NEW ZEALAND – HONG KONG, CHINA CLOSER ECONOMIC PARTNERSHIP AGREEMENT

The Governments of New Zealand and the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong, China"), hereinafter referred to collectively as "the Parties":
Conscious of their longstanding friendship and growing economic, trade and investment relationship; Believing that open, transparent and competitive markets are the key drivers of economic efficiency, innovation, wealth creation and consumer welfare;
Considering that electronic commerce, information technologies and knowledge-based industries are supporting the rapid integration of global economic activity and development and expansion of their economies;
Recognising the importance of ongoing liberalisation of trade in goods and services at the multilateral level; Aware of the growing importance of trade and investment for the economies of the Asia-Pacific region; **Confirming** their rights, obligations and undertakings under the WTO Agreement and other multilateral, regional and bilateral agreements and arrangements;
Confirming their support for the efforts of all APEC economies to meet the APEC goal of free and open trade and investment;
Recognising their commitment to securing trade liberalisation, the removal of barriers to trade in goods and services and investment flows and an outward-looking approach to trade and investment;
Mindful that trade remedies should not be used in an arbitrary or protectionist manner and should be carried out in accordance with the principle of fairness and accepted WTO standard practice;
Confirming their shared commitment to trade facilitation through removing or reducing, inter alia, technical, sanitary and phytosanitary barriers to, and reducing costs of, the movement of goods between Hong Kong, China and New Zealand;
Desiring to promote regulatory cooperation and to encourage greater international alignment of standards and regulations;
Recognising their right to regulate, and to introduce new regulations on the supply of services and investment in order to meet government policy objectives;
Mindful that fostering innovation and the promotion and protection of intellectual property rights will encourage further trade, investment and cooperation between the Parties;
Conscious that a clearly established and transparent framework of rules for trade in goods and services and for investment will provide confidence and certainty to their businesses to take investment and planning decisions, lead to a more effective use of resources and increase capacity to contribute to economic development and prosperity through international exchanges and the promotion of closer links with other economies, especially in the APEC region;
Mindful that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development and that closer economic partnership can play an important role in promoting sustainable development;
Considering the benefits of enhancing communication and cooperation on labour and environmental matters of mutual interest through bilateral agreements between them;
Recognising the need for good corporate governance and a predictable, transparent and consistent business environment, so that businesses can conduct transactions freely, use resources efficiently and obtain rewards for innovation;
Recognising that liberalised trade in goods and services and strengthening their economic partnership will assist the expansion of trade and investment flows, raise the living standards of their people and create new employment opportunities and improved conditions in their respective economies;
Have agreed as follows:

Chapter 1. Initial Provisions

Article 1. Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of GATT 1994 and Article V of GATS, hereby establish a free trade area.

Article 2. Objectives

The objectives of this Agreement, as elaborated more specifically through its principles and rules, are to:
(a) strengthen the Parties' bilateral relationship through the establishment of a mutually beneficial closer economic partnership;
(b) liberalise, facilitate and expand bilateral trade in goods and services, including through the removal of trade barriers and the disciplined use of trade remedy measures;
(c) ensure a liberal, open bilateral environment to expand investment;
(d) promote conditions for an open and competitive market in the free trade area for the purposes of enhancing trade and investment;
(e) ensure measures affecting trade and investment between the two economies are transparent, fair and equitable;
(f) promote effective protection and enforcement of intellectual property rights in each Party's Area;
(g) provide an effective mechanism to prevent and resolve trade disputes;
(h) support the wider liberalisation process in APEC and in particular the efforts of all APEC economies to meet the APEC goal of free and open trade and investment; and
(i) support the WTO in its efforts to create a predictable, freer and more open global trading environment.

Chapter 2. General Definitions and Interpretations

Article 1. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:
(a) Agreement means the New Zealand -Hong Kong, China Closer Economic Partnership Agreement;
(b) APEC means Asia-Pacific Economic Cooperation;
(c) Area in respect of:
(i) New Zealand means 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; and
(ii) Hong Kong, China means the Hong Kong Special Administrative Region of the People's Republic of China, together with the Shenzhen Bay Port Hong Kong Port Area;
(d) customs duty includes any duty or charges of any kind imposed in connection with the importation of a good, and any surtaxes or surcharges imposed in connection with such importation, but does not include:
(i) charges equivalent to an internal tax imposed consistently with GATT 1994, including excise duties and goods and services tax;
(ii) any anti-dumping or countervailing duty applied consistently with Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and the WTO Agreement on Subsidies and Countervailing Measures; and
(iii) fees or other charges that:
(1) are limited in amount to the approximate cost of services rendered; and
(2) do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;
(e) Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;
(f) days means calendar days;
(g) GATS means the General Agreement on Trade in Services, which is part of the WTO Agreement;
(h) GATT 1994 means the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;
(i) Harmonized System, HS Code, or HS means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Commodity Description and Coding System, signed at Brussels on 14 June 1983, as amended;
(j) Joint Commission means the Joint Commission established under Article 1 (Establishment of the Joint Commission) of Chapter 17 (Administrative and Institutional Provisions);
(k) measure includes any law, regulation, procedure, requirement or practice;
(l) WTO means the World Trade Organization;
(m) WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994; and
(n) WTO Dispute Settlement Understanding means the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement.

Article 2. Interpretations

In this Agreement, unless the context otherwise requires:
(a) in the case of Hong Kong, China;
(i) where an expression is qualified by the term "national", such expression shall be interpreted as pertaining to Hong Kong, China; and
(ii) the term "international agreement" shall include an agreement or arrangement entered into by Hong Kong, China with other parts of the People's Republic of China. For the purposes of Chapter 13 (Trade in Services), Hong Kong, China shall ensure that such agreements or arrangements which are referred to in Paragraph 4 of Article 12 (Most Favoured Nation Treatment) are published or otherwise made available through the internet or in print form to New Zealand promptly after these agreements or arrangements have come into force or effect; and
(b) where anything under this Agreement is to be done within a number of days after, before or of a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

Chapter 3. Trade In Goods

Article 1. Scope

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

Article 2. National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994. To this end, Article III of GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis.

Article 3. Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, neither Party may 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, and subject to each Party's Tariff Schedule in Annex I, as at the date of entry into force of this Agreement each Party shall eliminate its customs duties on originating goods of the other Party.

Article 4. Fees and Charges Connected with Importation and Exportation

1. The Parties agree that fees, charges, formalities and requirements imposed in connection with the importation and exportation of goods shall be consistent with their obligations under GATT 1994.
2. Each Party shall make available through the internet or a comparable computer-based telecommunications network details of the fees and charges it imposes in connection with importation and exportation.
3. Neither Party may require that any documentation supplied in connection with the importation of any good of the other Party be endorsed, certified or otherwise sighted or approved by the importing Party's overseas representatives, or persons or entities with authority to act on the importing Party's behalf, nor impose any related fees or charges.

Article 5. Non-tariff Measures

1. Neither Party shall adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the Area of the other Party except in accordance with its WTO rights and obligations or in accordance with other provisions of this Agreement.
2. Each Party shall ensure its non-tariff measures permitted in Paragraph 1 are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

Article 6. Consumer Protection

1. The Parties affirm their commitment to provide protection in their Areas from deceptive practices or the use of false or misleading descriptions in trade.
2. Each Party shall provide the legal means for its authorities and, to the extent permitted by its domestic law, interested parties to prevent the sale of products within the Party's Area which are labelled in a manner which is false, deceptive or misleading or is likely to create an erroneous impression about the character, composition, quality or origin, including country of origin, of the product. In addition, each Party shall provide the legal means for its authorities, to the extent permitted by its domestic law, and its interested parties to claim compensation for any loss suffered from such sale.

Article 7. Committee on Trade In Goods

1. The Parties hereby establish a Committee on Trade in Goods ("the Committee"), comprising representatives of each Party.
2. The Committee shall meet at the request of either Party or the Joint Commission to consider any matter arising under this Chapter, Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures and Cooperation), or Chapter 6 (Trade Remedies). Meetings of the Committee may be conducted in person or via teleconference, video-conference or any other means mutually determined by the Parties.
3. The Committee's functions shall include:
(a) reviewing implementation of the Chapters referred to in Paragraph 2;
(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures other than measures covered under Chapters 7 (Sanitary and Phytosanitary Measures) and 8 (Technical Barriers to Trade); and
(c) referring matters considered by the Committee to the Joint Commission where the Committee considers this appropriate.

Article 8. Contact Points and Consultations

1. Each Party shall designate one or more contact points to facilitate communication between the Parties on any matter relating to this Chapter. The Parties shall notify each other promptly of any amendments to the details of their contact points.
2. Where either Party considers that any actual or proposed measure of the other Party may materially affect trade in goods between the Parties, that Party may through the contact point of the other Party request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure.
3. The requested Party shall respond promptly to any such request for information.
4. Any consultations requested under Paragraph 2 shall be conducted through the relevant contact points and shall take place within 30 days of the receipt of the request, unless the Parties mutually determine otherwise.
5. Any action taken pursuant to this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Chapter 4. Rules of Origin

Article 1. Definitions

For the purposes of this Chapter:
(a) aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, crocodiles, alligators, turtles, amphibians, other aquatic invertebrates and aquatic plants from seedstock 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;
(b) CIF or CIF value means the value of the good imported inclusive of the cost of insurance and freight up to the port or place of entry in the importing Party;
(c) FOB or FOB value means the value of the good free on board inclusive of the cost of transport to the port or site of final shipment abroad;
(d) generally accepted accounting principles means the accounting standards of a Party with respect to:
(i) the recording of revenues, expenses, costs, assets and liabilities;
(ii) the disclosure of information; and
(iii) the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;
(e) good means any merchandise, product, article or material;
(f) material means any matter or substance used or consumed in the production or transformation of a good or physically incorporated into a good subjected to a process in the production of another good;
(g) non-originating good or non-originating material means a good or material which does not qualify as originating under this Chapter;
(h) originating good or originating material means a good or material which qualifies as originating in accordance with Article 2;
(i) producer means a person who grows, cultivates, mines, raises, harvests, fishes, traps, hunts, farms, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles a good; and
(j) production means methods of obtaining goods, including growing, cultivating, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, farming, trapping, hunting, manufacturing, processing or assembling a

good.

Article 2. Originating Goods

For the purposes of this Chapter, a good shall qualify as an originating good if it:
(a) is wholly obtained or produced in the Area of a Party as provided for in Article 4;
(b) is produced entirely in the Area of one or both Parties exclusively from originating materials from one or both Parties; or
(c) is produced in the Area of one or both Parties using non-originating materials that conform to a change in tariff classification requirement, a regional value content requirement (as provided for in Article 5) or other requirements as specified in Annex I; and the good meets the other applicable provisions of this Chapter.

Article 3. Preferential Tariff Treatment

Preferential tariff treatment provided for in this Agreement shall be applied to goods that qualify as originating goods in accordance with Article 2.

Article 4. Wholly Obtained or Produced Goods

For the purposes of subparagraph (a) of Article 2, the following goods shall be considered as wholly obtained or produced:
(a) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in the Area of a Party;
(b) live animals born and raised in the Area of a Party;
(c) goods obtained from live animals in the Area of a Party;
(d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in the Area of a Party;
(e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or subsoil, in the Area of a Party;
(f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered in a Party and entitled to fly the flag of that Party in accordance with the United Nations Convention on the Law of the Sea 1982 ("UNCLOS");
(g) goods processed and/or produced on board any factory ship registered in a Party and entitled to fly the flag of that Party in accordance with UNCLOS, from the goods referred to in subparagraph (f);
(h) goods extracted or taken by a Party, or a person of a Party, from the seabed or subsoil beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction, under exploitation rights granted in accordance with international law;
(i) goods which are:
(i) waste and scrap derived from production or consumption in the Area of a Party provided that such goods are fit only for the recovery of raw materials; or
(ii) used goods collected in the Area of a Party provided that such goods are fit only for the recovery of raw materials; and
(j) goods obtained or produced in the Area of a Party solely from products referred to in subparagraphs (a) to (i) or from their derivatives.

Article 5. Regional Value Content

For the purposes of this Chapter, the formula for calculating the regional value content ("RVC") shall be either:
(a) build-up formula RVC = [(material cost + labour cost + overhead cost + profit + other costs)/FOB] x 100 % or
(b) build-down formula RVC = [(FOB - value of non-originating materials) /FOB] x 100 % where: (i) material cost is the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;
(ii) labour cost includes wages, remuneration and other employee benefits;
(iii) overhead cost is the total overhead expense including product development and other production costs; (iv) other costs are the costs incurred in placing the good in the ship or other means of transport for export, including domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges;
(v) FOB is the free-on-board value of the goods as defined in Article 1; and
(vi) value of non-originating materials is the CIF value at the time of importation or the earliest ascertained price paid or payable in the Area of the Party where the production takes place for all non-originating materials, parts or produce that are acquired by the producer in the production of the good.
When the producer of a good acquires non-originating materials within that Party the value of such materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

Article 6. Accumulation

Originating materials from the Area of a Party, incorporated into a good in the Area of the other Party, shall be considered to originate in the Area of the other Party.

Article 7. Minimal Operations and Processes

1. Operations or processes undertaken by themselves or in combination with each other for purposes such as those listed below are considered to be minimal and shall not confer origin:
(a) ensuring preservation in good condition for the purposes of transport or storage;
(b) facilitating shipment or transportation;
(c) packaging or presenting goods for sale;
(d) affixing of marks, labels or other like distinguishing signs on products or their packaging;
(e) simple processes consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations; and
(f) mere dilution with water or another substance that does not materially alter the characteristics of the goods.
2. Where a RVC approach has been applied, minimal processes and operations referred to in Paragraph 1 shall be taken into account for the RVC calculation.

Article 8. De Minimis

Each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex I is nonetheless an originating good if:
(a) the value of all non-originating materials, including materials of undetermined origin, used or consumed in the production of the good that do not undergo the required change in tariff classification does not exceed ten percent of the FOB value of the good; and
(b) the good meets all other applicable requirements of this Chapter.

Article 9. Direct Consignment

A good shall retain its originating status as determined under Article 2 if the following conditions have been met:
(a) the good has been transported to the importing Party without passing through the territory of any non-Party; or
(b) the good has transited through one or more non-Parties, with or without transhipment or temporary storage of up to six months in those non-Parties, provided that:
(i) the good has not entered trade or commerce there; and
(ii) the good has not undergone any operation there other than unloading and reloading, repacking, or any operation required to preserve it in good condition or to transport it to the importing Party.

Article 10. Treatment of Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.
2. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements for the good. 3. If a good is subject to a regional value content requirement, the value of the packing materials and containers in which the good is packaged for retail sale 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 11. Accessories, Spare Parts, Tools and Instructional or Information Material

1. For the purpose of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification, provided that:
(a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; 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.
2. Notwithstanding Paragraph 1, if a good is subject to a regional value content requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good 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.
3. Paragraph 2 shall not apply where accessories, spare parts, tools and instructional or other information materials presented with the good have been added solely for the purpose of artificially raising the regional value content of that good.

Article 12. 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 the accounting records of the producer of the good.
2. For the purposes of this Article, indirect material 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 13. Identical and Interchangeable Materials

1. In determining whether a good is an originating good, any identical or interchangeable materials shall be distinguished by:
(a) physical separation of the goods; or
(b) an inventory management method recognised in the generally accepted accounting principles of the exporting Party.
2. Identical or interchangeable materials are goods or materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination.

Article 14. Compliance

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

Article 15. Definitions

For the purposes of this Section:
(a) certificate of origin means a certificate issued by the Trade and Industry Department of Hong Kong, China or by a Government Approved Certification Organisation of Hong Kong, China which certifies that the goods to which the certificate relates are originating goods in accordance with this Chapter; and
(b) declaration of origin means an appropriate statement as to the origin of the goods made, in connection with their exportation, by the manufacturer, producer, supplier, exporter or other competent person on the commercial invoice or any other document relating to the goods.

Article 16. Treatment of Goods for Which Preference Is Claimed

1. Each Party may require a declaration of origin of a good for which preferential tariff treatment is claimed. Where a Party requires a declaration of origin of a good, the importing Party shall grant preferential tariff treatment to goods imported into its Area from the other Party only in cases where an importer claiming preferential tariff treatment:
(a) provides a declaration of origin of the good in accordance with this Chapter; or
(b) provides other evidence to substantiate the origin of the goods.
2. With respect to any good falling within Chapter 61 or Chapter 62 of the Harmonized System, New Zealand shall require

that a certificate of origin of a good be obtained by the importer for goods imported from the Area of Hong Kong, China where preferential tariff treatment is claimed.

Article 17. Declaration of Origin and Certificate of Origin

1. The declaration of origin or certificate of origin shall specify on the face of the document issued in respect of the good that the goods enumerated thereon are the origin of the exporting Party and meet the requirements of this Chapter, and shall include:
(a) a full description of the goods;
(b) the goods' six digit Harmonized System reference;
(c) the rule of origin by which the goods qualify (wholly obtained, produced entirely from originating materials or by product-specific rule including, where applicable, the regional value content);
(d) the producer's name(s);
(e) the exporter's name(s), address and contact details;
(f) the consignee's name(s), address and contact details; and
(g) the importer's name(s) in respect of imported goods, if known.
2. The declaration of origin or certificate of origin:
(a) shall be completed in English; and
(b) may be made in respect of one or more goods in the shipment.
3. The certificate of origin shall also:
(a) bear a unique reference number given by the issuer of the certificate of origin; and
(b) contain sufficient details to identify the consignment to which it relates. (1)
4. Further operational certification procedures that shall apply to the application for and issuing of a certificate of origin shall be mutually determined between the relevant agencies of the Parties in an exchange of letters. Any subsequent amendments shall be similarly mutually determined in an exchange of letters between the relevant agencies of the Parties.

(1) Examples include the shipping marks, importer’s purchase order number, exporter’s invoice number, or number and types of packages.

Article 18. Exceptions from Declaration of Origin

1. An importing Party may not require a declaration of origin to admit goods pursuant to tariff preference where:
(a) the customs value of the importation does not exceed US$1,000 or the equivalent amount in the Party's currency or a higher amount as it may establish; or
(b) in respect of specific goods, a Party has waived the requirement for a declaration of origin.
2. Where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirement for a declaration of origin, the customs administration of the importing Party may deny preferential tariff treatment. Examples include the shipping marks, importer's purchase order number, exporter's invoice number, or number and types of packages.

Article 19. Records

1. Each Party shall require that, consistent with its domestic law, producers, exporters or importers, as appropriate, maintain for a period specified in its domestic law all records relating to an exportation or importation which are necessary to demonstrate that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment. In addition, Hong Kong, China shall inform producers in its Area that they should maintain for a period of not less than seven years after the date of exportation all records relating to that exportation which are necessary to demonstrate to New Zealand that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment.
2. In addition, with respect to any good falling within Chapter 61 or Chapter 62 of the Harmonized System, Hong Kong, China shall seek a written commitment from the producer of the good that all records relating to that exportation which are necessary to demonstrate that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment shall be maintained for a period of not less than seven years after the date of exportation. Where the producer provides such a written commitment, Hong Kong, China shall ensure that is recorded in the certificate of origin issued in respect of that good, and shall retain that written commitment for a period of not less than seven years.
3. The Trade and Industry Department of Hong Kong, China and each Government Approved Certification Organisation of Hong Kong, China shall maintain copies of certificates of origin and the application details submitted for a period of not less than seven years.

Article 20. Compliance with Direct Consignment

Compliance with Article 9 may be evidenced by means of supplying to the customs authorities of the importing Party either customs documents of a non-Party or documents of the competent authorities of a non-Party, together with commercial shipping or freight documents.

Article 21. Non-party Invoicing

The customs administration of the importing Party may accept a declaration of origin in cases where the sales invoice is issued either by a company located in a non-Party or by an exporter for the account of that company, provided that the goods meet the requirements of Section A.

Article 22. Verification of Origin

1. For the purposes of determining whether a good imported into its Area from the Area of the other Party qualifies as an originating good, the importing Party may, through its customs administration, conduct a verification of eligibility for preferential tariff treatment by means of:
(a) requests for information to the importer;
(b) requests for information to the exporter or producer in the Area of the other Party;
(c) requests for information to the customs administration of the other Party;
(d) subject to the consent of the relevant exporter or producer, visits to the premises of an exporter or producer in the Area of the other Party arranged by and in company with the customs administration of the other Party; (2) or
(e) such other procedures as the customs administrations of the Parties may agree.
2. Any such verification activities shall only be undertaken if:
(a) there are reasonable grounds to doubt the accuracy or authenticity of the declaration of origin, certificate of origin, or the origin status of the goods concerned;
(b) the purpose is to facilitate audit checks by the importing Party on a risk management basis; or
(c) the purpose is to ascertain the fulfilment of any other requirement of this Chapter.
3. Any request that is made to the customs administration of the exporting Party pursuant to Paragraph 1 shall specify the reasons, and any documents and information supporting the request shall be forwarded to the customs administration of the exporting Party.
4. All requests for information shall be accompanied by sufficient information to identify the good about which the request is made.

(2) For greater certainty, a visit shall not include the review of records kept by the exporter or producer including those records referred to in Article 19, unless the customs administrations of the Parties otherwise agree.

Article 23. Denial of Preferential Tariff Treatment

1. A Party may deny preferential tariff treatment for a good when:
For greater certainty, a visit shall not include the review of records kept by the exporter or producer including those records referred to in Article 19, unless the customs administrations of the Parties otherwise agree.
(a) the good does not qualify as an originating good pursuant to this Chapter; or
(b) the importer, exporter or producer, as appropriate, fails to provide information which the Party has requested in the course of a verification process under Article 22, or otherwise fails to comply with any of the relevant requirements of this Chapter.
2. In the event preferential tariff treatment is denied, the importing Party shall ensure that its customs administration provides in writing to the exporter, the importer or producer, as the case may be, the reasons for that decision.

Article 24. Refund of Import Duties

1. Where a declaration of origin is not provided at the time of importation of a good from a Party pursuant to Paragraph 1 of Article 16, the importing Party may impose the applied non-preferential import customs duty or require payment of a deposit on that good, where applicable. In such a case, the importer may apply for a refund of any excess import customs duty or deposit paid within one year of the date on which the good was imported, provided that:
(a) a written declaration that the good presented qualifies as an originating good was provided to the customs administration of the importing Party at the time of importation; and
(b) a valid declaration of origin or other evidence to substantiate the origin of the goods is provided in relation to the good imported.

2. Where a certificate of origin has not been obtained at the time of importation of a good from Hong Kong, China to New Zealand pursuant to Paragraph 2 of Article 16, New Zealand shall impose the applied non-preferential import customs duty. In such a case, the importer may apply for a refund of any excess import customs duty within one year of the date on which the good was imported, provided that a valid certificate of origin in relation to the good imported is provided to the customs administration of New Zealand.

Chapter 5. Customs Procedures and Cooperation

Article 1. Objectives and Scope

1. 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 laws and administrative procedures of the Parties;
(c) ensure the efficient and expeditious clearance of goods and means of transport;
(d) facilitate trade between the Parties; and
(e) promote cooperation between the customs administrations, within the scope of this Chapter.
2. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

Article 2. Definitions

For the purposes of this Chapter:
(a) customs administration means:
(i) in relation to New Zealand, the New Zealand Customs Service; and
(ii) in relation to Hong Kong, China, the Customs and Excise Department of Hong Kong, China;
(b) customs law means any legislation administered, applied or enforced by the customs administration of a Party;
(c) customs procedures means the treatment applied by the customs administration to goods and means of transport that are subject to customs control;
(d) express consignments means all goods imported by an enterprise operating a consignment service for the expeditious international movement of goods that assumes liability to the customs administration for those goods; and
(e) means of transport means various types of vessels, vehicles, aircraft and pack-animals which enter or leave the Area carrying persons or goods.

Article 3. Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade, in accordance with this Chapter.
2. Customs procedures of each Party shall where possible conform to the standards and recommended practices of the World Customs Organization, including those of the International Convention on the Simplification and Harmonization of Customs Procedures (as amended), known as the Revised Kyoto Convention.
3. Customs administrations of the Parties shall facilitate the clearance of goods in administering their customs procedures in accordance with this Chapter.
4. Each customs administration shall provide one or more focal points, electronic or otherwise, through which its traders may submit all information as may be required by the customs administration in respect of the importation of goods.

Article 4. Customs Valuation

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

Article 5. Tariff Classification

Each Party shall apply the International Convention on the Harmonized Commodity Description and Coding System to goods traded between the Parties.

Article 6. Advance Rulings

1. Each customs administration shall provide, in writing, advance rulings in respect of the tariff classification and origin of goods ("advance rulings") to an applicant described in Paragraph 2(a).
2. Each Party shall adopt or maintain procedures for advance rulings, which shall:
(a) provide that an exporter, importer or any person with a justifiable cause may apply for an advance ruling before the importation of the goods in question;
(b) 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;
(c) 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;
(d) 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; and
(e) provide that the ruling be issued to the applicant expeditiously on receipt of all necessary information, and in any case within:
(i) 60 days with respect to tariff classification; and
(ii) 150 days with respect to origin.
3. A Party may reject a request for an advance ruling where the additional information requested by its customs administration in accordance with Paragraph 2(c) is not provided within the specified period.
4. Subject to Paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its Area within a period of at least three years from the date of that ruling.
5. A Party may modify or revoke an advance ruling:
(a) upon a determination that the advance ruling was based on an error of fact or law, or the information provided is false or inaccurate;
(b) if there is a change in domestic law which is consistent with this Agreement; or
(c) if there is a change in a material fact, or circumstances on which the ruling is based.
6. Where an importer claims that the treatment applied 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 the advance ruling was based.

Article 7. Use of Automated Systems

The customs administration of each Party shall apply information technology to support customs operations where it is practicable, cost-effective and efficient, particularly in the paperless trading context, including taking into account developments on this issue within the World Customs Organization.

Article 8. Express Consignments

Each customs administration shall adopt procedures to expedite the clearance of express consignments while maintaining appropriate control, including: (a) to provide for pre-arrival processing of information related to express consignments; (b) to permit the submission of a single document covering all goods contained in an express consignment, through electronic means if possible; and (c) to minimise, to the extent possible, the documentation required for the release of express consignments.

Article 9. Release of Goods

Each Party shall adopt or maintain procedures which allow goods to be released within 48 hours of arrival, and at the point of arrival without temporary transfer to warehouses or other locations, unless:
(a) the importer fails to provide any information required by the importing Party at the time of first entry;
(b) the goods are selected for closer examination by the customs administration of the importing Party through the application of risk management techniques;
(c) the goods are to be examined by any agency, other than the customs administration of the importing Party, acting under powers conferred by the domestic law of the importing Party; or
(d) fulfilment of all necessary customs formalities has not been able to be completed or release is otherwise delayed by virtue of force majeure.

Article 10. Risk Management

1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. 2. To enhance the flow of goods across their borders, the customs administration of each Party shall regularly review its customs procedures.

Article 11. Review and Appeal

1. Each Party shall provide for the right of review or appeal without penalty in regard to customs administrative rulings, determinations or decisions by the importer, exporter or any other person affected by that administrative ruling, determination or decision.
2. An initial right of review or appeal described in Paragraph 1 may be to an authority within the customs administration or to an independent body; but in any case the domestic law of each Party shall provide for the right of review or appeal without penalty to a judicial authority.
3. Notice of the decision on any review or appeal shall be given to the applicant and the reasons for such decision shall be provided in writing.

Article 12. Customs Cooperation

1. To the extent permitted by their domestic laws, the customs administrations of the Parties shall assist each other by providing information in relation to:
(a) the implementation and operation of this Chapter and, as appropriate, Chapter 4 (Rules of Origin);
(b) security of trade between the Parties; and
(c) such other issues as the Parties mutually determine.
2. Each customs administration shall provide the other customs administration with timely notice of any modification of its customs law or procedures that is likely to substantially affect the operation of this Chapter.

Article 13. Consultations

1. Each customs administration shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other customs administration. Customs administrations of the Parties shall notify each other promptly of any amendments to the details of their contact points.
2. Either 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. Such consultations shall be conducted through the relevant contact points and shall take place within 30 days of the receipt of the request, unless the customs administrations of the Parties mutually determine otherwise. 3. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Committee on Trade in Goods for consideration.
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. Any action taken pursuant to this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Article 14. Publication and Enquiry Points

1. Each customs administration shall publish, on the internet or in print form, its customs law and any administrative procedures it applies or enforces.
2. Each customs administration shall designate one or more enquiry points to deal with enquiries 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. Customs administrations of the Parties shall notify each other promptly of any amendments to the details of their enquiry points.

Article 15. Review of Customs Procedures

Each customs administration shall periodically review its customs procedures with a view to their further simplification and the development of mutually beneficial arrangements to facilitate the flow of trade between the Parties.

Chapter 6. Trade Remedies

Article 1. General Provisions

1. The Parties agree not to take any trade remedy action pursuant to Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the WTO Agreement on Subsidies and Countervailing Measures, Article XIX of GATT 1994 and the WTO Agreement on Safeguards in an arbitrary or protectionist manner.

2. Each Party shall carry out trade remedy actions in accordance with the principle of procedural fairness and accepted WTO standards of best practice. 3. The Parties agree to carry out trade remedy actions in a transparent manner.

Article 2. Subsidies and Countervailing Measures

1. The Parties agree to prohibit export subsidies (3) on all goods including agricultural products.
2. The Parties maintain their rights and obligations under Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures. "Export subsidies" means subsidies as defined by Article 3 of the WTO Agreement on Subsidies and Countervailing Measures and Article 1(e) of the WTO Agreement on Agriculture.

(3) “Export subsidies” means subsidies as defined by Article 3 of the WTO Agreement on Subsidies and Countervailing Measures and Article 1(e) of the WTO Agreement on Agriculture.

Article 3. Safeguard Measures

1. The Parties maintain their rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.
2. A Party taking any measure pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards shall exclude imports of an originating good from the other Party from the action if such imports do not in and of themselves cause or threaten to cause serious injury.
3. Each Party shall promptly advise the contact point of the other Party of the initiation of any global safeguard investigation and the reasons for initiation.

Article 4. Anti-dumping Measures

1. The Parties maintain their rights and obligations under Article VI of GATT 1994 and the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.
2. Pursuant to Article 5(5) of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, a Party that has received a properly documented application from an industry in its Area for the initiation of an anti-dumping investigation in respect of products from the other Party shall, as soon as possible but no later than seven days following receipt, give written notice to the other Party through the contact point designated pursuant to Article 5.

Article 5. Consultations

1. Each Party shall designate one or more contact points for the purposes of 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.
2. A Party may at any time request consultations with the other Party on any matter arising from the operation or implementation of this Chapter. Such consultations shall be conducted through the relevant contact points and shall take place within 30 days of the receipt of the request, unless the Parties mutually determine otherwise.
3. Any action taken pursuant to this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Chapter 7. Sanitary and Phytosanitary Measures

Article 1. Objectives

The objectives of this Chapter are to:
(a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by the Codex Alimentarius Commission ("Codex"), the World Organisation for Animal Health ("OIE") and under the framework of the International Plant Protection Convention ("IPPC");
(b) facilitate trade between the Parties through establishing a mechanism to address, and where possible resolve, market access matters while protecting human, animal or plant life or health in the Areas of the Parties;
(c) provide a means to improve communication, consultation and cooperation between the Parties on sanitary and phytosanitary matters; and
(d) strengthen collaboration between the Parties in relevant international bodies that develop international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

Article 2. Scope

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

Article 3. Definitions

For the purposes of this Chapter:
(a) Implementing Arrangements means subsidiary documents to this Chapter which set out mutually determined mechanisms for applying, or outcomes derived from applying, the principles and processes outlined in this Chapter;
(b) SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement;
(c) the definitions in Annex A of the SPS Agreement are incorporated into and made part of this Chapter, mutatis mutandis; and
(d) the relevant definitions developed by Codex, OIE and under the framework of the IPPC shall apply in the implementation of this Chapter.

Article 4. International Obligations

Nothing in this Chapter or any Implementing Arrangements shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

Article 5. Competent Authorities and Contact Points

1. The competent authorities of the Parties are those authorities that are responsible for the implementation of matters within the scope of this Chapter, as identified in the first Implementing Arrangement to be known as "Implementing Arrangement 1".
2. At the request of either Party, competent authorities of the Parties shall jointly consider any matters relating to the implementation of this Chapter, including:
(a) establishing technical working groups to identify and address relevant technical and scientific issues;
(b) initiating, developing, adopting, reviewing and modifying Implementing Arrangements on technical matters which give practical effect to the provisions of this Chapter in order to facilitate trade between the Parties;
(c) establishing, monitoring and reviewing work plans which contribute to achieving the objectives of this Chapter; and
(d) reporting, as required, to the Joint Commission on their activities within the scope of this Chapter.
3. Each Party shall designate a contact point for its competent authorities, which shall be set out in Implementing Arrangement 1.
4. When the competent authorities need to consider any matters relating to the implementation of this Chapter as provided for in Paragraph 2, such consideration may be carried out in person or via teleconference, video-conference or any other means mutually determined by the Parties. The competent authorities may also address issues through correspondence, including via electronic communication.
5. The Parties shall inform each other of any significant changes in the structure, organisation and division of responsibility within its competent authorities.

Article 6. Implementing Arrangements

1. Consistent with Paragraph 2(b) of Article 5, the Implementing Arrangements shall set out understandings reached, including in relation to competent authorities, contact points, equivalence, adaptation to regional conditions and verification as provided for in Articles 5, 7, 8 and 9.
2. Where Implementing Arrangements have been adopted, they shall be applied to trade between the Parties. 3. Each Party responsible for the implementation of an Implementing Arrangement shall take all necessary actions to do so within a reasonable period of time as mutually determined by the Parties.

Article 7. Equivalence

1. The Parties may make determinations of equivalence consistent with the SPS Agreement and in particular Article 4 of the SPS Agreement which provides for the recognition of sanitary or phytosanitary measures as equivalent where the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection. The determination of equivalence may be in relation to an individual measure and/or

group of measures and/or systems applicable to a sector or part of a sector.
2. The Parties may agree the principles and procedures applicable to the determinations of equivalence made in accordance with Paragraph 1, and any such agreed principles and procedures shall be recorded in an Implementing Arrangement.
3. Any determination of equivalence shall be recorded in an Implementing Arrangement.

Article 8. Adaptation to Regional Conditions

1. The Parties may make determinations in relation to regionalisation, pest-free areas, areas of low pest prevalence, zoning and compartmentalisation consistent with the SPS Agreement, and in particular Article 6 of the SPS Agreement. Such determinations shall be consistent with relevant OIE and IPPC standards which provide, inter alia, for the recognition of pest-free areas or areas of low pest prevalence where the exporting Party objectively demonstrates to the importing Party that such areas are, and are likely to remain, pest-free areas or areas of low pest prevalence. These determinations may be made at various levels, including farms and processing establishments, which have appropriate sanitary or phytosanitary measures in place.
2. The Parties may agree the principles and procedures applicable to the determinations regarding adaptation to regional conditions made in accordance with Paragraph 1, and any such agreed principles and procedures shall be recorded in an Implementing Arrangement.
3. Any determinations in relation to regionalisation, pest-free areas, areas of low pest prevalence, zoning and compartmentalisation shall be recorded in an Implementing Arrangement.

Article 9. Verification

1. In order to maintain confidence in the effective implementation of this Chapter, each Party may carry out verification and audit of the exporting Party's system of regulating compliance with sanitary and phytosanitary requirements applicable to the trade. Such verification and audit procedures shall be risk-based and proportionate to the record of compliance. Verification and audit may include reviews of the exporting Party's sanitary and phytosanitary system, on-site visits to a sample of establishments and/or verification of a proportion of imports from the exporting Party.
2. The Parties may agree the principles and guidelines applicable to any verification or audit, taking account of the relevant domestic law of the exporting Party. Any such agreed principles and guidelines shall be recorded in an Implementing Arrangement.

Article 10. Emergency Measures

A Party may, on serious human, animal or plant life or health grounds, take emergency measures necessary for the protection of human, animal or plant life or health. Within 24 hours of a Party taking any emergency measures, such measures shall be notified to the contact point of the other Party. On request of either Party, consultations between the competent authorities regarding the situation shall be held within eight days of receipt of the request by the contact point, unless otherwise agreed by the Parties. The Parties shall take due account of any information provided through such consultations.

Article 11. Notification

1. The Parties shall notify each other in a timely and appropriate manner in writing through the contact points of any significant food safety issue or change in animal health, plant health or pest status in their Area that is relevant to existing trade.
2. Where one Party notifies the other Party of non-compliance of imported consignments with sanitary or phytosanitary measures, the Parties shall cooperate as follows, drawing on the guidelines of relevant international organisations where available:
(a) where significant non-compliance with sanitary or phytosanitary measures arises, the importing Party shall notify as soon as possible the exporting Party of the consignment details; and
(b) the Parties should consult to ensure that appropriate remedial actions are undertaken by the Parties to address the area of non-compliance.
3. Unless specifically required by its domestic law or policies, the importing Party shall avoid suspending trade based on one non-compliant consignment and should contact the exporting Party to ascertain how the non-compliance has occurred.

Article 12. Explanation of Measures

1. Where a Party considers that a sanitary or phytosanitary measure is affecting its trade with the other Party, it may,

through the contact points, request a detailed explanation of the sanitary or phytosanitary measure including information on the technical justification for the measure. The other Party shall respond promptly to any requests for such explanations.
2. Either Party may request consultations with the other Party in relation to the same matter for which an explanation has been provided pursuant to Paragraph 1, and such consultations shall be held as soon as practicable.

Article 13. Cooperation

The Parties may explore opportunities for further cooperation, collaboration and information exchange on sanitary or phytosanitary matters of mutual interest consistent with this Chapter, including in relevant international standard-setting bodies.

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Article 14. Consultations

Any requests for consultations or consultations held pursuant to Articles 10, 11 or 12 shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Chapter 8. Technical Barriers to Trade

Article 1. Objectives

The objectives of this Chapter are to:
(a) increase and facilitate trade through furthering the implementation of the TBT Agreement and building on the work of APEC on standards and conformance;
(b) promote information exchange and strengthen regulatory cooperation to:
(i) enhance mutual understanding of each Party's standards, technical regulations and conformity assessment procedures;
(ii) enable cooperation between the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures; and
(iii) manage risks to health, safety and the environment as a means of supporting trade facilitation;
(c) eliminate unnecessary technical barriers to trade in goods between the Parties and reduce, where possible, unnecessary transaction costs associated with trade between the Parties;
(d) strengthen cooperation between the Parties in the work of international bodies related to standardisation and conformity assessments; and
(e) provide a framework to implement supporting mechanisms to realise these objectives.

Article 2. Scope

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures of the Parties that may directly or indirectly affect the trade in goods between the Parties, except as provided in Paragraphs 3 and 4.
2. This Chapter applies to all goods traded between the Parties, regardless of the origin of the goods.
3. This Chapter does not apply to purchasing specifications used in government procurement, which shall be subject to the provisions of Chapter 12 (Government Procurement) to the extent they apply.
4. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

Article 3. Definitions

For the purposes of this Chapter:
(a) the definitions in Annex 1 of the TBT Agreement are incorporated into and made part of this Chapter, mutatis mutandis;
(b) 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 Areas of the Parties;
(c) TBT Agreement means the Agreement on Technical Barriers to Trade, which is part of the WTO Agreement; and
(d) technical regulations has the meaning set out in the TBT Agreement and includes standards that regulatory authorities of a Party recognise as meeting the mandatory requirements related to performance-based regulations.

Article 4. Affirmation of the Tbt Agreement

1. The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.
2. Nothing in this Chapter shall prevent a Party from preparing, adopting or applying, in accordance with its rights and obligations under the TBT Agreement, technical regulations which are not more trade restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non-fulfilment would create. Such legitimate objectives are, inter alia, national security requirements, the prevention of deceptive practices, the protection of human health or safety, animal or plant life or health, or the environment.

Article 5. International Standards

1. The Parties shall use relevant international standards, guides or recommendations, or the relevant parts of them, to the extent provided in Articles 2 and 5 and Annex 3 of the TBT Agreement, as a basis for their technical regulations and related conformity assessment procedures, except when such international standards, guides or recommendations or their relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.
2. In determining whether an international standard, guide or recommendation as mentioned in Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its determination on the principles set out in relevant Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995.
3. The Parties shall cooperate with each other, where appropriate, in the context of their participation in international standardising bodies, with a view to developing international standards that facilitate trade and do not create unnecessary obstacles to international trade.

Article 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, at 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 and conclude arrangements for achieving the equivalence of technical regulations as mentioned in Paragraph 1. Where a Party declines such a request, it shall, at the request of the other Party, give its reasons for doing so.

Article 7. Conformity Assessment Procedures

1. The Parties shall seek to use, on a case by case basis, a broad range of mechanisms to facilitate the acceptance of conformity assessment procedures conducted in the Area of the other Party, including:
(a) promoting recognition of cooperative arrangements between accreditation agencies located in each other's Area;
(b) implementing unilateral recognition by one Party of the results of conformity assessments performed in the other Party's Area;
(c) implementing mutual recognition of conformity assessment procedures conducted by bodies located in the respective Areas of the Parties;
(d) recognising accreditation procedures of the other Party for qualifying conformity assessment bodies in that Party's Area;
(e) recognising the other Party's designation of conformity assessment bodies;
(f) utilising relevant regional and international multilateral recognition agreements and arrangements; and
(g) accepting the declaration of conformity by a supplier in the other Party's Area.
2. The Parties shall intensify their exchange of information on the mechanisms set out in Paragraph 1 and similar mechanisms with a view to facilitating the acceptance of conformity assessment procedures and results.
3. The Parties shall seek to ensure that conformity assessment procedures applied between them facilitate trade by ensuring that they are no more restrictive than is necessary to provide the importing Party with adequate confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create.
4. A Party may accredit or otherwise recognise conformity assessment bodies in the Area of the other Party. The terms of accreditation or recognition shall be no less favourable than those it accords to conformity assessment bodies in its Area. If

a Party accredits or otherwise recognises a body assessing conformity with a particular technical regulation or standard and that Party refuses to accredit or otherwise recognise a body of the other Party assessing conformity with that technical regulation or standard, it shall, at the request of the other Party, give the reasons for its refusal.
5. To enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult, as appropriate, on matters such as the technical competence of conformity assessment bodies in the other Party.
6. A Party shall, at the request of the other Party, give the reasons why it has not accepted the results of any conformity assessment procedure performed in the Area of the other Party.
7. Each Party shall give positive consideration to a request by the other Party to negotiate and conclude arrangements to facilitate recognition of the results of conformity assessment procedures conducted by bodies located in the other Party. Where a Party declines such a request, it shall, at the request of the other Party, give its reasons for doing so.

Article 8. Cooperation for Regulatory Effectiveness

1. Recognising the important relationship between good regulatory practices and trade facilitation, the Parties shall cooperate in the areas of standards, technical regulations and conformity assessment, on a case by case basis, including to:
(a) promote good regulatory practice based on risk management principles;
(b) improve the quality and effectiveness of their technical regulations;
(c) develop joint initiatives for managing risks to health, safety and the environment; and
(d) build understanding and capacity to promote better regulatory compliance.
2. The Parties shall implement this Article by establishing work programmes under Article 10 to, inter alia:
(a) exchange information on, inter alia:
(i) regulatory systems;
(ii) incident analysis;
(iii) hazard alerts;
(iv) product bans and recalls; and
(v) procedures, strategies and programmes for product surveillance activities; and
(b) cooperate as mutually determined, on, inter alia:
(i) the development of technical regulations;
(ii) regulatory reviews and implementation; and
(iii) the development and implementation of risk management principles, including product monitoring, safety, compliance and enforcement procedures.

Article 9. Transparency

1. In order to enhance the opportunity for the other Party and interested persons of the other Party to provide meaningful comments on a proposal to introduce a particular technical regulation or conformity assessment procedure, a Party publishing a notice under Article 2(9) or 5(6) of the TBT Agreement shall:
(a) include in the notice a statement describing the objective of the proposal and the rationale for the approach that Party is proposing; and
(b) transmit the notice via electronic communication to the other Party through its enquiry point established under Article 10 of the TBT Agreement at the same time as it notifies WTO members of the proposal pursuant to the TBT Agreement.
2. Each Party shall allow at least 60 days from the transmission of the notification under Paragraph 1(b) for the other Party and interested persons of the other Party to make written comments on the proposal.
3. Where a Party makes a notification under Article 2(10) or 5(7) of the TBT Agreement, it shall at the same time transmit that notification via electronic communication to the other Party through its enquiry point established under Article 10 of the TBT Agreement.
4. Where goods are covered by an Annex or an implementing arrangement to which Article 11 applies and a Party takes a measure to manage an immediate risk that it considers those goods may pose to health, safety or the environment, it shall notify immediately the other Party, through the contact point designated under Article 10 of the measure and the reasons for the imposition of the measure.
5. A Party shall, at the request of the other Party, provide 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 10. Implementation

1. Each Party shall designate a contact point which shall have responsibility to work collaboratively with the contact point of the other Party to:
(a) coordinate participation in work programmes with persons and organisations in their respective Areas that have responsibility for accreditation of conformity assessment bodies or relevant technical regulations; (b) ensure appropriate

steps are taken to address any issue that the other Party may raise related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;
(c) enhance mutual cooperation in the development and improvement of technical regulations and conformity assessment procedures;
(d) facilitate, where appropriate, sectoral cooperation among governmental and non-governmental regulatory authorities, accreditation agencies and conformity assessment bodies in the Parties' Areas;
(e) exchange information, where appropriate, on developments in non-governmental, regional and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures; and
(f) take any other steps the Parties consider will assist them in implementing the TBT Agreement, implementing this Chapter and in facilitating trade in goods between them.
2. Each Party shall provide the other Party with the name of the designated organisation that shall be its contact point and the contact details of relevant officials in that organisation, including telephone, facsimile, email and other relevant details.
3. Each Party shall notify the other Party promptly of any change in its contact point or any amendments to the details of the relevant officials.
4. The Parties shall establish a Committee on Technical Barriers to Trade ("TBT Committee") consisting of officials from the contact points and any other representatives of the Parties to promote and monitor the implementation and administration of this Chapter. The TBT Committee shall meet within one year of entry into force of this Agreement and thereafter once every two years or as otherwise mutually determined by the Parties. Meetings may be conducted in person or via teleconference, video-conference or any other means mutually determined by the Parties. The TBT Committee may also address issues through correspondence, including via electronic communication.
5. The functions of the TBT Committee shall include to:
(a) identify and agree priority sectors and areas for enhanced cooperation, including giving due consideration to any sector-specific proposal made by either Party;
(b) where priority sectors or areas have been agreed, establish work programmes with clear targets, design structures and timelines;
(c) monitor the progress of work programmes established under subparagraph (b);
(d) consult with a view to resolving any matter arising under this Chapter, in accordance with Article 12;
(e) review this Chapter in light of any developments in relation to the TBT Agreement, and develop recommendations to the Joint Commission for amendments to this Chapter in light of those developments; and
(f) report to the Joint Commission on the implementation of this Chapter, as it considers appropriate.
6. The Parties shall ensure, to the extent possible, that the persons and organisations in their respective Areas that have responsibility for relevant accreditation of conformity assessment bodies or relevant technical regulations participate in work programmes and technical consultations where the TBT Committee has:
(a) established a work programme under Paragraph 5(b); or
(b) been requested to undertake technical consultations under Article 12.

Article 11. Agreements or Arrangements

1. The Parties shall seek to identify trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures, including those that are appropriate for particular issues or sectors. Such initiatives may include:
(a) agreements or arrangements on regulatory issues, such as alignment of standards, convergence or equivalence of technical regulations, conformity assessment procedures and compliance issues; and
(b) the use of asymmetrical approaches, where appropriate.
2. The Parties may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessments applicable to goods traded between them.
3. The Parties may conclude implementing arrangements setting out:
(a) details for the implementation of the Annexes to this Chapter; or
(b) arrangements resulting from work programmes established under Article 10.
4. The Parties shall take into account 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.
5. The Parties agree to maintain a programme of ongoing review and enhancement of Annexes and implementing arrangements.

Article 12. Technical Consultations

1. Either Party may request technical consultations with the other Party with the aim of resolving any matter arising under this Chapter. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within 60 days from the request for technical consultations. The technical consultations may be conducted in person or via email,

teleconference, video-conference or any other means mutually determined by the Parties.
2. Where either Party has requested technical consultations pursuant to Paragraph 1, the other Party shall: (a) investigate the issues that gave rise to the request for consultations including whether there are any irregularities in the implementation of its technical regulations or conformity assessment procedures;
(b) give positive consideration to any request to address any irregularities identified under subparagraph (a); and (c) report back to the other Party on the outcome of its investigations, stating its reasons.
3. Technical consultations may be referred to the TBT Committee by either Party for further consideration.
4. Any action taken pursuant to this Article and consultations held pursuant to Paragraph 5(d) of Article 10 shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Chapter 9. Competition

Article 1. Objectives

The Parties recognise the strategic importance of promoting open and competitive markets through the effective application of competition policies for the purposes of enhancing trade and investment, economic efficiency and consumer welfare.

Article 2. Promotion of Competition

1. Desiring to promote policy coherence and an integrated approach to trade and competition and endorsing the APEC Principles to Enhance Competition and Regulatory Reform, the Parties agree to promote competition and endeavour to ensure that the design of trade and competition policies and the implementation of domestic law gives due recognition to the effects on competition by:
(a) providing transparency in policies, laws and rules, and their implementation;
(b) applying competition policies to economic activities, including public and private business activities, in a manner that does not discriminate between or among economic entities in like circumstances;
(c) maintaining a high-level government commitment to promote competition and enhance economic efficiency, including through assessments of regulatory impacts or other appropriate means;
(d) setting out clear responsibilities within their respective administrations for promoting and identifying the competition and efficiency dimensions in the development of policies and rules, and their implementation; (e) promoting coherent and effective implementation of trade and competition policies within their respective Areas; and
(f) fostering appropriate cooperation between trade and competition officials.
2. The Parties recognise that the implementation of Paragraph 1 may be subject to the different circumstances of the Parties and the different policy approaches that arise from these circumstances.

Article 3. Exemptions and Exceptions

The Parties recognise that exemptions and exceptions from their respective competition regimes may be necessary to achieve other legitimate policy objectives. The Parties shall endeavour to identify and review these exemptions and exceptions to ensure that each is no broader than necessary to achieve a legitimate policy objective, and implemented in a transparent way that minimises distortions to fair and free competition.

Article 4. Cooperation and Exchange of Information

1. The Parties agree to cooperate and coordinate in the area of competition policy by exchanging information on the development of competition policy.
2. Where the Parties have set up their respective regulatory authorities responsible for competition law, the Parties shall encourage their respective regulatory authorities to cooperate in the area of competition law, including through technical assistance as appropriate, consultation and exchanges of information, as permitted by the domestic law and overall policy of each Party and within the scope of the responsibilities of each regulatory authority.

Article 5. Consultations

At the request of either Party, the Parties shall consult on particular anti-competitive practices adversely affecting trade or investment between the Parties, consistent with the objectives of this Chapter.

Article 6. Non-application of Dispute Settlement

Neither Party shall have recourse to any dispute settlement procedures under this Agreement in respect of any issue arising from or relating to this Chapter.

Chapter 10. Electronic Commerce

Article 1. Objectives

The objectives of this Chapter are to:
(a) avoid restrictions to trade between the Parties being introduced as a result of the use of electronic commerce ("E-commerce") transactions;
(b) minimise the extent to which E-commerce transactions are subject to particular requirements, tariffs or other limitations or costs which are additional to other transactions;
(c) encourage where possible the treatment of E-commerce transactions by the Parties as equivalent to corresponding paper transactions; and
(d) promote the use of E-commerce to assist the timeliness and reduce the cost of commercial transactions.

Article 2. Promotion of E-commerce

1. The Parties agree to:
(a) cooperate in promoting with respect to the use of E-commerce:
(i) the maintenance of an open trading environment for the free flow of information and services;
(ii) the minimisation of transaction costs for business;
(iii) the international alignment of laws;
(iv) effective regulatory coordination; and
(v) interoperability of infrastructures, such as secure electronic authentication and payments;
(b) promote the efficient functioning of E-commerce domestically and internationally by, wherever possible, developing domestic regulatory frameworks which are open, avoiding undue restrictions and costs on E-commerce and, as appropriate, ensuring that relevant processes are compatible with evolving international norms and practices;
(c) ensure a predictable and simple legal environment for E-commerce, taking into account the UNCITRAL Model Law on Electronic Commerce 1996 and other model law(s) on E-commerce as may be adopted or revised by UNCITRAL or other such international organisations from time to time, that supports the maintenance of a secure infrastructure, enables public key infrastructure solutions to develop, and includes laws to facilitate the use of electronic methods in meeting statutory requirements;
(d) ensure that regulations and the development of regulations affecting E-commerce are transparent;
(e) endeavour to ensure that policy responses in respect of E-commerce:
(i) are flexible and take account of developments in a rapidly changing technology environment; and
(ii) do not impose unnecessary restrictions on the conduct of E-commerce;
(f) work to build consumer and business confidence to support the fullest economic and social benefits from E-commerce by:
(i) maintaining privacy protection laws and consumer laws relating to E-commerce;
(ii) encouraging the use of electronic signatures and electronic certification in order to ensure authenticity, integrity and confidentiality, and prevent fraud; and
(iii) promoting self-regulatory codes based on international norms and standards;
(g) protect intellectual property rights in a way that is supportive of the application of E-commerce and business innovation; and
(h) ensure that their regulatory regimes support the free flow of services, including the development of innovative ways of developing services, using electronic means.
2. For the purposes of this Article, UNCITRAL means the United Nations Commission on International Trade Law.

Article 3. E-government Initiatives

The Parties agree that E-government initiatives should seek to:
(a) reduce compliance costs and enhance the general level of transparency of government regulations;
(b) deliver efficiency in administration (for example, paperless trading); and
(c) reduce technical barriers to trade.

Article 4. Consultations

At the request of either Party, the Parties agree to consult each other concerning:
(a) the development of policy for the conduct of E-commerce; and
(b) any policies or decisions which may impact adversely on E-commerce aspects of trade between the Parties.

Article 5. Non-application of Dispute Settlement

Neither Party shall have recourse to any dispute settlement procedures under this Agreement in respect of any issue arising from or relating to this Chapter.

Chapter 11. Intellectual Property

Article 1. Objectives

The objectives of this Chapter are to:
(a) promote the importance of intellectual property rights in fostering trade in goods and services, innovation, and economic, social and cultural development;
(b) promote the effective protection, enforcement and maintenance of intellectual property rights;
(c) recognise the need to achieve a fair balance between the rights of intellectual property right holders, the legitimate interests of users and the wider interest of the public with regard to the protected subject matter; and
(d) uphold commitments to combating the infringement of intellectual property rights that occurs through the pirating of copyright works and counterfeiting of trademarks.

Article 2. Definitions

For the purposes of this Chapter:
(a) intellectual property rights refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, layout designs of integrated circuits, rights in plant varieties and rights in undisclosed information as defined in the TRIPS Agreement; and
(b) TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement.

Article 3. General Provisions

1. Each Party reaffirms its commitment to abide by the TRIPS Agreement and any other multilateral agreement relating to intellectual property which are applicable to both Parties.
2. Each Party shall ensure that it maintains an effective legal framework that gives effect to the rights and obligations applicable to it under the TRIPS Agreement, and includes clearly defined rights and obligations that provide certainty over the protection and enforcement of intellectual property rights to holders of intellectual property rights and users of intellectual property.
3. Subject to the international obligations that are applicable to each Party, the Parties affirm that each Party may:
(a) provide for the international exhaustion of intellectual property rights;
(b) establish that provisions in non-negotiated standard form end-user licence agreements for goods and services (4) do not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws; and
(c) establish provisions to facilitate the exercise of permitted acts where technological protection measures have been applied.
4. Each Party shall also maintain transparent regulations, efficient and non-discriminatory enforcement mechanisms, and access to expeditious remedies, in accordance with the obligations applicable to each Party under the TRIPS Agreement.
5. In line with the obligations applicable to each Party under the TRIPS Agreement, each Party shall maintain an effective framework for the enforcement of intellectual property rights, including through:
(a) the provision of fair and equitable civil judicial procedures for private enforcement of those rights;
(b) the enforcement of criminal laws relating to wilful activities in respect of copyright piracy and trademark counterfeiting on a commercial scale; and
(c) the provision of effective border control measures and procedures for right holders.
6. All issues pertaining to intellectual property rights in this Agreement shall be interpreted and applied consistent with the object and purpose of this Chapter, unless the context otherwise requires. This does not include compulsory licensing agreements.

(4) This does not include compulsory licensing agreements.

Article 4. Contact Points

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

Article 5. Exchange of Information

1. Each Party shall, on request of the other Party and subject to its domestic law, 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 effective and efficient registration or grant of intellectual property rights; and
(c) developments in intellectual property rights enforcement.
2. Any information provided under this Article shall be conveyed through the contact points referred to in Article 4.

Article 6. Cooperation

1. Subject to their respective domestic laws and policies, the Parties agree to cooperate, as set out in this Article, with a view to eliminating trade in goods infringing intellectual property rights and ensuring that the enforcement of intellectual property rights does not itself become a barrier to legitimate trade.
2. The Parties shall endeavour to facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, and other organisations with an interest in the field of intellectual property rights.
3. Each Party shall, on request of the other Party, give due consideration to any specific cooperation proposal made by the other Party relating to the protection or enforcement of intellectual property rights.
4. Any proposal for cooperation shall be conveyed through the contact points referred to in Article 4.

Article 7. Business Facilitation

Each Party shall endeavour to reduce transaction costs associated with the implementation of its intellectual property regime, where practicable and taking into account local conditions and developments in the international community.

Article 8. Genetic Resources, Traditional Knowledge and Folklore

Subject to the international obligations that are applicable to each Party, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

Article 9. Consultations

1. Either 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 contact points referred to in Article 4 and shall commence within 60 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 this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Chapter 12. Government Procurement

Article 1. Objectives

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 facilitate competitive opportunities for suppliers of the Parties.

Article 2. Scope and Coverage

1. This Chapter shall apply to government procurement measures regarding procurement, by any contractual means, including purchase, hire purchase, rental or lease, with or without an option to buy, build-operate-transfer contracts and public works concessions contracts:
(a) by entities listed in Annex I;
(b) in which the contract has a value not less than the relevant threshold converted into respective currencies as set out in Annex II estimated at the time of, or within a reasonable time prior to, the publication of a notice in accordance with Article 10; and
(c) subject to any other conditions specified in Annex I. (5)
2. This Chapter shall not apply to:
(a) the purchase or acquisition of goods and services by an entity of a Party from another entity of that Party, except where tenders are called, in which case this Chapter shall apply;
(b) procurement of goods and services (including construction) outside the Area of the procuring Party for consumption outside the Area of the procuring Party;
(c) non-contractual agreements or any form of assistance to persons or governmental authorities, including cooperative agreements, sponsorship arrangements, grants, loans, subsidies, equity infusions, guarantees, fiscal incentives and governmental provision of goods and services;
(d) 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 of a project where that international agreement applies to a Party; or For greater certainty, nothing in this Chapter shall have the effect of obliging either Party to permit the supply of services in relation to government procurement covered by this Chapter in a manner that is inconsistent with that Party's Schedules to Annexes I and II to Chapter 13 (Trade in Services) and Annex I to Chapter 14 (Movement of Business Persons).
(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 conditions would be inconsistent with this Chapter;
(e) 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;
(f) hiring of government employees and related employment measures; or
(g) any procurement by an entity on behalf of an organisation that is not an entity.
3. Entities of each Party shall not prepare, design or otherwise structure or divide, at any stage of the procurement, any procurement in order to avoid the obligations of this Chapter.
4. In calculating the value of contracts for the purposes of implementing this Chapter, entities shall base their valuation on the estimated maximum total value of the procurement over its entire duration, including optional purchases, premiums, fees, commissions, interest or other forms of remuneration provided for in such contracts. For term contracts, the value of contracts may be taken as the estimated value of works in a 12 month period.

(5) For greater certainty, nothing in this Chapter shall have the effect of obliging either Party to permit the supply of services in relation to government procurement covered by this Chapter in a manner that is inconsistent with that Party's Schedules to Annexes I and II to Chapter 13 (Trade in Services) and Annex I to Chapter 14 (Movement of Business Persons).

Article 3. Definitions

For the purposes of this Chapter:
(a) 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, the 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;
(b) entity means an entity listed in Annex I;
(c) government procurement or procurement means the process by which entities obtain the use of or acquire goods or services or a combination of both;
(d) government procurement measure means any law, regulation, requirement or procedure of general application relating to government procurement;
(e) open tendering means a procurement method where all interested suppliers may submit a tender;

(f) publish means to disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public;
(g) qualified supplier means a supplier that an entity recognises as having satisfied the conditions for participation;
(h) selective tendering means a procurement method where only suppliers satisfying the conditions for participation are invited by the entity to submit a tender;
(i) supplier means a natural or juridical person of a Party that provides or could provide goods or services to an entity; and
(j) technical specification means a tendering requirement that:
(i) sets out the characteristics of:
(1) goods to be procured, such as quality, performance, safety and dimensions, or the processes and methods for their production; or
(2) services to be procured, or the processes and methods for their provision;
(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service; or
(iii) sets out conformity assessment procedures prescribed by an entity.

Article 4. Exceptions to this Chapter

1. Nothing in this Chapter shall be construed to prevent either 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 either 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 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 5. National Treatment and Non-discrimination

1. With respect to any government procurement measure regarding procurement covered by this Chapter, each Party shall grant to goods, services and suppliers of the other Party treatment no less favourable than that accorded by it to domestic goods, services and suppliers.
2. With respect to any government procurement measure regarding procurement covered by this Chapter, neither Party shall allow its entities to:
(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation to, or ownership by a person of, the other Party; or
(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier are goods or services of the other Party.
3. For the purposes of this Chapter, Article XVI(1) of the WTO Agreement on Government Procurement, including its footnote, is incorporated into and made part of this Chapter, mutatis mutandis.
4. This Article shall not apply to measures concerning customs duties and charges of any kind imposed on or in connection with importation, the method of levying such customs duties and charges, other import regulations, or to measures affecting trade in services other than government procurement measures specifically governing procurement covered by this Chapter.

Article 6. Rules of Origin

For procurement covered by this Chapter, each Party shall not apply rules of origin to goods or services imported from or supplied by 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 other Party.

Article 7. Non-disclosure of Information

1. The Parties, their entities and review authorities shall not, except to the extent required by law, disclose confidential information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers without the written authorisation of the supplier that provided the information.

2. Nothing in this Chapter shall be construed as requiring either Party, its entities or review authorities to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

Article 8. Publication of Information on Procurement

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

Article 9. Procurement Procedures

Except as provided for in Article 15, entities shall award contracts by means of open or selective tendering procedures, in the course of which all interested suppliers or, in the case of selective tendering, suppliers invited to do so by an entity may submit a tender.

Article 10. Notice of Intended Procurement

1. Except as provided for in Article 15, for each procurement covered by this Chapter, entities shall publish in advance a notice of intended procurement inviting interested suppliers to submit a tender or apply to meet conditions for participation in the procurement.
2. The notice of intended procurement shall be published through means that are widely disseminated and afford non-discriminatory access to interested suppliers. Such notices shall remain readily accessible, through a single electronic point of access specified in Annex III, free of charge for the entire period established for tendering.
3. Each notice of intended procurement shall include:
(a) a description of the intended procurement;
(b) any conditions that suppliers must fulfill to particupate in the procurement;
(c) the time limits for submission of tenders or applications to participate; and
(d) contact details for obtaining all relevant documents.
4. Each notice of intended procurement shall be published sufficiently in advance to provide interested suppliers with a reasonable period of time, in light of the nature, circumstances and complexity of the procurement, to obtain the full tender documentation and to prepare and submit responsive tenders by the closing date, or to apply for participation in the procurement where applicable.
5. The Parties agree that entities shall in no case provide less than ten days between the date on which the notice of intended procurement is published and the final date for the submission of tenders or applications to participate.

Article 11. Conditions for Participation

1. Where an entity requires suppliers to register, qualify, or satisfy any other conditions before being permitted to participate in a procurement, each Party shall ensure that a notice is published inviting suppliers to apply for registration or qualification or to demonstrate satisfaction of other conditions for participation.
2. The notice shall be published sufficiently in advance for interested suppliers to prepare and submit responsive applications and for the entity to evaluate and make its determinations based on such applications.
3. Any conditions for participation in the procurement, including the legal, commercial, technical and financial capacity of suppliers, as well as the verification of qualifications, shall be limited to those which are essential to ensure the supplier's capability to fulfil the contract in question.
4. The commercial, technical and financial capacity of a supplier shall be judged on the basis of both that supplier's global business activity and its activity in the Area of the procuring entity, taking due account of the legal relationship between the supply organisations.
5. Entities shall consider for a particular procurement those suppliers of the other Party that request to participate in the procurement and that are not yet registered or qualified, provided there is sufficient time to complete the registration or qualification procedures within the time period allowed for the submission of tenders.
6. Nothing in this Article shall preclude an entity from excluding a supplier from a procurement on grounds such as bankruptcy, liquidation or insolvency, false declarations relating to a procurement, or significant deficiency in the performance of any obligation under a prior contract.

Article 12. Lists of Registered or Qualified Suppliers

1. Entities may establish for continuing use a list of suppliers registered or qualified to participate in procurements.
2. Entities shall publish annually or otherwise make available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list.
3. The notice shall include:
(a) a description of the goods and services for which the list may be used; and
(b) the conditions to be satisfied by suppliers for inclusion on the list.
4. Entities shall ensure that suppliers may apply for participation in the list at any time, and that all qualifying suppliers are included within a reasonable period, taking into account the conditions for participation and the need for verification.
5. Where entities require suppliers to qualify for such a list before being permitted to participate in a procurement, and a supplier that has not previously satisfied such requirements or conditions submits an application, the entity shall promptly start the registration or qualification process. The entity shall allow such supplier to participate in the procurement, provided there is sufficient time to complete the registration or procurement procedures within the time period allowed for the submission of tenders. 6. Entities shall notify qualified suppliers of the termination of or their removal from a list and, on request of a supplier, provide the supplier with written reasons for this action within a reasonable time.

Article 13. Technical Specifications

1. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.
2. Any technical specifications prescribed by an entity shall, where appropriate:
(a) be specified in terms of performance and functional requirements, rather than design or descriptive characteristics; and
(b) be based on international standards, where applicable, or otherwise on national technical regulations, recognised national standards, or building codes.
3. Each Party shall ensure that its entities do not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier, unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.
4. Each Party shall ensure that its entities do not seek or accept, in a manner that would have the effect of prejudicing fair competition, advice to 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 that procurement.

Article 14. Tender Documentation

1. Tender documentation provided to suppliers shall contain all information necessary to enable them to prepare and submit responsive tenders, including the essential requirements and evaluation criteria for the award of the procurement contract.
2. Where entities do not offer direct access to the tender documentation by electronic means, entities shall promptly make available the tender documentation at the request of any interested or, as applicable, qualified supplier.
3. Entities shall endeavour to reply promptly to any reasonable request for relevant information or explanation made by a supplier, provided that such information does not give that supplier an advantage over other suppliers. The information or explanation given to a supplier may be provided to all participating suppliers known to the entity, in which case it shall be provided promptly.
4. Where an entity modifies the tender documentation, and that modification could impact on the preparation of tenders, it shall publish or transmit all such modifications in writing:
(a) to all suppliers who have requested tender documentation at the time the criteria are modified, and in the same manner as the original information was transmitted by the entity; and
(b) in adequate time to allow such suppliers to modify and resubmit their tenders, as appropriate.

Article 15. Exceptions to Open or Selective Tendering

1. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, entities may award contracts by means other than open or selective tendering procedures in any of the following circumstances:
(a) where, in response to a prior notice, invitation to participate, or invitation to tender under open or selective tendering procedures:
(i) no tenders were submitted;
(ii) no tenders were submitted that conform to the essential requirements in the tender documentation; or (iii) no suppliers satisfied the conditions for participation; and provided that the essential requirements of the procurement as set out in the tender documentation have not been substantially modified;
(b) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents or copyrights, or

where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
(c) for additional deliveries by the original supplier which are intended either as replacement parts, extensions or continuing services for or upgrades of existing equipment, software, services or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services or installations, or conditions under original supplier warranties;
(d) for goods purchased on a commodity market;
(e) when an 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. When such contracts have been fulfilled, subsequent procurements of such goods or services shall be subject to this Chapter;
(f) when additional construction services, which were not included in the initial contract but which were within the objectives of the original tender documentation, have, due to unforeseeable circumstances, become necessary to complete the construction services described therein, provided that the total value of contracts awarded for additional construction services does not exceed 50 percent of the amount of the main contract;
(g) in so far as it is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity and beyond its control, the goods or services could not be obtained in time by means of an open or selective tendering procedure;
(h) for purchases made under exceptionally advantageous conditions that only arise in the very short term, including public auction or unusual disposals, such as those resulting from liquidation, bankruptcy or receivership. This subparagraph is not intended to cover routine purchases from regular suppliers;
(i) in the case of a contract awarded to the winner of a design contest provided that the contest has been organised in a manner which is consistent with the principles of this Chapter and that the contest is judged by an independent jury with a view to a design contract being awarded to the winner; or
(j) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded, in accordance with the open or selective tendering procedures set out in this Chapter, and for which the entity has indicated in the notice of intended procurement concerning the initial construction service that procedures other than open or selective tendering procedures might be used in awarding contracts for such new construction services.
2. The Parties shall ensure that where entities resort to a procedure other than open or selective tendering based on the circumstances set forth in Paragraph 1, the entities shall maintain a written record or report setting out the circumstances and specific justifications for resorting to a procedure other than open or selective tendering.

Article 16. Awarding of Contracts

1. The Parties shall ensure that their entities receive, open and evaluate all tenders under procedures that guarantee the fairness and impartiality of the procurement process.
2. To be considered for award of a contract, a tender must, at the time of opening by the entity, conform to the essential requirements of the notice of intended procurement or tender documentation and be submitted by a supplier who complies with the conditions for participation.
3. Unless an entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that has been determined to be fully capable of undertaking the contract and has submitted the tender that:
(a) offers the best value for money;
(b) offers the lowest price; or
(c) is the most advantageous
4. An entity shall not cancel a procurement covered by this Chapter, or terminate or modify awarded contracts, in order to circumvent the requirements of this Chapter. in terms of the essential requirements and evaluation criteria set forth in the tender documentation.

Article 17. Post-award Information

1. Entities shall promptly inform suppliers that have submitted a tender of the contract award decision.
2. Entities shall, on request from an unsuccessful supplier, promptly explain the reasons for the rejection of its tender or the relative advantages of the tender the entity selected.
3. Entities shall, promptly after the award of a contract for a procurement covered by this Chapter, publish a notice containing at least the following information:
(a) the name and address of the successful supplier;
(b) a description of the goods or services supplied; and
(c) the value of the contract award.

Article 18. Ensuring Integrity In Procurement Practices

Each Party shall ensure that criminal or administrative penalties exist to address corruption in its government procurement, and that its entities have in place policies and procedures to address any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Article 19. 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 or government procurement measures implementing this Chapter arising in the context of a procurement in which those suppliers 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 measures or government procurement measures implementing this Chapter arising in the context of procurements in which those suppliers have, or have had, an interest.
3. Each Party shall make information on complaint mechanisms generally available.
4. Where an administrative or judicial body may award compensation for any breach of measures or government procurement measures implementing this Chapter, such compensation may be limited to the costs for tender preparation reasonably incurred by the supplier for the purpose of the procurement.

Article 20. Use of Electronic Communications In Procurement

1. The Parties shall encourage their entities to provide opportunities for government procurement to be undertaken through the internet and shall encourage, to the extent possible, the use of electronic means for the provision of tender documentation and receipt of tenders.
2. In order to facilitate commercial opportunities for their suppliers under this Chapter, each Party shall maintain a single electronic point of access to comprehensive information on government procurement supply opportunities in its Area, including as set out in Paragraph 2 of Article 10, and information on government procurement measures, as set out in Article 8. The contact point or points from whom suppliers can obtain information on government procurement shall either be specified in Annex IV, or be set out in the information on the single electronic point of access.
3. Each Party shall encourage its entities to publish on the internet information regarding the entities' indicative procurement plans as early as possible in the fiscal year.

Article 21. Modifications and Rectifications of Annexes

1. Each Party may modify its Annexes to this Chapter in conformity with Paragraph 2 of Article 2 (Functions of the Joint Commission) of Chapter 17 (Administrative and Institutional Provisions) provided that it:
(a) notifies the other Party of the proposed modification; and
(b) provides the other Party appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.
2. Notwithstanding Paragraph 1(b), no compensatory adjustments shall be provided to the other Party where the modification by a Party of its Annexes concerns:
(a) rectifications of a purely formal nature and minor amendments to entity coverage and/or the single electronic point of access and/or contact points, made through an implementing arrangement in accordance with Paragraph 2 of Article 2 (Functions of the Joint Commission) of Chapter 17 (Administrative and Institutional Provisions); or
(b) one or more entities over which government control or influence has been effectively eliminated as a result of corporatisation and commercialisation or privatisation.

Chapter 13. Trade In Services

Article 1. Objectives

The objectives of this Chapter are to:
(a) facilitate the expansion of trade in services on a mutually advantageous basis;
(b) improve the efficiency and transparency of the Parties' respective services sectors and competitiveness of their export trade; and
(c) work toward progressive liberalisation, while recognising the right of each Party to regulate and introduce new

regulations, and to provide and fund public services, in a manner that gives due respect to government policy objectives.

Article 2. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services. 2. This Chapter shall not apply to:
(a) government procurement;
(b) services supplied in the exercise of governmental authority;
(c) subsidies (10) 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, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers, except as provided for in Article 11;
(d) measures affecting natural persons seeking access to the employment market of a Party; or
(e) measures regarding citizenship, nationality, residence or employment.
3. This Chapter shall not apply to measures affecting air transport services or related services in support of air services except that this Chapter shall apply to measures affecting:
(a) aircraft repair and maintenance services;
(b) the selling and marketing of air transport services; and
(c) computer reservation system services.
4. The Parties note the multilateral negotiations pursuant to the review of the GATS Annex on Air Transport Services. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement, so as to take into account the results of such multilateral negotiations.

(10) Including grants.

Article 3. Definitions

For the purposes of this Chapter:
(a) 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;
(b) commercial presence means any type of business or professional establishment, including through the constitution, acquisition or maintenance of an enterprise, including a representative office, within the Area of a Party for the purpose of supplying a service;
(c) 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;
(d) enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation and a branch of an enterprise;
(e) enterprise of a Party means an enterprise which is:
(i) organised or constituted under the law of that Party; or
(ii) in the case of the supply of a service through commercial presence, owned or controlled by:
(1) natural persons of that Party; or
(2) an enterprise of that Party identified under sub-subparagraph (i);
(f) government procurement means any law, regulation, requirement or procedure of general application governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;
(g) measure means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
(h) measures adopted or maintained by a Party means measures taken by:
(i) central or local governments and authorities; and
(ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities. Such measures include measures in respect of:
(1) the purchase, payment or use of a service;
(2) 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;
(3) the presence, including commercial presence, of persons of a Party for the supply of a service in the Area of the other Party;
(i) monopoly supplier of a service means any person, public or private, which in the relevant market of the Area of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(j) natural person means:
(i) with respect to New Zealand, a New Zealand national or permanent resident under its domestic law; and (ii) with respect to Hong Kong, China, a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China under its domestic law;
(k) person means a natural person or an enterprise;
(l) 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;
(m) 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;
(n) service supplier of a Party means a person of a Party that supplies, or seeks to supply, a service; (11)
(o) services includes any service in any sector except services supplied in the exercise of governmental authority;
(p) state enterprise means an enterprise that is owned or controlled through ownership interests by a Party; (q) supply of a service includes the production, distribution, marketing, sale and delivery of a service; and
(r) trade in services means the supply of a service:
(i) from the Area of one Party into the Area of the other Party (Mode 1);
(ii) in the Area of one Party to the service consumer of the other Party (Mode 2);
(iii) by a service supplier of one Party, through commercial presence in the Area of the other Party (Mode 3); or
(iv) by a service supplier of one Party, through presence of natural persons of that Party in the Area of the other Party (Mode 4). Where the service is not supplied directly by an enterprise but through other forms of commercial presence such as a representative office, the service supplier (i.e. the enterprise) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the Area where the service is supplied.

(11) Where the service is not supplied directly by an enterprise but through other forms of commercial presence such as a representative office, the service supplier (i.e. the enterprise) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the Area where the service is supplied.

Article 4. Market Access

Neither Party shall, either on the basis of a regional sub-division or on the basis of its entire Area, adopt or maintain:
(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
(c) limitations on the total number of service operations or on 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; (12)
(d) limitations on 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; and
(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service. Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

(12) Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

Article 5. National Treatment

1. Each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. (13)
2. A Party may meet the requirement of Paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to the like services or service suppliers of the other Party.

(13) Obligations assumed under this Article by a Party except as set out in its Schedules to Annexes I and II shall not be construed to require that Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article 6. Local Presence

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its Area as a condition for the supply of cross-border trade in services.

Article 7. Application of Articles 4, 5, 6 and 12

1. Articles 4, 5, 6 and 12 shall not apply to: Obligations assumed under this Article by a Party except as set out in its Schedules to Annexes I and II shall not be construed to require that Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.
(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 4, 5, 6 and 12.

2. Articles 4, 5, 6 and 12 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

Article 8. Review

The Parties shall consult within two years of entry into force of this Agreement and at least every three years thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.

Article 9. 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. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, 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.
3. Where authorisation is required for the supply of a service, the competent authorities of a Party shall:
(a) in the case of an incomplete application, at the request of the applicant, identify all the 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 considered complete under domestic law, inform the applicant of the decision concerning the application;
(c) at the request of the applicant, provide, without undue delay, information concerning the status of the application; and
(d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.
4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, each Party shall ensure that any such measures that it adopts or maintains 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;
(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service; and
(d) subject to Paragraph 5 of Annex III, in compliance with the disciplines on domestic regulation in that Annex.
5. 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 (14) applied by that Party.
6. 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 the Parties participate) enter into effect, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Agreement would improve or strengthen the disciplines contained herein, the Parties shall jointly The term "relevant international organisations" refers to the international bodies whose membership is open to the Parties. determine whether to incorporate such results into this Agreement.
7. Nothing in this Article and Annex III shall apply to any measure adopted or maintained by a Party consistent with its Schedules to Annexes I and II.

(14) The term “relevant international organisations” refers to the international bodies whose membership is open to the Parties.

Article 10. Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of Paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certification granted in the Area of the other Party.
2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licences or certification granted in the Area of a non-Party, nothing in Article 12 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the Area of the other Party.
3. A Party that is a party to an agreement or arrangement of the type referred to in Paragraph 2, 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 a comparable one 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 licences or certifications granted in that other Party's Area should be recognised.
4. A Party shall not accord recognition in a manner which 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.
5. The Parties agree to facilitate the establishment of dialogue between their regulators and/or relevant industry bodies with a view to the achievement of early outcomes on recognition of qualifications and/or professional registration.
6. Such recognition may be achieved through harmonisation, recognition of regulatory outcomes, recognition of qualifications and professional registration awarded by one Party as a means of complying with the regulatory requirements of the other Party (whether accorded autonomously or by mutual arrangement) or recognition arrangements concluded between the Parties and between industry bodies.

Article 11. Subsidies

Notwithstanding Paragraph 2(c) of Article 2:
(a) the Parties shall review the issue of disciplines on subsidies related 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; and
(b) a Party which considers that it is adversely affected by a subsidy of the other Party related to trade in services may request consultations on such matters. The Parties shall enter into such consultations.

Article 12. Most Favoured Nation Treatment

1. 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.
2. Notwithstanding Paragraph 1, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to non-Parties under any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.
3. For greater certainty, Paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.
4. The Parties reserve the right to adopt or maintain any measure that accords differential treatment to non-Parties under any international agreement in force or signed after the date of entry into force of this Agreement involving: (a) aviation; (b) fisheries; and (c) maritime matters.

Article 13. Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Articles 4, 5, 6 and 12 except as set out in its Schedules to Annexes I and II.
2. Where a Party's monopoly supplier of a service competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its Area in a manner inconsistent with that Party's obligations under Articles 4, 5, 6 and 12 except as set out in its Schedules to Annexes I and II.
3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with Paragraphs 1 or 2, that Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.
4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (a) authorises or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its Area.

Article 14. Denial of Benefits

1. Subject to prior notification wherever possible, and in any event subject to notification within ten working days of the decision, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that:
(a) 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 Area of the other Party; or
(b) 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 Area of the other Party.
2. A Party that denies benefits pursuant to Paragraph 1 shall enter into consultations if requested by the other Party within 30 days following the receipt of the request. Any consultations conducted pursuant to this Paragraph shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the WTO Dispute Settlement Understanding.

Article 15. Miscellaneous Provisions

1. The GATS Annex on Financial Services and Annex on Telecommunications are incorporated into and made part of this Chapter, mutatis mutandis.
2. Additional provisions on education cooperation are set out in Annex IV.
3. Notwithstanding Article 7, Articles 4, 5, 6 and 12 do not apply to any measure affecting the presence of natural persons (Mode 4).
4. In accordance with Article 4 (Grant of Temporary Entry) of Chapter 14 (Movement of Business Persons), commitments in respect of the presence of natural persons (Mode 4) are set out in each Party's Schedule to Annex I of Chapter 14 (Movement of Business Persons).

Article 16. Committee on Trade In Services

1. For purposes of the effective implementation and operation of this Chapter and Chapter 14 (Movement of Business Persons), the Parties hereby establish a Committee on Trade in Services ("Committee on Services") to consider any matter arising under this Chapter and Chapter 14 (Movement of Business Persons). 2. The Committee on Services shall:
(a) consider any matters related to the implementation of this Chapter and Chapter 14 (Movement of Business Persons);
(b) review the implementation of this Chapter and Chapter 14 (Movement of Business Persons) and consider other trade in services issues of mutual interest pursuant to Article 8;
(c) explore measures for the further expansion of trade in services between the Parties; and (d) take any other action it decides appropriate for the implementation of this Chapter and Chapter 14 (Movement of Business Persons).
3. The Committee on Services shall meet within the first year of the date of entry into force of this Agreement and subsequently thereafter as mutually determined by the Parties.
4. The Committee on Services may meet in person or via teleconference, video-conference or any other means mutually determined by the Parties. Should the Parties determine to meet in person, the venue for the meetings shall, unless the Parties determine otherwise, alternate between the Parties.

Article 17. Contact Points

1. Each Party shall designate a contact point for trade in services to facilitate communication between the Parties, and shall provide details of such contact point to the other Party.

2. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Chapter 14. Movement of Business Persons

Article 1. Objectives

The objectives of this Chapter are to:
(a) facilitate the movement 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 Chapter 13 (Trade in Services) and Chapter 3 (Trade in Goods) in relation to the movement of natural persons between the Parties for business purposes, while recognising the need to ensure border security and to protect the domestic labour force and employment in the Areas of the Parties.

Article 2. Scope

1. This Chapter shall apply to measures affecting the temporary entry of business persons of one Party into the Area of the other Party, where such persons include:
(a) business visitors;
(b) intra-corporate transferees;
(c) independent service suppliers; and
(d) installers or servicers.
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 13 (Trade in Services) 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 Area, 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 benefits accruing to the other Party under the terms of this Chapter. The sole fact of a Party requiring an immigration formality in respect of natural persons of the other Party and not those of non-Parties shall not be regarded as nullifying or impairing benefits accruing to the other Party under the terms of this Chapter.

Article 3. Definitions

For the purposes of this Chapter:
(a) business visitor means a natural person of a Party who:
(i) is seeking temporary entry to the Area of the other Party for the purpose of:
(1) attending meetings or conferences, or engaging in consultations with business colleagues;
(2) taking orders or negotiating contracts for an enterprise located in the Area of the Party but not selling goods or providing services to the general public; or
(3) undertaking business consultations concerning the establishment, expansion or winding up of an enterprise or investment in the other Party;
(ii) who is not seeking to enter the labour market of the other Party; and
(iii) whose principal place of business, actual place of remuneration and predominant place of accrual of profits remain outside the Area of the other Party;
(b) granting Party means a Party who receives an application for temporary entry from a business person of the other Party who is covered by Paragraph 1 of Article 2;
(c) immigration formality means a visa, permit, pass or other document or electronic authority granting a natural person permission to enter, stay, work or establish commercial presence in the Area of the granting Party;
(d) installer or servicer means a natural person of a Party who is an installer or servicer of machinery and/or equipment, where such installation and/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;
(e) intra-corporate transferees means a senior manager or a specialist who is an employee of a service supplier or investor of a Party with a commercial presence in the Area of the other Party;
(f) natural person means a natural person as defined in Article 3 (Definitions) of Chapter 13 (Trade in Services);
(g) senior manager means a natural person of a Party within an organisation of a Party who:
(i) is a senior employee of that organisation with responsibility for the entire organisation's operations, or a substantial part

of it, in the Area of the other Party;
(ii) has proprietary information of the organisation and receives only general supervision or direction from higher level executives or the board of directors or stockholders of the organisation; and
(iii) supervises and controls the work of other supervisory, professional or managerial employees. 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 provision of the service or operation of an investment;
(h) specialist means a natural person of a Party within an organisation of a Party who:
(i) possesses knowledge at an advanced level of technical expertise;
(ii) possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; and
(iii) is essential to the operation of the concerned service supplier's or investor's establishment in the Area of the other Party; and
(i) temporary entry means entry by a business person covered by this Chapter, without the intent to establish permanent residence.

Article 4. Grant of Temporary Entry

1. The Parties shall make commitments in respect of the temporary entry of business persons covered by Article 2. Each Party shall set out in Annex I a Schedule containing such commitments. These Schedules 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 commitments.
2. Where a Party makes a commitment under Paragraph 1, that Party shall grant temporary entry or extension of temporary stay to the extent provided for in that commitment, provided that 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.
3. Temporary entry granted to a business person pursuant to this Chapter does not exempt that person from the requirements needed to carry out a profession or activity according to the domestic law, and any applicable mandatory codes of practice made pursuant to the domestic law, in force in the Area of the Party authorising the temporary entry.
4. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with domestic law.
5. Neither Party may, except as provided for in its Schedule of commitments set out in Annex I, impose or maintain any numerical restriction relating to temporary entry as a condition for entry under Paragraph 1.

Article 5. Expeditious Application Procedures

1. Where an application for an immigration formality is required by a Party, the Party shall process expeditiously completed applications for immigration formalities or extensions thereof received from business persons of the other Party covered by Paragraph 1 of Article 2.
2. A Party shall, within ten working days of receipt of an application for temporary entry that has been completed and submitted in accordance with its domestic law, either:
(a) make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions; or
(b) if a decision cannot be made in that time period, inform the applicant when a decision will be made.
3. At 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 6. Transparency

Each Party shall:
(a) publish, such as on the website of its immigration authority, 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 the Party's requirements; and
(b) upon modifying or amending the requirements for temporary entry referred to in subparagraph (a) that affect the temporary entry of business persons, ensure that the information published pursuant to subparagraph (a) is updated by the date that modification or amendment comes into effect.

Article 7. Dispute Settlement

1. Any differences or disputes arising out of the implementation of this Chapter shall be settled amicably through consultations or negotiations between the Parties.

2. Neither Party shall have recourse to Chapter 16 (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 all available administrative remedies regarding the particular matter.

Article 8. Contact Points

1. Each Party shall designate a contact point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the movement of business persons between the Parties or any matters covered in this Chapter, and shall provide details of this contact point to the other Party.
2. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Chapter 15. Transparency

Article 1. Definitions

For the purposes of this Chapter:
(a) 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 is relevant to the implementation of this Agreement but does not include:
(i) 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
(ii) a ruling that adjudicates with respect to a particular act or practice.

Article 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 promptly, but in no case later than 90 days after implementation or enforcement, published or otherwise made available (26) to interested persons and the other Party.
2. When possible, each Party shall: Including through the internet or in print form. (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 such proposed measures.

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

Article 3. Cooperation on Business Law

1. Notwithstanding other provisions in this Chapter, the Parties agree to:
(a) make available information on their respective business laws, including, where appropriate, on proposed and actual amendments to their business laws;
(b) provide each other, where appropriate, with a reasonable opportunity to comment on proposed new business laws or proposed amendments to existing business laws; and
(c) encourage cooperation between their relevant regulatory authorities in the area of business law.
2. For the purposes of this Article, the term "business law" means domestic law of a Party which relates to security markets, insurance markets, insolvency, corporate governance or other similar business activities.
3. Neither Party shall have recourse to any dispute settlement procedures under this Agreement in respect of any issue arising from or relating to this Article.

Article 4. Review and Appeal

1. Each Party shall, where warranted, establish or maintain judicial, quasi-judicial or administrative tribunals, or procedures, for the purpose of the prompt review and correction of final administrative actions regarding matters covered by this Agreement, other than those taken for prudential reasons. 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 domestic law, the record compiled by the administrative authority.
3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, 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.

Article 5. 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 the details of their contact points.
3. Each Party shall ensure that its contact points are able to coordinate and facilitate a response on any matter covered by this Agreement, including any enquiries referred to in Article 7.
4. At the request of either Party, the contact points of the other Party shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with that Party.

Article 6. 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 Paragraph 1 of Article 2 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 domestic law.

Article 7. Notification and Provision of Information

1. Where a Party considers that any actual or proposed measure might 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 request of the other Party, the requested Party shall within 30 days of receipt of the request 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.
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 notified to the WTO in accordance with the WTO Agreement.
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 16. Dispute Settlement

Article 1. Objectives

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.

Article 2. Scope and Coverage

1. Except as otherwise provided in this Agreement, this Chapter shall apply:
(a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement; (b) wherever a Party considers that an actual measure of the other Party is not or would not be in conformity with the obligations of this Agreement or that the other Party has otherwise failed to carry out its obligations

under this Agreement; or
(c) wherever a Party considers that any benefit it could reasonably have expected to accrue to it under any provision of this Agreement is being nullified or impaired as a result of the application of any actual measure that is not inconsistent with this Agreement.
2. For the avoidance of doubt, the Parties agree that this Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law and consistently with the objectives set out in Article 2 (Objectives) of Chapter 1 (Initial Provisions).

Article 3. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another 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 selected a particular forum, the forum selected shall be used to the exclusion of other possible fora in respect of the dispute.
3. For the purposes of this Article, the complaining Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel or arbitral tribunal. 4. Except as provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are party.

Article 4. Consultations

1. Each Party shall accord adequate opportunity for consultations with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.
2. A request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of any actual measure or other matter at issue and an indication of the legal basis for the complaint. The complaining Party shall deliver the request to the other Party.
3. If a request for consultations is made, the Party to which the request is made shall reply to the request in writing within seven days after the date of its receipt 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. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. In conducting the consultations, the Parties shall:
(a) provide sufficient information to enable a full examination of how the actual measure or other matter might affect the operation or application of this Agreement; and
(b) treat any information exchanged in the course of consultation which is designated by a Party as confidential or proprietary in nature on the same basis as the Party providing the information.
5. If the responding Party does not reply within the required seven days, or does not enter into consultations within the timeframes specified in Paragraph 3(a) or (b), or a period otherwise mutually agreed by the Parties, the complaining Party may proceed directly to request the establishment of an arbitral tribunal under Article 6.
6. The consultations shall be confidential, and without prejudice to the rights of either Party in any further proceedings.
7. The complaining Party may request the responding Party to make available for the consultations personnel from its government agencies or other regulatory bodies who have expertise in the matter under consultation.

Article 5. Good 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 those proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 6. Establishment of an Arbitral Tribunal

1. The complaining Party may request, by means of a written notification addressed to the other Party, the establishment of an arbitral tribunal if:
(a) the consultations fail to settle a dispute within:
(i) 30 days after the date of receipt of the request for consultations regarding urgent matters, including those concerning perishable goods; or

(ii) 60 days after the date of receipt of the request for consultations regarding all other matters; or (b) Paragraph 5 of Article 4 applies.
2. The Parties may agree during the consultations to vary the periods set out in Paragraph 1(a).
3. The request to establish an arbitral tribunal shall identify:
(a) the specific measures at issue;
(b) the legal basis of the complaint sufficient to present the problem clearly including, where applicable:
(i) any provisions of this Agreement alleged to have been breached;
(ii) whether there is a claim for nullification and impairment; and
(iii) any other relevant provisions; and
(c) the factual basis for the complaint.
4. Unless otherwise agreed by the Parties, the arbitral tribunal shall be established and perform its functions in a manner consistent with this Chapter.

Article 7. Composition of Arbitral Tribunals

1. The arbitral tribunal shall consist of three members.
2. Each Party shall appoint an arbitrator within 21 days of the receipt of the request to establish an arbitral tribunal.
3. The Parties shall appoint by common agreement the third arbitrator within 30 days of the receipt of the request to establish an arbitral tribunal. The arbitrator thus appointed shall chair the arbitral tribunal.
4. The chair shall be a national of a non-Party who shall not have his or her usual place of residence in the Area of either of the Parties.
5. If all three members of the arbitral tribunal have not been appointed within 30 days of receipt of the request to establish an arbitral tribunal, the Director-General of the WTO shall, at the request of either Party, make the necessary appointments within 30 days of the request to the Director-General of the WTO.
6. All arbitrators shall:
(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
(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 panellists established under the WTO Dispute Settlement Understanding.
7. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator is appointed.
8. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed, within 21 days from the date written notice is received by the Parties of the need for a successor, in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended pending the appointment of the successor arbitrator.
9. Where an arbitral tribunal is established under Articles 12, 13 or 15, it shall, where possible, have the same arbitrators as the original arbitral tribunal. 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. Where special circumstances warrant, the arbitral tribunal may comprise only the chair of the original arbitral tribunal if the Parties so agree.

Article 8. Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an objective assessment of the facts of the case and the applicability of and conformity with this Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to it as it thinks fit.
2. The arbitral tribunal shall, apart from the matters set out in Article 9, make decisions in order to regulate its own procedures in relation to the rights of the Parties to be heard and its deliberations, in consultation with the Parties.
3. The arbitral tribunal shall make its decisions to which Paragraph 2 applies and its findings and rulings by consensus, provided that where an arbitral tribunal is unable to reach consensus these may be made by majority vote. The arbitral tribunal shall not disclose which arbitrators are associated with majority or minority opinions.
4. The findings and rulings of the arbitral tribunal cannot add to or diminish the rights and obligations provided in this Agreement.

Article 9. Proceedings of Arbitral Tribunals

1. The arbitral tribunal proceedings shall be conducted in accordance with this Chapter and, unless the Parties agree

otherwise, the Model Rules of Procedure for Arbitral Tribunals in Annex I.
2. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference shall be: "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 6 and to make findings and rulings of law and fact together with the reasons therefore for the resolution of the dispute."
3. At the request of either Party or on its own initiative, the arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. Any information or technical advice so obtained shall be submitted to the Parties for comment. Where the arbitral tribunal takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

Article 10. Termination of Proceedings

1. The Parties may agree to terminate the proceedings of an arbitral tribunal 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 arbitral tribunal.
2. The Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. In such event the Parties shall jointly notify the chair of the arbitral tribunal. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

Article 11. Reports of the Arbitral Tribunal

1. The reports of the arbitral tribunal shall be drafted without the presence of the Parties and shall be based on the relevant provisions of this Agreement, the submissions and arguments of the Parties and any other information provided to the arbitral tribunal pursuant to Paragraph 3 of Article 9.
2. The arbitral tribunal shall present its initial report to the Parties within 90 days of the date of establishment of the arbitral tribunal or in cases of urgency, including those concerning perishable goods, within 60 days of the date of establishment of the arbitral tribunal. The initial report shall contain:
(a) findings of fact; and
(b) the determination of the arbitral tribunal as to whether a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Paragraph 1(c) of Article 2 and any other determination requested in the terms of reference or required to perform its functions under Article 8.
3. In exceptional cases, if the arbitral tribunal considers it cannot present its initial report within 90 days, or within 60 days in cases of urgency, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.
4. A Party may submit written comments on the initial report to the arbitral tribunal within ten days of receiving the initial report or within such other period as the Parties may agree.
5. After considering any written comments by the Parties and making any further examination it considers necessary, the arbitral tribunal shall present its final report to the Parties within 30 days of presentation of the initial report, unless the Parties otherwise agree.
6. If in its final report, the arbitral tribunal finds that a Party's measure does not conform with this Agreement or is causing nullification or impairment in the sense of Paragraph 1(c) of Article 2, it shall include in its findings and rulings a requirement to remove the non-conformity or address the nullification or impairment.
7. The Parties shall release the final report of the arbitral tribunal as a public document within 15 days from the date of its presentation to the Parties, subject to the protection of confidential information.

Article 12. Implementation

1. The findings and rulings of the arbitral tribunal shall be final and binding on the Parties.
2. The Parties shall promptly comply with the findings and rulings of the arbitral tribunal. Where it is not practicable to comply immediately, the Party concerned shall comply with the findings and rulings within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties. As a guideline, the reasonable period of time should not exceed 12 months from the date of the presentation of the arbitral tribunal's final report to the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days of the presentation to the Parties of the arbitral tribunal's final report, either Party may refer the matter, in accordance with Paragraph 9 of Article 7, to the original arbitral tribunal, which shall determine the reasonable period of time following consultation with the Parties.
3. The arbitral tribunal shall present its report to the Parties within 60 days of the date on which the arbitral tribunal is established, in accordance with Paragraph 7 of Article 7, to consider the matter referred to in Paragraph 2. The report shall contain the determination of the arbitral tribunal as to the reasonable period of time and the reasons for its determination.

When the arbitral tribunal considers that it cannot present 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 present its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

Article 13. Compliance Within Reasonable Period of Time

1. 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 arbitral tribunal, such disagreement shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal, in accordance with Paragraph 9 of Article 7.
2. The arbitral tribunal shall present its report to the Parties within 90 days of the date on which the arbitral tribunal is established to consider the dispute on compliance within a reasonable period of time referred to in Paragraph 1. When the arbitral tribunal considers that it cannot present 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 present its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

Article 14. Compensation and Suspension of Benefits

1. If a failure to comply with the findings and rulings of the arbitral tribunal has been established in accordance with Paragraph 1 of Article 13 or the responding Party notifies the other Party in writing that it does not intend to comply with the findings and rulings, the responding Party shall, if so requested, enter into negotiations with the complaining Party within ten days of the receipt of such request with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.
2. If no mutually satisfactory agreement on compensatory adjustment as set out in Paragraph 1 is reached within 20 days of entering into negotiations, the complaining Party may at any time thereafter notify the responding Party that it intends to suspend the application to the responding Party of benefits of equivalent effect and shall have the right to begin suspending those benefits 30 days after the receipt of the notification. Benefits shall not be suspended while the complaining Party is pursuing negotiations under Paragraph 1.
3. Compensation and the suspension of benefits shall be temporary measures. Neither compensation nor the suspension of benefits is preferred to full compliance with the findings and rulings of the arbitral tribunal. Compensation and suspension of benefits shall only be applied until such time as the measure found to be not in conformity with this Agreement has been brought into conformity, or the responding Party has complied with the arbitral tribunal's findings and rulings, or a mutually satisfactory solution is reached. 4. 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 arbitral tribunal 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 it is based.
5. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.

Article 15. Review

1. Where the right to suspend benefits has been exercised under Article 14, upon written request of the responding Party, the arbitral tribunal shall decide whether:
(a) the level of benefits suspended by the complaining Party is not of equivalent effect pursuant to Article 14; or
(b) the responding Party has complied with the findings and rulings of the original arbitral tribunal.
2. Such matters shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal, in accordance with Paragraph 9 of Article 7.
3. The arbitral tribunal shall present its report to the Parties within 90 days of the date on which the arbitral tribunal is established to consider the matters referred to in Paragraph 1. When the arbitral tribunal considers that it cannot present 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 present its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.
4. If the arbitral tribunal finds that the level of benefits suspended by the complaining Party is not of equivalent effect, the complaining Party shall modify the level of benefits suspended accordingly. If the arbitral tribunal finds that the responding Party has complied with the findings and rulings, the complaining Party shall promptly stop the suspension of benefits under Article 14.

Article 16. Expenses

Unless the arbitral tribunal 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 arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne by the Parties in equal shares.

Chapter 17. Administrative and Institutional Provisions

Article 1. Establishment of the Joint Commission

The Parties hereby establish a Joint Commission which may meet at the level of Ministers or senior officials, as mutually determined by the Parties.

Article 2. Functions of the Joint Commission

1. The Joint Commission shall:
(a) consider any matter relating to the implementation of this Agreement;
(b) review the general functioning of this Agreement;
(c) consider any proposal to amend this Agreement;
(d) supervise the work of all committees and working groups established under this Agreement and supervise other activities conducted under this Agreement; and
(e) consider any other matter that may affect the operation of this Agreement.
2. The Joint Commission may:
(a) establish additional committees and working groups, refer any matter to a committee or working group for advice, and consider any matter raised by a committee or working group established under this Agreement;
(b) further the implementation of this Agreement's objectives through implementing arrangements;
(c) further the implementation of this Agreement's objectives by approving any modifications of, inter alia, the lists of entities and thresholds in Annexes I and II to Chapter 12 (Government Procurement);
(d) explore measures for the further expansion of trade and investment between the Parties;
(e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;
(f) seek the expert advice of non-governmental persons or groups on any matter falling within its functions where this would help the Joint Commission make an informed decision; and
(g) take such other action in the exercise of its functions as the Parties may mutually determine.

Article 3. Meetings of the Joint Commission

1. The Joint Commission shall meet within one year of the date of entry into force of this Agreement and every second year thereafter, or as otherwise mutually determined by the Parties.
2. Meetings of the Joint Commission shall be held alternately in the Area of each Party or as otherwise mutually determined by the Parties, and shall be chaired successively by each Party. The Party chairing a meeting of the Joint Commission shall provide any necessary administrative support for that meeting.
3. Each Party shall be responsible for the composition of its delegation.
4. The Joint Commission shall take decisions on any matter within its functions by mutual agreement.

Article 4. General Reviews

1. The Parties shall undertake a general review at ministerial level of this Agreement, including of matters relating to liberalisation, cooperation and trade facilitation, within two years of its entry into force and at least every three years thereafter, unless the Parties agree otherwise. 2. The conduct of general reviews shall, where possible, coincide with regular meetings of the Joint Commission.

Chapter 18. General Provisions

Article 1. Application of Agreement to Local Government and Authorities (28)

1. 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 local government and authorities.
2. Chapter 16 (Dispute Settlement) may be invoked in respect of measures affecting the observance of this Agreement taken

by local government or authorities within the Area of a Party. When an arbitral tribunal established under Chapter 16 (Dispute Settlement) has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance by the relevant local government or authority within its Area. The provisions of Chapter 16 (Dispute Settlement) relating to the suspension of the application of benefits of equivalent effect shall apply in cases where it has not been possible to secure such observance.
3. This Article does not apply to Chapter 12 (Government Procurement).

(28) In the case of New Zealand, references to local governments and authorities include regional government and authorities.

Article 2. 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: In the case of New Zealand, references to local governments and authorities include regional government and authorities.
(a) would be contrary to any of its domestic law, including those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
(b) would impede law enforcement;
(c) would prejudice legitimate commercial interests of particular enterprises, public or private;
(d) would be contrary to the public interest as determined by its domestic law; or
(e) at the time of the disclosure of the information, would be for the purpose of judicial proceedings.

Article 3. Obligations Under other International Agreements

Nothing in this Agreement shall derogate from the existing rights and obligations of either Party under the WTO Agreement or any other international agreement to which it is a party or which is applicable to its Area. In the event of any inconsistency between this Agreement and any other international agreement to which the Parties are party or which is applicable to the Parties' Areas, 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.

Article 4. Labour and Environmental Cooperation

The Parties shall enhance their communication and cooperation on labour and environment matters through both the New Zealand -Hong Kong, China Environment Cooperation Agreement and the Memorandum of Understanding on Labour Cooperation between New Zealand and Hong Kong, China concluded between the Parties separately from but alongside this Agreement.

Article 5. Succession of Treaties or International Agreements

Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which a Party is party or which is applicable to a Party's Area.

Article 6. Confidentiality

Where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific written permission of the Party providing the information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 7. Financial Provisions

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the domestic laws and policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.

Chapter 19. Exceptions

Article 1. General Exceptions

1. For the purposes of this Agreement, Article XX of GATT 1994 and its interpretive notes and Article XIV of GATS (including its footnotes) are incorporated into and made part of this Agreement, mutatis mutandis.
2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 and Article XIV(b) of GATS as incorporated into this Agreement include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 as incorporated into this Agreement applies to measures relating to the conservation of living and non-living exhaustible natural resources.
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, 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 (29) of national value.

(29) "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 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 determines to be contrary to its essential security interests; or
(b) to prevent a Party from taking any actions 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 purpose of supplying or provisioning a military establishment;
(ii) taken in time of war or other emergency in external relations;
(iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
(c) to prevent either Party from taking any action in pursuance of the obligations applicable to it under the United Nations Charter for the maintenance of international peace and security.
2. Each Party shall promptly inform the other Party to the fullest extent possible of measures taken under Paragraphs 1(b) and (c) and of their termination.

Article 3. 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 Māori 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 16 (Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established under Article 6 (Establishment of an Arbitral Tribunal) of Chapter 16 (Dispute Settlement) may be requested by Hong Kong, China to determine only whether any measure (referred to in Paragraph 1) is inconsistent with its rights under this Agreement.

Article 4. Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.
2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under the WTO Agreement.
3. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention relating to the avoidance of double taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any tax convention relating to the avoidance of double taxation in force between the Parties, the latter shall prevail. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall include representatives of the tax administration of each Party.

Article 5. 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 this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

Article 6. Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, 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 the General Agreement on Tariffs and Trade 1994, adopt restrictive import measures; and/or
(b) in the case of services, in accordance with Article XII(2) of GATS, adopt or maintain restrictions on trade in services, including on payments or transfers.
2. In determining the incidence of restrictions adopted or maintained under Paragraph 1, each Party may give priority to economic sectors which are more essential to its economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.
3. Any restrictions adopted or maintained by a Party under Paragraph 1, or any changes therein, shall be notified to the other Party within 14 days from the date such measures are taken.
4. The Party adopting or maintaining any restrictions under Paragraph 1 shall commence consultations with the other Party within 45 days from the date of notification in order to review the measures adopted or maintained by it.

Chapter 20. Final Provisions

Article 1. Annexes and Footnotes

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

Article 2. Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on such date or dates as may be agreed between them.

Article 3. Participation by other Economies

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. The terms of such accession or association shall take into account the circumstances of the member of the WTO, State or separate customs territory.

Article 4. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force 30 days after the date on which the Parties have notified each other in writing that they have completed their necessary internal procedures for the entry into force of this Agreement.
2. This Agreement may be terminated by either Party on giving 180 days' written notice to the other Party.

Article Article

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement. DONE in duplicate in the English language at this day of 2010. For the Government of For the Government of the New Zealand Hong Kong Special Administrative Region of the People's Republic of China