and evaluate the co-operative activities; (c) serve as a forum for dialogue on environmental matters of mutual interest;
(d) review the operation and outcomes of this Chapter; and
(e) take any other action it decides appropriate for the implementation of this Chapter.
4. The Committee shall meet (1) within the first year after this Agreement enters into force, and subsequently thereafter as mutually decided by the Parties.
5. After three years, or as otherwise agreed, the Committee shall review the operation and outcomes of this Chapter, and

may report the result of this review to the Joint Commission. This report may also be made public.
Stakeholder Consultation
6. The Committee may consult or seek the advice of relevant stakeholders or experts over matters relating to the implementation of this Chapter.
7. Each Party shall provide an opportunity for its domestic stakeholders to submit views or advice to it on matters relating to the operation of this Chapter, and may develop mechanisms to inform its public of activities undertaken pursuant to this Agreement in accordance with its laws, regulations, policies and practices.
8. The Committee shall prepare a report on its work at the end of each Committee meeting. The Committee's report may be made public.

(1) The Committee may meet via teleconference, via video-conference or through any other means mutually determined by the Parties. Should the Parties decide to meet in person, the venue for meetings shall alternate between the Parties.

### Article 16.8. Co-operation

1. The Parties recognise the importance of co-operation on trade-related environmental matters in order to support the effective implementation of this Agreement and promote the achievement of the objectives of this Chapter.
2. Taking account of their national priorities and available resources, the Parties commit to expanding their co-operative relationship in bilateral, regional and multilateral fora on environmental matters, including, where relevant, through the interaction of government and non-government organisations (including business, industry, education and research institutions).
3. The Parties also commit to co-operate on mutually agreed environmental issues as set out in Annex 16-A.

## Chapter 17. Transparency

### Article 17.1. Definitions

For the purposes of this Chapter: administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct, but does not include:
(a) a determination or ruling made in administrative or quasi-judicial proceedings that applies to a particular person, good, or service of the other Party in a specific case; or
(b) a ruling that adjudicates with respect to a particular act or practice.

### Article 17.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are published promptly or otherwise made available (1) in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. When possible, each Party shall:
(a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
(b) provide, where appropriate, interested persons and the other Party with a reasonable opportunity to comment on any such proposed measure.

(1) Including through the internet or in print form.

### Article 17.3. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals, or procedures for the purposes of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings are provided with the right to:
(a) a reasonable opportunity to support or defend their respective positions; and
(b) a decision based on the evidence and submissions of record or, where required by its domestic laws, the record

compiled by the administrative authority.
3. Each Party shall ensure, subject to appeal or further review as provided in its domestic laws, that decisions referred to in paragraph 1 shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue. 1 Including through the internet or in print form.

### Article 17.4. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures affecting matters covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 17.2.1 to particular persons, goods, or services of the other Party in specific cases, that:
(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in question;
(b) persons of the other Party that are directly affected by a proceeding are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest, permit; and
(c) its procedures are in accordance with its domestic laws.

### Article 175. Notification and Provision of Information

1. Where a Party considers that any actual or proposed measure may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, that Party shall notify the other Party, to the extent possible, of the actual or proposed measure.
2. On the request of the other Party, the requested Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure.
3. Any notification, request, information or response provided under this Article shall be conveyed to the other Party through its Contact Points designated in accordance with Article 18.4 (Contact Points).
4. The notification referred to in paragraph 1 shall be regarded as having been conveyed in accordance with paragraph 3 when the actual or proposed measure has been appropriately notified to the WTO.
5. Any notification, information or response provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

## Chapter 18. Institutional Provisions

### Article 18.1. Establishment of the Joint Commission

The Parties hereby establish a Joint Commission which may meet at the level of Ministers or their respective designees, as mutually agreed by the Parties. Each Party shall be responsible for the composition of its delegation.

### Article 18.2. Functions of the Joint Commission

1. The Joint Commission shall:
(a) review and assess the implementation and operation of this Agreement;
(b) supervise the work of all committees, working groups and other bodies established under this Agreement; and
(c) consider any other matter that may affect the operation of this Agreement.
2. The Joint Commission may:
(a) establish any ad hoc or standing committee, working group, or other body;
(b) refer matters to, or consider matters raised by, any ad hoc or standing committee, working group, or other body established under this Agreement;
(c) consider any proposals for amendments or modifications to the rights and obligations under this Agreement;
(d) as appropriate, issue interpretations of the provisions of this Agreement;
(e) further the implementation of this Agreement through implementing arrangements under the Agreement;
(f) establish its own rules of procedure as appropriate;
(g) explore ways to enhance further trade and investment between the Parties;
(h) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement; (i) seek the advice of non-governmental persons or groups; and
(j) take such other action in the exercise of its functions as the Parties may agree.

### Article 18.3. Meetings of the Joint Commission

1. The Joint Commission shall convene within one year of entry into force of this Agreement and then annually, or as otherwise mutually agreed by the Parties.
2. Unless the Parties otherwise agree, meetings of the Joint Commission shall be held alternately in the territory of each Party and shall be chaired successively by each Party. The Party chairing a meeting of the Joint Commission shall provide any necessary administrative support for such meeting.
3. All decisions of the Joint Commission and of any ad hoc or standing committee, working group, and other body established under this Agreement shall be taken by mutual agreement.

### Article 18.4. Contact Points

1. Each Party shall designate a Contact Point or Points, and provide details of such Contact Points to the other Party, to facilitate communications between the Parties on any matter covered by this Agreement.
2. The Parties shall notify each other promptly of any amendments to their Contact Points.
3. On the request of the other Party, a Party's Contact Point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

## Chapter 19. Dispute Settlement

### Article 19.1. Objectives

1. The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and the settlement of disputes arising under this Agreement.
2. The Parties shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of this Agreement.

### Article 19.2. Definitions

For the purposes of this Chapter: arbitration panel means an arbitration panel established under Article 19.8; complaining Party means the Party that requests consultations under Article 19.6; and responding Party means the Party to which the request for consultations is made under Article 19.6.

### Article 19.3. Scope

Except as otherwise provided in this Agreement, this Chapter shall apply:
(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; or
(b) wherever a Party considers that:
(i) a measure of the other Party is not in conformity with its obligations under this Agreement;
(ii) the other Party has otherwise failed to carry out its obligations under this Agreement; or
(iii) any benefit it could reasonably have expected to accrue to it under Chapter 2 (Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Procedures and Trade Facilitation), 8 (Cross-Border Trade in Services), or 13 (Government Procurement) is being nullified or impaired as a result of the application of a measure, whether such measure is in conformity or not with this Agreement.

### Article 19.4. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute. 2. Once the complaining Party has requested the establishment of, or referred a matter to, an arbitration panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

### Article 19.5. Rules of Interpretation

1. For the avoidance of doubt, the Parties agree that the provisions of this Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law, including as reflected in the Vienna Convention on the Law of Treaties. 2. The findings and rulings of the arbitration panel cannot add to or diminish the rights and

obligations provided in this Agreement.

## Article 19.6. Consultations

1. Each Party shall accord adequate opportunity for consultations with respect to any matter referred to in Article 19.3. Any differences shall, as far as possible, be settled by consultation between the Parties.
2. Either Party may request consultations with the other Party with respect to any matter described in Article 19.3 by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.
3. If a request for consultations is made, the responding Party shall reply to the request promptly in writing and shall enter into consultations in good faith with a view to reaching a mutually satisfactory solution within a period of no more than:
(a) 15 days after the date of receipt of the request for urgent matters, including those concerning perishable goods; or (b) 30 days after the date of receipt of the request for all other matters.
4. Each Party shall:
(a) provide sufficient information in the consultations to enable a full examination of the matter subject to consultations, including how the measure at issue might affect the operation or application of this Agreement; and
(b) treat any information exchanged in the course of consultations which is designated by the other Party as confidential or proprietary in nature, on the same basis as the Party providing the information.
5. The consultations shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

## Article 19.7. Goods Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time.
2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

## Article 19.8. Establishment of an Arbitration Panel

1. The complaining Party may request, by means of a written notification addressed to the responding Party, the establishment of an arbitration panel if the consultations fail to settle a dispute within:
(a) 30 days of the date of receipt of the request for consultations regarding urgent matters, including those concerning perishable goods; or
(b) 60 days of the date of receipt of the request for consultations regarding all other matters.
2. The Parties may agree during the consultations to vary the periods set out in paragraph 1.
3. The request to establish an arbitration panel shall identify:
(a) the specific measure or measures at issue;
(b) the legal basis of the complaint sufficient to present the problem clearly; and
(c) the factual basis for the complaint.
4. Unless the Parties otherwise agree, the Parties shall apply the following procedures in selecting an arbitration panel: (a) the arbitration panel shall consist of three members;
(b) within 30 days of receipt of the request to establish an arbitration panel, each Party shall appoint one arbitrator, who may be its national, and provide to the other Party a list of up to three nominees for appointment to serve as the third arbitrator who shall be the chair of the arbitration panel;
(c) the Parties shall appoint by common agreement the third arbitrator within 45 days of the receipt of the request to establish an arbitration panel, taking into account the nominees proposed pursuant to subparagraph (b);
(d) the chair shall be a national of a non-Party who shall not have his or her usual place of residence in the territory of either of the Parties; and
(e) if any of the arbitrators have not been appointed within 60 days of the date of receipt of the request to establish an arbitration panel, any of the remaining arbitrators shall be appointed on request of either Party by random drawing from the lists of nominees for appointment provided under subparagraph (b).
5. All arbitrators shall:
(a) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
(b) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;
(c) be independent of, and not be affiliated with or take instructions from, either Party;
(d) not have dealt with the matter under dispute in any capacity; and
(e) comply with the code of conduct for arbitrators established under the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement.

6. The date of establishment of an arbitration panel shall be the date the last arbitrator is appointed in accordance with paragraph 4.
7. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended during the appointment of the successor arbitrator.
8. Where an arbitration panel is established under Articles 19.13 through 19.16, it shall, where possible, have the same arbitrators as the original arbitration panel. Where this is not possible, any replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator. The arbitration panel may comprise only the chair of the original arbitration panel if the Parties so agree.

## Article 19.9. Functions of Arbitration Panels

1. An arbitration panel shall make:
(a) an objective assessment of the matter before it, including an objective assessment of:
(i) the facts of the case;
(ii) the applicability of the relevant provisions of this Agreement cited by the Parties; and
(iii) the conformity with this Agreement; and
(b) such other findings and rulings necessary for the resolution of the dispute as it thinks fit.
2. The findings and rulings of the arbitration panel shall be final and binding on the Parties.
3. Unless the Parties otherwise agree within 20 days of the date of the receipt of the request for the establishment of an arbitration panel, the arbitration panel's terms of reference shall be: "to examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referenced in the request for the establishment of an arbitration panel, to make findings, rulings, and, if applicable, recommendations as provided in Articles 19.11.2 and 19.11.3 together with the reasons therefore for the resolution of the dispute, and to provide the written reports referred to in Articles 19.11.2 and 19.11.7."
4. Unless the Parties otherwise agree, the arbitration panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

## Article 19.10. Rules of Procedure

1. Unless the Parties otherwise agree, the arbitration panel shall follow the model rules of procedure set out in Annex 19-A.
2. The arbitration panel may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with this Chapter and Annex 19-A.
3. The arbitration panel shall make its decisions by consensus, provided that where an arbitration panel is unable to reach consensus, the decisions may be made by majority vote. The arbitration panel shall not disclose which arbitrators are associated with majority or minority opinions.
4. On the request of a Party, or on its own initiative, the arbitration panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree. The Parties shall have an opportunity to comment on any information or advice so obtained.

## Article 19.11. Reports of the Arbitration Panel

1. The reports of the arbitration panel shall be drafted without the presence of the Parties.
2. Unless the Parties otherwise agree, the arbitration panel shall provide to the Parties its initial report within 90 days of the date of establishment of an arbitration panel or in cases of urgency including those concerning perishable goods, within 45 days of the date of establishment of the arbitration panel.
The initial report shall contain:
(a) findings of fact;
(b) the ruling of the arbitration panel as to whether:
(i) the measure at issue is inconsistent with the obligations of this Agreement;
(ii) a Party has otherwise failed to carry out its obligations under this Agreement; or
(iii) the measure at issue is causing nullification or impairment in the sense of Article 19.3(b)(iii);
(c) the panel's ruling on any other issue of concern that the Parties have jointly requested that the arbitration panel address; and (d) the reasons for its findings and rulings.
3. The arbitration panel may, on the joint request of the Parties, make recommendations for the resolution of the dispute.
4. The arbitration panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and any information or technical advice it has obtained in accordance with Article 19.10.4.
5. In exceptional cases, if the arbitration panel considers it cannot provide its initial report within the timeframe specified

under paragraph 2, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.
6. Each Party may submit written comments to the arbitration panel on its initial report within 14 days of the presentation of the report, or within such other period as the Parties may agree. After considering any written comments by the Parties on the initial report, the arbitration panel may modify its report and make any further examination it considers appropriate.
7. The arbitration panel shall provide a final report to the Parties within 30 days of presentation of the initial report, unless the Parties otherwise agree.
8. If in its final report, the arbitration panel finds that a Party's measure does not conform with this Agreement or is causing nullification or impairment in the sense of Article 19.3, it shall include in its findings and rulings a requirement to remove the non-conformity or address the nullification or impairment.
9. The Parties shall release the final report of the arbitration panel as a public document within 15 days of the date of its presentation to the Parties, subject to the protection of confidential information.

## Article 19.12. Suspension and Termination of Proceedings

1. The Parties may agree that the arbitration panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended arbitration panel shall be resumed upon the request of either Party. If the work of the arbitration panel has been continuously suspended for more than 12 months, the authority for establishment of the arbitration panel shall lapse unless the Parties otherwise agree.
2. The Parties may agree to terminate the proceedings of an arbitration panel in the event that a mutually satisfactory solution to the dispute has been found. In such event the Parties shall jointly notify the chair of the arbitration panel.
3. Before the arbitration panel provides its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

## Article 19.13. Implementation

1. Where the arbitration panel has made findings and rulings in accordance with Article 19.11.8, the responding Party shall immediately comply with the findings and rulings of the arbitration panel. Where it is not practicable to comply immediately, the responding Party shall comply with the findings and rulings within a reasonable period of time. Such reasonable period of time shall, whenever possible, be mutually agreed by the Parties.
2. Where the Parties are unable to agree on the reasonable period of time within 45 days of the presentation of the final report, either Party may refer the matter to the original arbitration panel, in accordance with Article 19.8.8, which shall determine the reasonable period of time following consultation with the Parties.
3. The arbitration panel shall provide its report to the Parties within 45 days of the date on which the arbitration panel is established, in accordance with Article 19.8.8, to consider the matter referred to in paragraph 2.
The report shall contain the ruling of the arbitration panel as to the reasonable period of time and the reasons for its ruling. Prior to making this ruling, the arbitration panel shall seek written submissions from the Parties, and if requested by either Party, hold a meeting with the Parties where each Party will be given an opportunity to present its submission.

## Article 19.14. Compliance Within Reasonable Period of Time

1. The responding Party shall notify the complaining Party in writing before the end of the reasonable period of time of the measures that it has taken to comply with the arbitration panel's findings and rulings, or that it does not intend to comply.
2. Where there is disagreement as to the existence, or consistency with this Agreement, of measures taken within a reasonable period of time to comply with the findings and rulings of the arbitration panel, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitration panel, in accordance with Article 19.8.8.
3. The arbitration panel shall provide its report to the Parties within 45 days of the date on which the arbitration panel is established to consider the matter referred to in paragraph 2. When the arbitration panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

## Article 19.15. Compensation and Suspension of Benefits In Case of Non-compliance

1. If the responding Party, before the expiry of the reasonable period of time, fails to notify any measure taken to comply with the arbitration panel's findings and rulings, or notifies in writing that it does not intend to comply with the arbitration panel's findings and rulings, or if the arbitration panel established under Article 19.14.2 rules that no measure taken to

comply with its findings and rulings exists, or that the measure notified under Article 19.14.1 is inconsistent with that Party's obligations under this Agreement, the responding Party shall, if so requested, enter into negotiations with the complaining Party within 10 days of the receipt of such request with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.
2. If no agreement on compensation is reached within 30 days of the receipt of the request under paragraph 1, the complaining Party may at any time thereafter provide written notification to the responding Party that it intends to suspend the application to the responding Party of benefits of equivalent effect. The notification shall specify the level of benefits that the complaining Party intends to suspend. The complaining Party shall have the right to begin suspending those benefits 30 days after the receipt of such notification. However, the right to suspend benefits arising under this paragraph shall not be exercised if an arbitration panel has been established under paragraph 4 and has not yet provided its report.
3. In considering what benefits to suspend pursuant to paragraph 2:
(a) the complaining Party shall first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitration panel has found to be not in conformity with this Agreement or to have caused nullification or impairment; and
(b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector or sectors. The communication in which it announces such a decision shall indicate the reasons on which the decision is based.
4. Within 30 days of the receipt of the notification made under paragraph 2, if the responding Party objects to the level of suspension proposed, the responding Party may, by means of written notification addressed to the complaining Party, request the establishment of an arbitration panel to consider whether the benefits intended to be suspended by the complaining Party are of equivalent effect.
5. Except as otherwise provided in this Article, such matters shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitration panel established in accordance with Article 19.8. Where an arbitration panel is reconvened pursuant to this paragraph, it shall reconvene within 15 days of the date of such request. An arbitration panel established under this Article shall provide a single final report containing its findings and rulings on the matter to the Parties within 45 days of the date that the arbitration panel is established. If the arbitration panel finds that the level of benefits intended to be suspended by the complaining Party is not of equivalent effect, the complaining Party shall modify the level of suspension of benefits accordingly.
6. Where the right to suspend concessions has been exercised under this Article, if the responding Party considers that the level of benefits suspended by the complaining Party is not of equivalent effect, it may by means of written notification addressed to the complaining Party request the establishment of an arbitration panel to consider the matter. The procedures in paragraph 5 shall apply. The complaining Party may continue to suspend benefits while the arbitration panel considers the matter.
7. Compensation and suspension of benefits shall be temporary. Neither compensation nor the suspension of benefits shall be preferred to full compliance with the findings and rulings of the arbitration panel. Compensation and suspension of benefits shall only be applied by the complaining Party until the measure found to be inconsistent with the obligations of this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or the Parties have otherwise reached agreement on a resolution of the dispute.

## Article 19.16. Review

1. Where the Parties disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in Article 19.13.1, such dispute shall be decided by recourse to an arbitration panel requested for this purpose by means of written notification by either Party.
2. Such request may only be made after the earlier of:
(a) the expiry of the reasonable period of time; or
(b) the date of receipt of a notification by the responding Party to the complaining Party that it has complied with its obligations in Article 19.13.
3. Except as otherwise provided in this Article, such matter shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitration panel established in accordance with Article 19.8.
4. Where an arbitration panel is reconvened pursuant to this paragraph, it shall reconvene within 15 days of the date of such request. The arbitration panel shall provide its initial report to the Parties within 60 days of the date on which it is established, and its final report 15 days thereafter. When the arbitration panel considers that it cannot provide its report within this timeframe it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. Any delay shall not exceed a further period of 15 days unless the Parties otherwise agree.
5. If the arbitration panel finds that the responding Party has complied with its obligations in Article 19.13, the complaining Party shall promptly reinstate any benefits it has suspended under the Article 19.15.

### Article 19.17. Expenses

Unless the arbitration panel decides otherwise because of the particular circumstances of the case, each Party shall bear the cost of its appointed arbitrator and its own expenses. The cost of the chair of the arbitration panel and other expenses associated with the conduct of arbitration panel proceedings shall be borne by the Parties in equal shares.

# Chapter 20. General Provisions and Exceptions

### Article 20.1. General Exceptions

1. For the purposes of Chapters 2 (Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures), 6 (Technical Barriers to Trade), 11 (Intellectual Property Rights) and 14 (Agriculture, Forestry and Fisheries Co-operation), Article XX of GATT 1994, including its interpretive notes, is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
2. For the purposes of Chapters 8 (Cross-Border Trade in Services), 9 (Temporary Entry of Business Persons), and 10 (Investment), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures to protect human, animal or plant life or health.
3. For the purposes of this Agreement, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods or services and investment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national works or specific sites of historical or archaeological value, or to support creative arts (1) of national value which is customarily practiced.

(1) "Creative arts" include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts; and the study and technical development of these art forms and activities.

### Article 20.2. Security Exceptions

1. Nothing in this Agreement shall be construed:
(a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;
(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
(i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purposes of supplying or provisioning a military establishment,
(ii) taken in time of war or other emergency in international relations; or
(iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. The Joint Commission shall be informed, to the fullest extent possible, of measures taken under paragraphs 1(b) and (c) and of their termination.

### Article 20.3. Measures to Safeguard the Balance of Payments

1. When a Party is in serious balance of payments and external financial difficulties or under threat thereof, or when in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation on monetary policy or exchange rate policy in either Party, it may:
(a) in the case of trade in goods, in accordance with GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions of GATT 1994, adopt restrictive import measures;
(b) in the case of services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments; or

(c) in the case of investments, adopt or maintain restrictions with regard to payments relating to the transfer of proceeds from investment.
2. Restrictions adopted or maintained under paragraph 1(b) or (c) shall:
(a) be consistent with the Articles of Agreement of the International Monetary Fund;
(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
(c) not exceed those necessary to deal with the circumstances described in paragraph 1;
(d) be temporary, and be phased out progressively as the situation specified in paragraph 1 improves;
(e) not exceed a period of one year; however, if extremely exceptional circumstances arise such that a Party seeks to extend such measures, the Party will co-ordinate in advance with the other Party concerning the implementation of any proposed extension; and
(f) be applied on a national treatment basis and such that the other Party is treated no less favorably than any non-Party.
3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular sector.
4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be promptly notified to the other Party.
5. The Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations in relation to the measures or any extension thereof on the request of the other Party.

## Article 20.4. Prudential Measures

Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking 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 to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding a Party's commitments or obligations under this Agreement.

## Article 20.5. Taxation Exception

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.
2. This Agreement shall grant rights or impose obligations with respect to taxation measures in accordance with subparagraphs (a) through (d):
(a) Article 2.3 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994;
(b) Article 2.12 (Export Duties, Taxes, or Other Charges) shall apply to taxation measures;
(c) Article 8.4 (National Treatment) shall apply to taxation measures on income, on capital gains, on the taxable capital of corporations or on the value of an investment or property (2) (but not on the transfer of that investment or property) that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; (3)
(d) Articles 8.4 (National Treatment), 8.5 (Most-Favoured-Nation Treatment), 10.5 (National Treatment), and 10.6 (Most-Favoured-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, on the taxable capital of corporations, on the value of an investment or property4 (but not on the transfer of that investment or property), or taxes on estates, inheritances, gifts and generation-skipping transfers.
3. Notwithstanding paragraph 2, nothing in the Articles referred to in paragraph 2 shall apply to:
(a) any most-favoured-nation obligation with respect to an advantage accorded by a Party in accordance with a tax convention;
(b) a non-conforming provision of any existing taxation measure;
(c) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
(d) an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;
(e) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence or incorporation, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties; (5) or
(f) a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

4. Without prejudice to the rights and obligations of the Parties under paragraphs 2(a) and (b), and Articles 10.11.2 through 10.11.4 shall apply to taxation measures.
5. Article 10.9 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 10.9 (Expropriation and Compensation) as the basis for a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.9 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 10.20 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.20 (Submission of a Claim to Arbitration).
6. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention.
7. For the purposes of this Article, "tax convention" means a convention for the avoidance of double taxation or other international taxation agreement in force between the Parties.
8. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.
9. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.
10. For the purposes of this Article, taxation measures shall not include any:
(a) customs duties as defined in Article 1.5 (Definitions);
(b) any measures listed in exceptions (b) and (c) of the definition of customs duties in Article 1.5 (Definitions); or (c) import duties.

(2) This is without prejudice as to the methodology used to determine the value of such investment or property under Parties' respective domestic laws.

(3) For greater certainty, this subparagraph provides that a Party's tax deduction and tax credit rules in respect of the taxes referred to in this subparagraph, that relate to the expenses incurred for purchasing or consuming services covered in this subparagraph from service suppliers, shall not discriminate between a national service supplier and the service suppliers of the other Party.

(4) This is without prejudice as to the methodology used to determine the value of such investment or property under Parties' respective domestic laws.

(5) The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

## Article 20.6. Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.
2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 19 (Dispute Settlement) shall otherwise apply to this Article. An arbitration panel established under Article 19.8 (Establishment of an Arbitration Panel) may be requested by Korea to determine only whether any measure referred to in paragraph 1 is inconsistent with its rights under this Agreement.

## Article 20.7. Disclosure of Information

Nothing in this Agreement shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:
(a) be contrary to the public interest as determined by its domestic laws;
(b) be contrary to any of its domestic laws, including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
(c) impede law enforcement; or

(d) prejudice legitimate commercial interests of particular enterprises, public or private.

### Article 20.8. Confidentiality

Where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information. The information shall be used only for the purposes specified by the Party providing the information. It shall not be disclosed without the specific written permission of the Party providing the information, except to the extent that the disclosure or use is necessary to comply with the domestic legal requirements of the receiving Party, including for the purposes of judicial proceedings.

## Chapter 21. Final Provisions

### Article 21.1. Annexes, Appendices, and Footnotes

The Annexes, Appendices, and footnotes to this Agreement shall constitute an integral part of this Agreement.

### Article 21.2. Entry Into Force

This Agreement shall enter into force 30 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, or on such other date as the Parties may agree in writing.

### Article 21.3. Termination

1. This Agreement shall terminate 180 days after the date that either Party notifies the other Party in writing that it wishes to terminate the Agreement.
2. Within 30 days of the delivery of a notification under paragraph 1, either Party may make a written request to the other Party to enter into consultations regarding whether any provision of this Agreement should terminate on a date later than that provided under paragraph 1. The consultations shall begin no later than 30 days after the Party delivers its request. If no agreement is reached within 180 days of the delivery of notification under paragraph 1, this Agreement shall terminate.

### Article 21.4. Amendments

1. The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, on such date as the Parties may agree.
2. Unless otherwise provided in this Agreement, if any provision of the WTO Agreement or any other international agreement to which both Parties are party that is incorporated into or referred to in this Agreement is amended, the Parties shall consult on whether to amend this Agreement.

### Article 21.5. Accession

This Agreement is open to accession or association, on terms to be agreed between the Parties, by any member of the WTO, or by any other State or separate customs territory.

### Article 21.6. Authentic Texts

The English and Korean texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement. DONE in duplicate at _____on this _____ day of _____20 in the English and Korean languages.
For the Government of New Zealand: For the Government of the Republic of Korea: