TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT

The Governments of Brunei Darussalam, the Republic of Chile, New Zealand and the Republic of Singapore, (hereinafter referred to collectively as the "Parties" or individually as a "Party", unless the context otherwise requires), resolve to:

STRENGTHEN the special links of friendship and cooperation among them;

ENLARGE the framework of relations among the Parties through liberalising trade and investment and encouraging further and deeper cooperation to create a strategic partnership within the Asia - Pacific region;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst for broader cooperation at international forums;

CREATE an expanded and secure market for the goods and services in their territories;

AVOID distortions in their reciprocal trade;

ESTABLISH clear rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization and other multilateral and bilateral agreements and arrangements;

AFFIRM their commitment to the Asia - Pacific Economic Cooperation (APEC) goals and principles;

REAFFIRM their commitment to the APEC Principles to Enhance Competition and Regulatory Reform with a view to protecting and promoting the competitive process and the design of regulation that minimises distortions to competition;

BE 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;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote the protection intellectual property rights to encourage trade in goods and services among the Parties;

STRENGTHEN their strategic economic partnership to bring economic and social benefits, to create new opportunities for employment and to improve the living standards of their peoples;

UPHOLD the rights of their governments to regulate in order to meet national policy objectives;

PRESERVE their flexibility to safeguard the public welfare;

ENHANCE their cooperation on labour and environmental matters of mutual interest;

PROMOTE common frameworks within the Asia â Pacific region, and affirm their commitment to encourage the accession to this Agreement by other economies;

HAVE AGREED as follows:

Chapter 1. INITIAL PROVISIONS

Article 1.1. Objectives

1. This Agreement establishes a Trans-Pacific Strategic Economic Partnership among the Parties, based on common interest

and on the deepening of the relationship in all areas of application.

2. This Agreement covers in particular the commercial, economic, financial, scientific, technological and cooperation fields. It may be extended to other areas to be agreed upon by the Parties in order to expand and enhance the benefits of this Agreement.

3. The Parties seek to support the wider liberalisation process in APEC consistent with its goals of free and open trade and investment.

4. The trade objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favoured- nation treatment and transparency, are to:

(a) encourage expansion and diversification of trade among each Party's territory;

(b) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services among the territories of the Parties;

(c) promote conditions of fair competition in the free trade area;

(d) substantially increase investment opportunities among each Partyâs territory;

(e) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; and

(f) create an effective mechanism to prevent and resolve trade disputes.

Article 1.2. Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services, which are part of the WTO Agreement, hereby establish a free trade area.

Chapter 2. GENERAL DEFINITIONS

Article 2.1. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

Agreement means the Trans-Pacific Strategic Economic Partnership Agreement;

APEC means the Asia - Pacific Economic Cooperation;

Commission means the Trans-Pacific Strategic Economic Partnership Commission established under Article 17.1 (Establishment of the Strategic Economic Partnership Commission); customs administration means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and policies, and

(a) in relation to Brunei Darussalam means the Royal Customs and Excise Department;

(b) in relation to Chile means the National Customs Service of Chile;

(c) in relation to New Zealand means the New Zealand Customs Service; and

(d) in relation to Singapore means the Singapore Customs;

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:

(a) charges equivalent to an internal tax imposed consistently with GATT 1994, including excise duties and goods and services tax;

(b) fees or other charges that

(i) are limited in amount to the approximate cost of services rendered, and

(ii) do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes; and

(c) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the WTO Agreement on the Implementation of Article VI of GATT 1994, and the WTO Agreement on Subsidies and Countervailing

Measures;

Customs Valuation Agreement means the Agreement on Implementation of Article Vil of the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

days means calendar days;

enterprise means any corporation, company, association, partnership, trust, joint venture, sole-proprietorship or other entity constituted or organised under applicable law, regardless of whether or not the entity is organised for profit, privately or otherwise owned, or organised with limited or unlimited liability;

enterprise of a Party means an enterprise constituted or organised under the law of a Party;

existing means in effect on the date of entry into force of this Agreement for a Party;

GATS means the General Agreement on Trade in Services, which is part of the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

goods of a Party means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree and includes originating goods of a Party;

goods and products shall be understood to have the same meaning unless the context otherwise requires;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System administered by the World Customs Organisation, including its General Rules of Interpretation, Section Notes and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

heading means the first four digits in the tariff classification under the Harmonized System;

measure includes any law, regulation, procedure, requirement or practice;

national means a natural person who has the nationality of a Party according to Annex 2.A or a permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter 4 (Rules of Origin);

person means a natural person or an enterprise;

person of a Party means a national or an enterprise of a Party;

producer means a person who grows, raises, mines, harvests, fishes, captures, gathers, collects, breeds, extracts, hunts, manufactures, processes, assembles or disassembles a good;

preferential tariff treatment means the customs duty rate applicable to an originating good, pursuant to the Parties' respective Tariff Elimination Schedules set out in Annex 1;

Safeguards Agreement means the Agreement on Safeguards, which is part of the WTO Agreement;

subheading means the first six digits in the tariff classification under the Harmonised System;

territory means for a Party the territory of that Party as set out in Annex 2.A; WTO means the World Trade Organisation;

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on April 15, 1994.

Annex 2.A. Country-Specific Definitions

For the purposes of this Agreement, unless otherwise specified:

natural person who has the nationality of a Party means:

(a) with respect to Brunei Darussalam, a subject of His Majesty the Sultan and Yang Di-Pertuan in accordance with the Laws of Brunei;

(b) with respect to Chile, a Chilean as defined in Article 10 of the ConstituciÃ©n Politica de la Republica de Chile;

(c) with respect to New Zealand, a citizen as defined in the Citizenship Act 1977, as amended from time to time, or any

successor legislation; and

(d) with respect to Singapore, any person who is a citizen within the meaning of its Constitution and domestic laws.

territory means:

(a) with respect to Brunei Darussalam, the territory of Brunei Darussalam and the maritime areas adjacent to the coast of Brunei Darussalam to the extent to which Brunei Darussalam may exercise sovereign rights or jurisdiction in accordance with international law and its legislation;

(b) with respect to Chile, the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(c) with respect to New Zealand, the territory of New Zealand and the exclusive economic zone, seabed and subsoil over which it exercises sovereign rights with respect to natural resources in accordance with international law, but does not include Tokelau; and

(d) with respect to Singapore, its land territory, internal waters and territorial sea as well as and any maritime area situated beyond the territorial sea which has been or might in future be designated under its domestic law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regard to the sea, seabed, the subsoil and the natural resources.

Chapter 3. TRADE IN GOODS

Article 3.1. Definitions

For the Purposes of this Chapter:

advertising films and recordings means recorded audio/visual (film, tape, or disc), or audio (tape or disc) media designed to advertise or promote goods or services by any company, firm or person, having an established business or resident in the territory of a Party, excluding such media for general public exhibition;

agricultural goods means those goods referred to in Article 2 of the Agreement on Agriculture, which is part of the WTO Agreement;

commercial samples of negligible value means commerical samples having a value, individually or in the aggregate as shipped, of not more than one US dollar, or the equivalent amount in the currency of a Party, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as comercial samples;

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations or any other customs documentation required on or in connection with importation;

duty-free means free of customs duty;

export subsidies shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture, which is part of the WTO Agreement, including any amendment of that article;

goods admitted for sports purposes means articles and equipment for use in sports contests, demonstrations or training in the territory of the Party into whose territory such goods are imported;

goods intended for display or demonstration includes instruments, apparatus and models designed for demonsirational purposes, unsuitable for other purposes, and classified in Harmonized System Tariff heading 90.23;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicise or advertise a good or serviced, are essentially intended to advertise a good or services, and are supplied free of charge.

Article 3.2. Scope

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

Article 3.3. National Treatment

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

Article 3.4. Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, and subject to a Party's Schedule as set out in Annex I, as at the date of entry into force of this Agreement each Party shall eliminate all customs duties on originating goods of another Party.

3. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between two or more of the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each Party in accordance with Article 17.2 (Functions of the Commission). Any such acceleration shall be extended to all Parties.

Article 3.5. Goods Re-entered after Repair and Alteration

1. The Parties may not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in its own territory.

2. The Parties may not apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

3. For the purposes of this Article, repair and alteration does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

Article 3.6. Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

With the exception of liquor and tobacco products, the Parties shall grant customs duty-free entry to commercial samples of negligible value and to printed advertising materials imported from the territory of another Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or

(b) such advertising materials are imported in packets that each contain no more than one copy of each material and that neither such materials nor packets form part of a larger consignment.

Article 3.7. Temporary Admission of Goods

1. With the exception of liquor and tobacco products each Party shall grant customs duty-free temporary admission for:

(a) professional equipment, including equipment for the press or television, software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade or profession of a business person;

(b) goods intended for display or demonstration;

(c) commercial samples and advertising films and recordings; and

(d) goods admitted for sports purposes, including racing or others similar events, regardless of their origin.

2. Each Party shall, at the request of the person concerned and for reasons deemed valid by its customs authority, extend

the time limit for temporary admission beyond the period initially fixed, provided that the period of extension, having regard to the particular goods and circumstances of each case, is reasonable and the period of extension is no greater than the period initially fixed.

3. No Party may condition the duty-free temporary admission of goods referred to in Paragraph 1, other than to require that such goods:

(a) be used solely by or under the personal supervision of a national or resident of another Party in the exercise of the business activity, trade, profession, or sport of that person;

(b) not be sold or leased or disposed of or transferred while in its territory;

(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(d) be capable of identification wnen imported and exported;

(e) be exported on the departure of the person referenced in Subparagraph (a), or within such other period, related to the purpose of the temporary admission, as the Party may establish;

(f} be admitted in no greater quantity than is reasonable for their intended use; and

(g) be otherwise admissible into the Party's territory under its laws.

4. If any condition that a Party imposes under Paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its domestic law.

5. Each Party, through its customs authority, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of another Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs authorised point of departure other than that through which it was admitted.

7. Subject to Chapter 12 (Trade in Services):

(a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

(b) no Party may require any bond or impose any penalty or charge solely by reason of any difference between the customs authorised point of entry and the customs authorised point of departure of a vehicle or container;

(c) no Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular customs authorised point of departure; and

(d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container back to the territory of that other Party.

Article 3.8. Non-Tariff Measures

1. No Party shall adopt or maintain any non-tariff measures on the importation of any good of another Party or on the exportation of any good destined for the territory of another Party except in accordance with its rights and obligations under the WTO Agreement or in accordance with other provisions of this Agreement.

2. Paragraph 1 shall not apply to the measures set out in Annex 3.A.

Article 3.9. Administrative Fees and Formalities

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. No Party may require consular transactions, including related fees and charges, in connection with the importation of any

good of the other Parties.

3. Each Party shall make available through the Internet or a comparable computer-based telecommunications network a current list of the fees and charges it imposes in connection with importation or exportation.

Article 3.10. Export Duties

No Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Parties, unless such duty, tax, or charge is adopted or maintained on any such good when destined for domestic consumption.(1)

(1) For greater certainty, this Article shall not apply to fees, charges, formalities and requirements on the exportation of goods imposed consistent with the provisions of Article VIII of GATT 1994

Article 3.11. Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of all forms of export subsidies for agricultural goods and shall cooperate in an effort to achieve such an agreement and prevent their reintroduction in any form.

2. Notwithstanding any other provisions of this Agreement, the Parties agree to eliminate, as of the date of entry into force of this Agreement, all forms of export subsidy for agricultural goods destined for the other Parties, and to prevent the reintroduction of such subsidies in any form.

Article 3.12 . Price Band System

1. Chile may maintain its Price Band System as established in Article 12 of Law 18.525 and its subsequent legal modifications or succeeding system, for the products covered by that law. (2)

2. With respect to the products referred to in Paragraph 1, Chile shall give to the other Parties a treatment not less favourable than the preferential tariff treatment given to any third country, including countries with which Chile has concluded or will conclude in the future an agreement notified under Article XXIV of GATT 1994.

(2) The only products covered by the Price Band System are HS 1001.9000, 1101.0000, 1701.1100, 1701.1200, 1701.9100, 1701.9910, 1701.9920 and 1701.9990.

Article 3.13. Special Agricultural Safeguard Measures

1. Chile may apply a special safeguard measure to a limited number of specified sensitive agricultural goods listed in Annex 3.B.

2. Chile shall endeavour to apply special safeguard measures in a manner that is consistent with its commitments under this Agreement to liberalise and promote the expansion of trade in these goods among the Parties.

3 Chile may impose a special safeguard measure on a good only during the period, following the grace period specified in Chile's Schedule as set out in Annex I, in which tariffs are being eliminated. Chile may not impose a special safeguard measure on a good after that good achieves duty-free status under this Agreement.

4. Notwithstanding Article 3.4, Chile may impose a special safeguard measure in the form of additional import duties as set out below on those goods listed in Annex 3.B. The sum of any such additional duty and any import duties or other charges applied pursuant to Article 3.4 shall not exceed the lesser of:

(a) the prevailing most-favoured-nation applied rate; or

(b) the base rate.

5. Chile may impose a special safeguard measure if the quantity of imports of the good during any semester exceeds the quantity trigger level, corresponding to that specific semester, for those goods listed in Annex 3.B.

6. Chile may maintain a special safeguard measure, under Paragraph 5, only until the end of the semester in which Chile applies the measure.

7. Supplies of the good in question which were en route on the basis of a contract settled before the additional customs duty is imposed under the terms of this Article shall be exempted from any such additional customs duty, provided that they may be counted in the volume of imports of the good in question during the following semester for the purposes of triggering the provisions of Paragraph 5 in that semester.

8. Chile may not apply, with respect to the same good, a special safeguard measure and at the same time apply or maintain a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

9. Chile shall apply any special safeguard measure in a transparent manner. Chile shall ensure that the current volume of imports is published in a manner which is readily accessible to the other Parties, and shall give notice in writing, including relevant data, to the other Parties as far in advance as may be practicable and in any event within 10 working days of the implementation of such action. If Chile decides not to apply a special safeguard measure where the specified trigger volume has been or is about to be met, it shall notify the other Parties promptly of its decision.

10. Upon request of a Party, Chile shall consult promptly and cooperate in exchanging information, as appropriate, with respect to the conditions for applying a special safeguard measure.

11. The Committee on Trade in Goods may review the implementation and operation of this Article.

12. For purposes of this Article, special safeguard measure means a special safeguard measure described in Paragraph 4 and base rate means the rate of customs duty for an imported good as indicated in the Schedule of the importing Party as set out in Annex I.

Article 3.14. Committee on Trade In Goods

1. The Parties may establish a Committee on Trade in Goods that may meet on the request of any Party or the Commission to consider any matter arising under this Chapter and Chapter 4 (Rules of Origin).

2. The Committee's functions shall include:

1. (a) reviewing the implementation of the Chapters referred to above; and
2. (b) identification and recommendation of measures to promote and facilitate improved market access, including addressing barriers to trade in goods among the Parties, and to accelerate the tariff elimination under this Agreement

Annex 3.A . Import and Export Measures Measures of Chile

Article 3.8 shall not apply to measures of Chile relating to imports of used vehicles.

Annex 3.B . Special Safeguard Measures

For purposes of Article 3.13, goods originating in Brunei Darussalam, New Zealand or Singapore that may be subject to a special safeguard measure and the trigger levels for each such good are set out below:

Notes:

1. The quantities set out above for baskets correspond to each semester. The semesters run from January 1 to June 30 and July 1 to December 31 for each year.
2. Each basket will have an annual growth rate of 8 percent which will be calculated at the end of each calendar year.
3. In the first calendar year following entry into force of the Agreement, the 8 percent annual growth rate will apply to that calendar year and each calendar year thereafter.

Chapter 4 . RULES OF ORIGIN

Article 4.1 . Definitions

For the purposes of this Chapter:

aquaculture means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from 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;

CIF means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry in

the country of importation. The valuation shall be made in accordance with the Customs Valuation Agreement;

FOB means the value of the good free on board, independent of the means of transportation, at the port or site of final shipment abroad. The valuation shall be made in accordance with the Customs Valuation Agreement;

goods wholly obtained or produced entirely in a Party means:

(a) mineral goods extracted from the soil or seabed in the territory of a Party;

(b) agricultural and plant products grown and harvested, picked or gathered in the territory of a Party;

(c) live animals, born and raised in the territory of a Party;

(d) goods obtained from live animals in the territory of a Party;

(e) goods obtained from hunting, trapping, fishing, farming, gathering, capturing or aquaculture in the territory of a Party;

(f) goods (fish, shellfish, plant and other marine life) taken within the territorial sea or the relevant maritime zone of a Party seaward of the territorial sea under that Party's applicable law in accordance with the provisions of the United Nations Convention on the Law of the Sea 1982 by a vessel flying, or entitled to fly, the flag of that Party, or taken from the high seas by a vessel registered or recorded with that Party and flying its flag;

(g) goods obtained or produced on board a factory ship registered or recorded with that Party and flying its flag, exclusively from products referred to in Subparagraph (f);

(h) waste and scrap derived from production in the territory of a Party or used articles or goods collected in the territory of a Party, provided that such goods are fit only for the recovery of raw materials;

(i) goods taken by a Party, or a person of a Party, from the seabed or subsoil beneath the territorial sea or the continental shelf of that Party, in accordance with the provision of the United Nations Convention on the Law of the Sea 1982;

(j) recovered goods derived in the territory of a Party from used goods and utilised in the territory of the Party in the production of remanufactured goods; and

(k) goods produced entirely in the territory of a Party exclusively from goods referred to in Subparagraphs (a) to (j) or from their derivatives, at any stage of production;

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Indirect material means a good used in the production, testing or inspection of another good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices, and supplies used for testing or inspecting the goods;

(c) gloves, glasses, footwear, clothing, safety equipment and supplies;

(d) tools, dies and moulds;

(e) spare parts and materials used in the maintenance of equipment and buildings;

(f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

(g) 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.

material means a good or any matter or substance that is used or consumed in the production of goods or transformation of another good;

minimal operations or processes means operations or processes which contribute minimally to the essential characteristics of the goods and which by themselves, or in combination, do not confer origin;

packing materials and containers for shipment means goods used to protect a good during its transportation, other than containers and packaging materials used for retail sale;

production means methods of obtaining goods including, but not limited to growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, aquaculture, gathering, collecting, breeding, extracting, manufacturing, processing, assembling or disassembling a good;

recovered goods means materials in the form of individual parts that result from:

(a) the complete disassembly of used goods into individual parts; and

(b) the cleaning, inspecting, or testing or other processing of those parts, and as necessary for improvement to sound working condition one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good as listed in Annex 4.A;

remanufactured goods means an industrial good assembled in the territory of a Party as listed in Annex 4.A, that:

(a) is entirely or partially composed of recovered goods;

(b) has the same life expectancy and meets the same performance standards as a new good; and

(c) enjoys the same factory warranty as such a new good

transaction value means the price paid or payable for a good as determined by the provisions of the Customs Valuation Agreement;

used means used or consumed in the production of goods;

value means the value of a good or material, pursuant to the provisions of the Customs Valuation Agreement.

Article 4.2 . Originating Goods

Unless otherwise indicated in this Chapter, a good shall be considered as originating in a Party when:

(a) the good is wholly obtained or produced entirely in the territory of one Party, pursuant to the definition in Article 4.1;

(b) the good is produced entirely in the territory of one or more Parties, exclusively from materials whose origin conforms to the provisions of this Chapter; or

(c) the good is produced in the territory of one or more Parties, using non- originating materials that conform to a change in tariff classification, a regional value content, or other requirements specified in Annex II, and the good meets the other applicable provisions of this Chapter.

Article 4.3 . Regional Value Content

1. Where Annex II refers to a regional value content, each Party shall provide that the regional value content of a good shall be calculated on the basis of the following method:

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

where:

RVC is the is the regional value content expressed as a percentage;

TV is the transaction value of the good, adjusted on an FOB basis, except as provided in Paragraph 3. If no such value exists or cannot be determined, pursuant to the principles of Article 1 of the Customs Valuation Agreement, it shall be calculated pursuant to the principles of Articles 2 to 7 of that Agreement; and

VNM is the transaction value of the non-originating materials, when they were first acquired or supplied to the producer of the goods, adjusted on a CIF basis, except as provided in Paragraph 4. If such value does not exist or cannot be determined, pursuant to the principles of Article 1 of the Customs Valuation Agreement, it shall be calculated pursuant to that Agreement.

2. The value of the non-originating materials used by the producer in the production of a good shall not include, for

purposes of calculating the regional value content, pursuant to Paragraph 1, the value of non-originating materials used to produce the originating materials subsequently used in the production of the good.

3. When the producer of a good does not export it directly, the value shall be adjusted up to the point at which the purchaser receives the good within the territory of a Party where the producer is located.

4. When the producer of the good acquires a non-originating material in the territory of the Party where it is located, the value of such material 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.

Article 4.4 . Operations That Do Not Confer Origin

The minimal operations or processes that do not confer origin, include the following:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, ventilation, chilling and like operations);

(b) simple operations consisting of sifting, classifying, washing, cutting, slitting, bending, coiling, or uncoiling;

(c) changes of packing and breaking up and assembly of consignments;

(d) packing, unpacking or repacking operations;

(e) affixing of marks, labels or other like distinguishing signs on products or their packaging; and

(f) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

Article 4.5 . Accumulation

Originating goods or materials of any of the Parties used in the production of goods in the territory of another Party shall be considered to originate in the territory of the latter Party.

Article 4.6 . De Minimis

A good that does not conform to a change in tariff classification, pursuant to the provisions of Annex II, shall be considered to be originating if the value of all non-originating materials used in its production not meeting the change in tariff classification requirement does not exceed 10 percent of the transaction value of the given good pursuant to Article 4.3, and the good meets all the other applicable criteria of this Chapter.

Article 4.7 . Accessories, Spare Parts, and Tools

1. Normal accessories, spare parts, or tools provided with the good as part of the standard accessories, spare parts, or tools shall be regarded as originating goods and shall be disregarded in determining whether or not all the non- originating materials used in the production of the originating goods undergo the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good; and

(b) the quantities and the value of those accessories, spare parts, or tools are the normal ones for the good.

2. If the goods are subject to a regional value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the goods.

Article 4.8. Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which goods are packaged for retail sale, if classified with the goods, shall be disregarded in determining whether all the non-originating materials used in the production of those goods have undergone the applicable change in tariff classification set out in Annex II. However, if the goods are subject to a regional value content requirement the value of the packaging used for retail sale will be counted as originating or non- originating, as the case may be, in calculating the regional value content of the goods.

Article 4.9. Packing Materials and Containers for Shipment

Packing materials and containers in which a good is packed exclusively for transport shall not be taken into account for purposes of establishing whether the good is originating.

Article 4.10 . Indirect Materials

Indirect materials shall be considered to be originating materials without regard to where they are produced and its value shall be the cost registered in the accounting records of the producer of the good.

Article 4.11 . Transit Through Non-Parties

1. Preferential tariff treatment provided for in this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are directly transported among the Parties.

2. Notwithstanding Paragraph 1, goods shall be authorised to transit through non-Party countries, and to remain stored for a reasonable period of time, which in no case shall be more than 6 months from the date of entry of the goods into the third non-Party country.

3. Goods shall be eligible for preferential tariff treatment in accordance with this Agreement if they are transported through the territory of one or more non- Parties, provided that the goods:

(a) did not undergo operations other than unloading, reloading, or any other operation necessary to preserve them in good condition; and

(b) did not enter the commerce of such non-Parties after the shipment from the Party and before the importation into another Party.

4. Compliance with the provisions set out in Paragraphs 2 and 3 shall be proved by means of supplying to the customs authorities of the importing Party either customs documents of the third country or documents of the competent authorities, including commercial shipping or freight documents.

Article 4.12. Outward Processing

1. Notwithstanding the relevant provisions of Article 4.2 and the product- specific requirements set out in Annex II, a good listed in Annex 4.B shall be considered as originating even if it has undergone processes of production or operation outside the territory of a Party on a material exported from the Party and subsequently re-imported to the Party, provided that:

(a) the total value of non-originating materials as set out in Paragraph 2 does not exceed 55 percent of the customs value of the final good for which originating status is claimed;

(b) the materials exported from a Party shall have been wholly obtained or produced in the Party or have undergone therein, processes of production or operation going beyond the minimal processes or operations in Article 4.4, prior to being exported outside the territory of the Party;

(c) the producer of the exported material is the same producer of the final good for which originating status is claimed;

(d) the re-imported good has been obtained through processes of production or operation of the exported material; and

(e) the last process of manufacture of the good was performed in the territory of the Party, and this process is the last activity undertaken in respect to a good that finally transforms it into a good different from its component parts or materials and a new good is therefore manufactured.

2. For the purposes of Paragraph 1(a), the total value of non-originating materials shall be the value of any non-originating materials added in a Party as well as the value of any materials added and all other costs accumulated outside the territory of the Party, including transportation costs.

3. For greater certainty, the verification procedures referred to in Article 4.16 shall apply in order to ensure the proper application of this Article. Such procedures include the provision of information and supporting documentation, including that relating to the export of originating materials and the subsequent re- import of the goods subsequently exported as originating goods, by the exporting customs administration or exporter upon receipt of a written request from the customs administration of the importing Party through the customs administration of the exporting Party.

4. Upon the request of a Party, the list of products in Annex 4.B may be modified by the Commission.

Article 4.13. Treatment of Goods for Which Preference Is Claimed

1. A Party can accept either; a declaration as to origin on the export invoice (declaration), or a certificate of origin, in respect of a good imported from any other Party for which an importer claims preferential tariff treatment.

2. An exporter or producer may elect to use either a declaration as to origin on the export invoice or a certificate of origin, either of which may then be used by the importer as evidence of origin in respect to goods for which preferential tariff treatment is claimed.

3. The declaration or certificate of origin shall be completed by the exporter or producer, as the case may be. The declaration or certificate of origin shall:

(a) specify that the goods enumerated thereon are the origin of the exporting Party and meet the terms of this Chapter;

(b) be made in respect of one or more goods; and which can include a variety of goods; and

(c) be completed in English.

4. respect of the goods subject to the declaration shall include:

The export invoice upon which the declaration as to origin is affixed and in

(a) a full description;

(b) six digit Harmonized System Code;

(c) the producer's name(s) if known; and

(d) the importer's name(s) in respect of imported goods, if known.

5. If the export invoice does not include the information referred to in Paragraph 4, it must be added in "observations" on the declaration as to origin in the form set out in Annex 4.C.

6. The declaration shall be in the form set out in Annex 4.C, and the certificate of origin shall be in the form set out in Annex 4.D. These requirements may thereafter be revised or modified by an Implementing Arrangement agreed among the Parties.

7. The declaration and the certificate of origin shall remain valid for a period of 2 years from the date on which the respective documents were issued.

8. If the exporter is not the producer of the good referred to on the declaration or on the certificate of origin, that exporter may complete and sign the declaration on the basis of:

(a) the exporter's knowledge of whether the good qualifies as an originating good; or

(b) a producer’s written declaration that the good qualifies as an originating good in that it meets the terms of this Chapter.

9. Nothing in Paragraph 8(b) shall be construed to require a producer who is not the exporter of the good to make a declaration or complete a certificate of origin.

10. Slight discrepancies as between the wording and detail stated on the export invoice or certificate of origin produced to the customs administration of the importing Party in clearance of goods shall not, of itself, cause any claim for preferential tariff treatment to be denied.

11. Any declaration or certificate of origin presented in the clearance of goods issued in advance of the entry into force of this Agreement shall, if presented on or after the date of entry into force of this Agreement, be accepted as evidence as to the origin of the good specified thereon.

12. The customs administration of the importing Party shall, in accordance with its domestic legislation, grant preferential tariff treatment to goods of another Party only in those instances that an importer:

(a) provides to the customs administration a declaration or certificate of origin in accord with the provisions of this Article; or

(b) provides sufficient documentary or other evidence to substantiate the tariff preference claimed for the goods.

13. The Parties shall, in accordance with their domestic legislation, provide that where an importer claims at the time of importation a good can meet the terms of this Chapter and would thereby have qualified for preferential tariff treatment but was unable to provide a declaration or a certificate of origin or other such evidence as provided for in Paragraph 12 the importer may, in accordance with domestic legislation or within 1 year from date of importation, apply for a refund of any excess customs duties paid as a result of the goods not having been accorded preferential tariff treatment, on production of:

(a) a declaration or certificate of origin that the good qualifies as an originating good; and

(b) such other evidence as the customs administration may require to satisfactorily evidence the tariff preference claimed.

14. An importing Party may not require a declaration or certificate of origin to admit goods pursuant to tariff preference where:

(a) the customs value does not exceed US$1000 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 such evidence.

15. In accordance with Paragraph 14, where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the origin requirements of this Article, the customs administration of the importing Party may deny preferential tariff treatment.

Article 4.14. Obligations Regarding Exports

1. Where the exporter or producer becomes aware that it has provided an erroneous or false declaration or certificate of origin or any other such erroneous or false evidence, the exporter or producer shall give notice as soon as possible to the customs administrations of the importing and exporting Party, as well as the importer, of any change that would affect the accuracy or validity of a declaration or certificate of origin.

2. The exporter or producer that has provided a declaration or a certificate of origin, shall provide a copy of these documents to its exporting Party's customs administration upon request.

3. With respect to exports, each Party shall provide penalties for false declarations, certification, or documentation related to origin submitted to a customs administration by an exporter or producer in its territory.

Article 4.15. Records

Each Party shall require that producers, exporters and importers in their respective territories maintain for a period of not less than 3 years after the date of exportation or importation, as the case may be, all records relating to that 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.

Article 4.16 . Verification of Origin

1. For the purposes of determining whether goods imported into the territory of a Party from the territory of another Party qualify as originating goods, the importing Party may, through its customs administration, verify any claims made for tariff preference by means of:

(a) written requests for information addressed to the importer;

(b) written questions and requests for information addressed to the exporter or producer in the territory of the exporting Party through the customs administrations of the exporting Party;

(c) requests to the customs administration of the exporting Party to verify the origin of the good; or

(d) such other procedures as the customs administrations of the Parties may agree.

2. If the mechanism established in Paragraph 1 fails to determine the origin of a good, the importing Party may request, through the customs administration of the exporting Party, to visit the premises of the exporter or producer in the territory of the exporting Party:

(a) to review records referring to origin; and

(b) to observe the facilities used in production of the goods.

3. The requesting Party shall, through its customs administration:

(a) ensure that any request made to the customs administration of the exporting Party is sufficiently material to warrant the request and is accompanied by sufficient information to identify the particular goods and the exporter or producer of those goods; and

(b) specify a period of 60 days from the date the written questions or request was sent to the exporter or producer to fully respond to the questions or request.

4. The parties agree to facilitate requests for assistance through their customs administration under this Article within 10 days of receipt of the request.

Article 4.17. Decision on Origin

1. If as a result of questions put or visits made to the exporter or producer the requesting Party is satisfied the goods about which those questions were put or visits made are originating goods pursuant to the provisions of this Chapter, it shall permit preferential access for those goods.

2. Preferential tariff treatment may be denied if:

(a) the goods do not or did not meet the requirements of this Chapter;

(b) the exporter or producer fails to respond fully to questions put by the customs administration of the importing Party within 60 days of the date of the request of the importing Party, or such other extended period of time as may be specified by the customs administrations of the importing Party, but not more than an additional 30 days;

(c) the requested customs administration is, for any reason, unable to comply with a request from the customs administration of the importing Party to verify the origin of goods and advises the requesting customs administration of this inability or, fails to respond to a request within 90 days; or

(d) the exporter or producer does not agree to a visit by the customs administration of the importing Party within 30 days.

3. 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, full reasons for that decision.

4. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such a person until it is satisfied that the exporter or producer is no longer making false or unsupported representations as to origin.

Article 4.18 . Costs Incurred

1. The ordinary costs of complying with a request for verification will be borne by:

(a) the requested Party; or

(b) the Party which visits an exporter or producer, as the case may be, in the territory of the other Party.

2. Where extraordinary costs or doubts in determining costs arise, these shall be resolved by mutual agreement between Parties.

Annex 4.A.

Goods classified in the following Harmonized System subheadings may be considered remanufactured goods, except for those designed principally for use in automotive goods of Harmonized System headings or subheadings 8702, 8703, 8704.21, 8704.31, 8704.32, 8706 and 8707:

8408.10 8408.20 8408.90 8409.10 8409.91 8409.99 8412.21 8412.29 8412.39 8412.90 8413.30 8413.50 8413.60 8413.91 8414.30 8414.80 8414.90 8483.10 8483.30 8483.40 8483.50 8483.60 8483.90 8503.00 8511.40 8511.50 8526.10 8537.10 8542.21

Annex 4.B.

Goods classified in the following Harmonized System subheadings are goods to which Article 4.12 (Outward Processing) applies:

4014.90 7015.40 7019.90 8207.19 8409.99 8412.80 8414.59 8414.80 8414.90 8415.81 8415.90 8421.21 8421.99 8422.30 8422.40 8423.82 8423.89 8423.90 8424.30 8424.90 8437.90 8441.10 8443.90 8451.29 8462.31 8462.99 8467.22 8467.91 8467.99 8471.60 8471.70 8471.80 8473.29 8473.30 8479.89 8479.90 8480.20 8480.49 8480.79

8483.50 8484.20 8501.20 8501.31 8501.32 8501.33 8501.34 8501.53 8501.61 8501.62 8502.11 8502.12 8502.13 8502.20 8502.31 8502.39 8502.40 8504.21 8504.22 8504.31 8504.32 8504.33 8504.34 8504.40 8504.90 8505.11 8505.19 8506.90 8507.40 8509.20 8509.90 8511.20 8511.80 8514.10 8514.30 8514.40 8514.90 8515.11 8515.19 8515.21 8515.31 8515.80 8515.90 8516.21 8516.33 8518.29

8518.50 8520.32 8520.33 8520.39 8520.90 8522.10 8522.90 8523.30 8524.60 8525.10 8525.30 8526.10 8526.91 8526.92 8531.90 8535.29 8535.40 8536.41 8536.49 8539.29 8539.32 8539.39 8539.41 8539.49 8539.90 8540.72 8540.79 8540.89 8542.21 8542.29 8543.20 8543.30 8543.90 8544.41 8545.20 8546.10 8548.10 8714.93 8714.96 8803.30 8905.20 9001.10 9001.50 9006.10 9008.30 9010.90

9013.80 9017.20 9017.80 9018.11 9027.90 9031.10 9031.80 9032.90 9033.00 9403.70 9403.80 9405.50

Annex 4.C. DECLARATION AS TO ORIGIN

I [state name and position] being the [producer and exporter][producer][exporter] (insert only that which applies) hereby declare that the goods enumerated on this invoice are originating from [Brunei Darussalam] [Chile] [New Zealand] [Singapore] (insert only that which applies) in that they comply with the provisions of Article 4.13 of the Trans-Pacific Strategic Economic Partnership Agreement entered into among Brunei Darussalam, Chile, New Zealand and Singapore.

Observations:

Signature

Date:

Annex 4.D . TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT CERTIFICATE OF ORIGIN

TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT

CERTIFICATE OF ORIGIN INSTRUCTIONS

Pursuant to Article 4.13, for the purposes of obtaining preferential tariff treatment this document must be completed legibly and in full by the exporter or producer and be in the possession of the importer at the time the declaration is made. Please print or type:

Issuing Number: Fill in the serial number of the certificate of origin.

Field 1: State the full legal name, address (including country) and legal tax identification number of the exporter. The legal tax identification number in Chile is the Unique Tax Number (“Rol Unico Tributario”). The tax identification number is not applicable for Brunei Darussalam, New Zealand and Singapore.

Field 2: If one producer, state the full legal name, address (including country, telephone number, fax number and email address) and legal tax identification number, as defined in Field 1, of said producer. (Tax ID is not applicable to Brunei Darussalam, New Zealand and Singapore.) If more than one producer is included on the Certificate, state "Various" and attach a list of all producers, including their legal name, address (including country, telephone number, fax number and email address) and legal tax identification number, cross referenced to the good or goods described in Field 4. If you wish this information to be confidential, it is acceptable to state " Available to Customs upon request". If the producer and the exporter are the same, complete field with "SAME". If the producer is unknown, it is acceptable to state "UNKNOWN".

Field 3: State the full legal name, address (including country) as defined in Field 1, of the importer; if the importer is not known, state "UNKNOWN"; if multiple importers, state "VARIOUS".

Field 4: Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (HS) description of the good.

Field 5: For each good described in Field 4, identify the HS tariff classification to six digits.

Field 6: For each good described in Field 4, state which criterion (A through C) is applicable. The rules of origin are contained in Chapter 4 and Annex II of the Agreement. NOTE: In order to be entitled to preferential tariff treatment, each good must meet at least one of the criteria below.

Preference Criteria

A: The good is "wholly obtained or produced entirely" in the territory of one or more of the Parties, as referred to in Article 4.1 and 4.2 of the Agreement. NOTE: The purchase of a good in the territory does not necessarily render it "wholly obtained or produced".

B: The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials. All materials used in the production of the good must qualify as "originating" by meeting the rules of Chapter 4 of the Agreement.

C: The good is produced entirely in the territory of one or more of the Parties and satisfies the specific rule of origin set out in Annex II of the Agreement (Specific Rules of Origin) that applies to its tariff classification as referred to in Article 4.2, or the provisions under Article 4.12 of the Agreement. The rule may include a tariff classification change, regional value-content requirement and a combination thereof, or specific process requirement. The good must also satisfy all other applicable requirements of Chapter 4 (Rules of Origin) of the Agreement.

Field 7: For each good described in Field 4, state "YES" if you are the producer of the good. If you are not the producer of the good, state "NO" followed by (1) or (2), depending on whether this certificate was based upon: (1) your knowledge of whether the good qualifies as an originating good; (2) Issued by the producer's written Declaration of Origin, which is completed and signed by the producer and voluntarily provided to the exporter by the producer.

Field 8: For each good described in Field 4, where the good is subject to a regional value content (RVC) requirement stipulated in the Agreement, indicate the percentage.

Field 9: Identify the name of the country. ("BN" for all goods originating from Brunei Darussalam, "CL" for all goods originating from Chile, "NZ" for all goods originating from New Zealand, "SG" for all goods originating from Singapore)

Field 10: This field must be completed, signed and dated by the exporter or producer. The date must be the date the Certificate was completed and signed.

Chapter 5. CUSTOMS PROCEDURES

Article 5.1 . Definitions

For the purposes of this Chapter:

customs law means any legislation administered, applied or enforced by the customs administration of a Party;

customs offence means any breach or attempted breach of customs law;

customs procedures means the treatment applied by the customs administration of each Party to goods, which are subject to customs control.

Article 5.2 . Objectives

The objectives of this Chapter of the Agreement are to:

(a) ensure predictability, consistency and transparency in the application of customs laws and other customs administrative policies of the Parties;

(b) ensure efficient, economical administration of customs procedures, and the expeditious clearance of goods;

(c) facilitate trade among the Parties;

(d) apply simplified customs procedures; and

(e) promote cooperation among the customs administrations.

Article 5.3 . Scope

This Chapter shall apply, in accordance with each Party's respective international obligations and customs law, to customs procedures applied to goods traded among the Parties.

Article 5.4 . Customs Procedures and Facilitation

1. Customs procedures of the Parties shall, where possible and to the extent permitted by their respective customs law, conform with the standards and recommended practices of the World Customs Organisation, including the principles of the International Convention on the Simplification and Harmonisation of Customs Procedures.

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

3. The customs administrations of the Parties shall periodically review their customs procedures with a view to their further simplification and the development of further mutually beneficial arrangements to facilitate trade.

Article 5.5 . Customs Cooperation

1. To the extent permitted by their domestic law, the customs administrations of the Parties may, as they deem fit, assist each other, in relation to originating goods, by providing information on the following:

(a) the implementation and operation of this Chapter;

(b) the movement of goods among the Parties;

(c) investigation and prevention of prima facie customs offences;

(d) developing and implementing customs best practice and risk management techniques;

(e) simplifying and expediting customs procedures;

(f) advancing technical skills and the use of technology;

(g) application of the Customs Valuation Agreement; and

(h) additional assistance in respect to other matters.

2. Where a Party providing information to another Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information.

Article 5.6 . Customs Valuation

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

Article 5.7 . Advance Rulings

1. Each Party, through its customs administration, shall provide in writing advance rulings in respect of the tariff classification and origin of goods and whether a good qualifies for entry free of customs duty in accordance with Article 3.5 (Goods Re-entered After Repair or Alteration) (hereinafter referred to as “advance rulings”), to a person described in Subparagraph 2(a).

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:

(a) provide that an importer in its territory or an exporter or producer in the territory of another Party may apply for an advance ruling before the importation of 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 an advance ruling be issued to the applicant expeditiously, or in any case within 60 days of the receipt of all necessary information.

3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with Subparagraph 2(c) is not provided within a specified time.

4. Subject to Paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory within 3 years of the date of that ruling, or such other period as required by that Party's laws.

5. A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law, the information provided is false or inaccurate, if there is a change in domestic law consistent with this Agreement, or there is a change in a material fact, or circumstances on which the ruling is based.

6. Subject to the confidentiality requirements of a Party’s domestic law, each Party shall publish its advance rulings.

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

8. The importing Party may apply measures as provided in Article 5.12.

Article 5.8 . Review and Appeal

1. Each Party shall ensure that the importers in its territory have access to:

(a) administrative review independent of the official or office that issued the determination subject to review; and

(b) judicial review of the determination taken at the final level of administrative review, in accordance with the Party's domestic law.

2. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

3. The level of administrative review may include any authority supervising the customs administration.

Article 5.9. Consultation

The customs administrations of the Parties will encourage consultation with each other regarding significant customs issues that affect goods traded among the Parties.

Article 5.10. Paperless Trading

1. The customs administrations shall each endeavour to provide an electronic environment that supports business transactions between it and its trading communities.

2. In implementing initiatives that provide for paperless trading, the customs administrations of the Parties shall take into account the methods developed in APEC and the World Customs Organisation.

Article 5.11 . Express Consignments

Each Party shall ensure efficient clearance of all shipments, while maintaining appropriate control and customs selection. In the event that a Party's existing system does not ensure efficient clearance, it should adopt procedures to expedite express consignments to:

(a) provide for pre-arrival processing of information related to express consignments;

(b) permit the submission of a single document covering all goods contained in a shipment transported by the express shipment company through electronic means if possible; and

(c) minimise, to the extent possible, the documentation required for the release of express consignments.

Article 5.12 . Penalties

Each Party shall adopt or maintain measures that provide for the imposition of civil, criminal or administrative penalties, whether solely or in combination, for violations of its customs laws consistent with the provisions of this Chapter.

Article 5.13. 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. To enhance the flow of goods across their borders the customs administrations shall regularly review these procedures.

2. Where a customs administration deems that the inspection of goods is not necessary to authorise clearance of the goods from customs control, the Party shall endeavour to provide a single point for the documentary or electronic processing of all imports and exports.

Article 5.14. Release of Goods

Each Party shall adopt or maintain procedures allowing, to the greatest extent possible, goods to be released:

(a) within 48 hours of arrival; and

(b) at the point of arrival, without temporary transfer to warehouses or other locations.

Article 5.15 . Enquiry Points

Each Party shall designate one or more enquiry points to address enquires from interested persons concerning customs matters, and shall make available on the Internet or in print form information concerning procedures for making such enquires.

Article 5.16 . Confidentiality

Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its legislation;

(b) be contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(c) impede law enforcement; or

(d) prejudice the competitive position of the person providing the information.

Chapter 6 . TRADE REMEDIES

Article 6.1 . Global Safeguards

1. Nothing in this Agreement affects the rights and obligations of the Parties under Article XIX of GATT 1994 and the Safeguards Agreement or any amendments or provisions that supplement or replace them.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

3. As a courtesy, a Party shall advise the other Parties of a safeguard action on initiation of an investigation and the reasons for it.

Article 6.2 . Antidumping and Countervailing Duties

1. Nothing in this Agreement affects the rights and obligations of the Parties under Article VI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 which is part of the WTO Agreement (Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures which is part of the WTO

Agreement (SCM Agreement) with regard to the application of antidumping and countervailing duties or any amendments or provisions that supplement or replace them.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article VI of GATT 1994, the Antidumping Agreement and the SCM Agreement.

Chapter 7. SANITARY AND PHYTOSANITARY MEASURES

Article 7.1 . Definitions

1. For the purposes of this Chapter: SPS Agreement means the Agreement on the Application of Sanitary and

Phytosanitary Measures, which is part of the WTO Agreement. 2. The definitions in Annex A of the SPS Agreement are incorporated into this

Chapter and shall form part of this Chapter, mutatis mutandis.

3. The relevant definitions developed by the international organisations International Office of Epizootics (OIE), International Plant Protection Convention (IPPC), and Codex Alimentarius Commission apply in the implementation of this Chapter.

Article 7.2 . 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 relevant international organizations (OIE, IPPC and Codex Alimentarius Commission);

(b) expand trade opportunities through facilitation of trade among the Parties through seeking to resolve trade access issues, while protecting human, animal or plant life or health in the territory of the Parties;

(c) provide a means to improve communication, cooperation and resolution of sanitary and phytosanitary issues; and

(d) establish a mechanism for the recognition of equivalence of sanitary and phytosanitary measures and regionalisation practices maintained by the Parties consistent with the protection of human, plant and animal life or health.

Article 7.3 . Scope

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

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

Article 7.4 . Committee on Sanitary and Phytosanitary Matters

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters (the Committee) which shall include representatives of the competent authorities of the Parties.

2. The Committee shall meet within one year of the entry into force of this Agreement and at least annually thereafter or as mutually determined by the Parties. The Committee shall establish its rules of procedure at its first meeting. It shall meet in person, teleconference, video conference, or through any other means, as mutually determined by the Parties. The Committee may also address issues through correspondence.

3. The Gommittee may agree to establish technical working groups consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from this Chapter. When additional expertise is needed, the membership of these groups need not be restricted to representatives of the Parties.

4. The Committee shall consider any matters relating to the implementation of the Chapter including:

(a) establishing, monitoring and reviewing work plans; and

(b) initiating, developing, adopting, reviewing and modifying Implementing Arrangements on technical matters which further elaborate the provisions of this Chapter in order to facilitate trade among the Parties.

5. The Implementing Arrangements referred to in Paragraph 4(b) shall include the following:

(a) Competent Authorities and Contact Points (Implementing Arrangement 1);

(b) Diseases and Pests for which Regionalisation Decisions can be Taken (Implementing Arrangement 2);

(c) Criteria for Regionalisation Decisions (Implementing Arrangement 3); (d) Recognition of Measures (Implementing Arrangement 4);

(e) Guidelines for Conducting an Audit (Implementing Arrangement 5); (f} Certification (Implementing Arrangement 6);

(g) Import Checks (Implementing Arrangement 7); and

(h) Equivalence: Procedures for Determination (Implementing Arrangement 8).

6. Each Party responsible for the implementation of an Implementing Arrangement shall take all necessary actions to implement such Arrangement within three months following its adoption, unless otherwise agreed by the relevant Parties.

7. The Committee shall report to the Commission on the implementation of this Chapter.

Article 7.5. Competent Authorities and Contact Points

1. The competent authorities responsible for the implementation of the measures referred to in this Chapter are listed in Implementing Arrangement 1. The contact points that have the responsibilities relating to notification are also set out in Implementing Arrangement 1.

2. The Parties shall inform each other of any significant changes in the structure, organisation and division of the competency of its competent authorities or contact points.

Article 7.6. Adaptation to Regional Conditions

1. Where a Party has an area or part of its territory free of a disease or pest, the Parties may agree in accordance with Implementing Arrangement 3, to list this status and the measures in place in Implementing Arrangement 2 to ensure that the disease or pest free status will be maintained in the event of an incursion.

2. In the event of an incursion of a disease or pest specified in Implementing Arrangement 2, the importing Party shall recognise the exporting Party's measures specified in Implementing Arrangement 2 for the purpose of facilitating trade among the Parties.

3. The Parties may agree to list additional diseases or pests in Implementing Arrangement 2, in accordance with the criteria specified in Implementing Arrangement 3.

4. Where one of the Parties considers that it has a special status with respect to a specific disease or pest, it may request recognition of this status. The Party concerned may also request specific guarantees in respect of imports of animals and animal products, plants and plant products, and other related goods appropriate to the agreed status. The guarantees for specific diseases and pests shall be specified in Implementing Arrangement 4.

Article 7.7. Equivalence

1. Equivalence may be recognised by the Parties in relation to an individual measure and/or groups of measures and/or systems applicable to a sector or part of a sector as specified in Implementing Arrangement 4. The equivalence determinations recorded in Implementing Arrangement 4 shall be applied to trade among the relevant Parties in animals and animal products, plants and plant products, or as appropriate to related goods.

2. The recognition of equivalence requires an assessment and acceptance of:

(a) the legislation, standards and procedures, as well as the programmes in place to allow control and to ensure domestic and importing country requirements are met;

(b) the documented structure of the competent authority(ies), their powers, their chain of command, their modus operandi and the resources available to them; and

(c) the performance of the competent authority in relation to the control and assurance programmes.

In this assessment, the Parties shall take account of experience already acquired.

3. The importing Party shall accept the sanitary or phytosanitary measure of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection. In reaching a determination of whether a sanitary or phytosanitary measure applied by an exporting Party achieves the importing Party's appropriate level of protection, those Parties shall follow the process specified in Implementing Arrangement 8. The Parties may add to or amend the steps in the process in the future as the Partiesâ experience in regard to the determination of equivalence process increases.

4. Where equivalence has not been recognised or where an application is pending, trade shall take place under the conditions required by the importing Party to meet its appropriate level of protection. These conditions shall be as set out in Implementing Arrangement 4 where such conditions have been agreed. If conditions have not been agreed and incorporated in Implementing Arrangement 4, then the conditions to be met by the exporting Party shall be those specified by the importing Party. The exporting Party may agree to meet the importing Party's conditions, without affecting the result of the process set out in Implementing Arrangement 8.

5. Implementing Arrangement 4 may list :

(a) those individual measures and/or groups of measures and/or systems applicable to a sector or part of a sector, for which the respective sanitary or phytosanitary measures are recognised as equivalent for trade purposes;

(b) actions to enable the assessment of equivalence to be completed in accordance with the process set out in Implementing Arrangement 8, and by the date indicated in Implementing Arrangement 4, or if not indicated, as specified by the importing Party; or

(c) the specific guarantees related to recognition of special status provided for Article 7.6(4); and

(d) may also list those sectors, or parts of sectors, for which the Parties apply differing sanitary or phytosanitary measures and have not concluded the determination provided for in Paragraph 3.

6. Unless otherwise agreed among the relevant Parties, an official sanitary or phytosanitary certificate will be required for each consignment of animals and animal products, plants and plant products, or other related goods intended for import and for which equivalence has been recognised. The model attestation for such certificates will be prescribed in Implementing Arrangement 6. The Parties may jointly determine principles or guidelines for certification, which shall be included in Implementing Arrangement 6.

Article 7.8. Verification

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right to carry out audit and verification of the procedures of the exporting Party, which may include an assessment of all or part of the competent authoritiesâ total control programme, including, where appropriate:

(a) reviews of the inspection and audit programmes; and (b) on-site checks.

These procedures shall be carried out in accordance with the provisions of Implementing Arrangement 5.

2. Each Party shall also have the right to carry out import checks for the purposes of implementing sanitary and phytosanitary measures on consignments on importation, consistent with Article 7.9, the results of which form part of the verification process.

3. With the consent of the importing and exporting Parties, a Party may:

(a) share the results and conclusions of its audit and verification procedures and checks with non-Parties; or

(b) use the results and conclusions of the audit and verification procedures and checks of non-Parties.

Article 7.9. Import Checks

1. The import checks applied to imported animals and animal products, plants and plant products, or other related goods shall be based on the risk associated with such importations. They shall be carried out without undue delay and with a minimum effect on trade between the Parties.

2. The frequencies of import checks on such importations shall be made available on request and where set out in Implementing Arrangement 7 shall be applied accordingly. The Parties may amend the frequencies, within their

responsibilities, as appropriate, as a result of progress made in accordance with Implementing Arrangement 4, or as a result of other actions or consultations provided for in this Chapter.

3. In the event that the import checks reveal non-conformity with the relevant standards and/or requirements, the action taken by the importing Party should be based on an assessment of the risk involved. Wherever possible, the importer or their representative shall be given access to the consignment and the opportunity to contribute any relevant information to assist the importing Party in taking a final decision.

Article 7.10. Notifications

1. The Parties shall notify each other in writing through the contacts points set out in Implementing Arrangement 1 of:

(a) significant changes in health status including the presence and evolution of diseases or pests in Implementing Arrangement 2, in a timely and appropriate manner so as to ensure continued confidence in the competence of the Party with respect to the management of any risks of transmission to one of the other Parties which may arise as a consequence;

(b) _ scientific findings of importance with respect to diseases or pests which are not in Implementing Arrangement 2 or new diseases or pests without delay; and

(c) any additional measures beyond the basic requirements of their respective sanitary or phytosanitary measures taken to control or eradicate diseases or pests or to protect public health, and any changes in preventive policies, including vaccination policies.

2. In cases of serious and immediate concern with respect to human, animal or plant life or health, immediate oral notification shall be made to the contact points and written confirmation should follow within 24 hours.

3. Where a Party has serious concerns regarding a risk to human, animal or plant life or health, consultations regarding the situation shall, on request, take place as soon as possible, and in any case within 13 days unless otherwise agreed between the Parties. Each Party shall endeavour in such situations to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution.

4. Where in the case of products subject to sanitary or phytosanitary measures, there is non-conformity with the relevant standards and/or requirements, the importing Party shall notify the exporting Party as soon as possible of the non-conformity as set out in Implementing Arrangement 7.

Article 7.11. Provisional Measures

Without prejudice to Article 7.10, and in particular Article 7.10(3), any Party may, on serious human, animal or plant life or health grounds, adopt provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified within 24 hours to the other Parties and, on request, consultations regarding the situation shall be held within 13 days unless otherwise agreed by the Parties. The Parties shall take due account of any information provided through such consultations.

Article 7.12. Exchange of Information

1. The Parties, through the contacts points set out in Implementing Arrangement 1, shall exchange information relevant to the implementation of this Chapter on a uniform and systematic basis, to provide assurance, engender mutual confidence and demonstrate the efficacy of the programmes controlled. Where appropriate, achievements of these objectives may be enhanced by exchanges of officials.

2. The information exchange on changes in the respective sanitary or phytosanitary measures, and other relevant information, shall include:

(a) opportunity to consider proposals for changes in regulatory standards or requirements which may affect this Chapter in advance of their finalisation;

(b) briefing on current developments affecting trade; and

(c) information on the results of the verification procedures provided for in Article 7.8.

3. The Parties may provide for the sharing of scientific papers or data to relevant scientific forums on sanitary or phytosanitary measures and related matters.

Article 7.13. Technical Consultation

1. A Party may initiate consultations with another Party with the aim of resolving issues on the application of measures covered in this Chapter or interpretation of the provisions of this Chapter.

2. Where a Party requests consultations, these consultations shall take place as soon as practicable.

3. If a Party considers it necessary, it may request that the Committee facilitate such consultations. The Committee may refer the issues to an ad hoc working group for further discussion. The ad hoc working group may make a recommendation to the Committee on the resolution of the issues. The Committee shall discuss the recommendation with a view to resolving the issue without undue delay.

4. Such consultations are without prejudice to the rights and obligations of the Parties under Chapter 15 (Dispute Settlement).

Article 7.14. Cooperation

1. The Parties shall explore opportunities for further cooperation and collaboration on sanitary or phytosanitary matters of mutual interest consistent with the provisions of this Chapter.

2. The Parties acknowledge that the provisions of Chapter 16 (Strategic Partnership) and its accompanying Implementing Arrangement relating to primary industry matters will be of relevance to the implementation of this Chapter.

3. The Parties agree to cooperate together to facilitate the implementation of this Chapter, and in particular the development of this Chapter's Implementing Arrangement.

Chapter 8. TECHNICAL BARRIERS TO TRADE

Article 8.1. Definitions 1. for the Purposes of this Chapter:

1. For the purposes of this Chapter:

Equivalence of technical regulations means that one or more of the Parties accepts that the technical regulations of another Party fulfil the legitimate objectives of its own regulations;

regulatory authority means the authority that is responsible for preparing or adopting technical regulations and conformity assessment procedures applicable to goods;

technical regulations also includes standards that regulatory authorities recognise as meeting the mandatory requirements related to performance based regulation;

TBT Agreement means the Agreement on Technical Barriers to Trade, which is part of the WTO Agreement.

2. The definitions in Annex | of the TBT Agreement are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis.

Article 8.2. Objectives

The objectives of this Chapter are to increase and facilitate trade through furthering the implementation of the TBT Agreement and building on the work of APEC on standards and conformance. Wherever possible, the Parties shall aim to reduce compliance costs by:

(a) eliminating unnecessary technical barriers to trade in goods among the Parties;

(b) enhancing cooperation among the Partiesâ regulatory agencies responsible for standards, technical regulations and conformity assessment procedures applicable to goods; and

(c) providing a framework to address the impact of technical barriers to trade.

Article 8.3. Scope

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures that may, directly or

indirectly, affect the trade in goods among the Parties, except as provided in Paragraphs 2 and 3.

2. This Chapter does not apply to technical specifications prepared by governmental entities for production or consumption requirements of such entities which are covered by Chapter 11 (Government Procurement).

3. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

4. Nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations or standards, in accordance with its rights and obligations under the TBT Agreement necessary to fulfil a legitimate objective taking into account the risks non fulfilment would create. This shall include technical regulations necessary to ensure its 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 8.4. Affirmation of the Agreement on Technical Barriers to Trade

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 8.5. Origin

1. This Chapter applies to all goods traded among the Parties, regardless of the origin of those goods.

2. Notwithstanding Paragraph 1, a Party may give special consideration to goods of a non-Party through the application of a technical regulation, due to the need to avoid the introduction of costly surveillance procedures and as long as the technical regulation is compatible with the TBT Agreement. This shall be notified to the other Parties through the contact points established in Article 8.11(2).

Article 8.6. Trade Facilitation

1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to each other's market. In particular, the Parties shall seek to identify initiatives among them that are appropriate for particular issues or sectors. Such

initiatives may include cooperation on regulatory issues, such as harmonisation or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies, as well as cooperation through mutual recognition.

2. Initiatives identified by the Parties shall be focused on the promotion of the use of international standards, transparency, exchange of information and reducing compliance costs.

Article 8.7. International Standards

1. The Parties shall use international standards, or the relevant parts of international standards, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, except when such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate objectives.

2. In this respect, the Parties shall apply the decision of the WTO Committee on Technical Barriers to Trade set out in G/TBT/1/Rev.8, 23 May 2002, Section IX "Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement.

3. The Parties shall cooperate with each other, where appropriate, in the context of their participation in international standardising bodies to ensure that international standards developed within such bodies that are likely to become a basis for technical regulations are trade facilitating and do not create unnecessary obstacles to international trade.

Article 8.8. Equivalency of Technical Regulations

1. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if these regulations differ from its own, provided that those technical regulations produce outcomes that are equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.

2. A Party shall, upon the request of another Party, explain the reasons why it has not accepted a technical regulation of that Party as equivalent.

Article 8.9. Conformity Assessment Procedures

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results, including:

(a) the importing Party's reliance on a supplier's declaration of conformity;

(b) unilateral recognition by one Party of the results of conformity assessments performed in another Party's territory;

(c) cooperative arrangements among conformity assessment bodies from each other's territory;

(d) mutual recognition of conformity assessment procedures conducted by bodies located in the territory of another Party;

(e) accreditation procedures for qualifying conformity assessment bodies; (f} | government designation of conformity assessment bodies; and

(g) devising solutions to increase administrative efficiency, that avoid duplication and are cost effective.

2. The Parties shall intensify their exchange of information on the range of mechanisms to facilitate the acceptance of conformity assessment results.

3. The Parties shall seek to ensure that conformity assessment procedures applied among them facilitate trade by ensuring that they are no more restrictive than is necessary to provide an importing Party with confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create.

4. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, as appropriate.

5. A Party shall, on the request of another Party, explain its reasons for not accepting the results of a conformity assessment procedure performed in the territory of that other Party.

6. Each Party shall accredit, approve, license, or otherwise recognise conformity assessment bodies in the territory of another Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory and it

refuses to accredit, approve, license, or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of another Party, it shall, on request, explain the reasons for its refusal.

7. Where a Party declines a request from another Party to enter into negotiations on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the territory of either of the other Parties, it shall, on request, explain its reasons.

Article 8.10. Transparency

1. In order to enhance the opportunity for persons to provide meaningful comments, 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 the Party is proposing; and

(b) transmit the proposal electronically to the other Parties through the 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 should allow at least 60 days from the transmission under Paragraph 1(b) for persons and the other Parties to make comments in writing 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 the notification to the other Parties, electronically, through the enquiry point referred to in Paragraph 1(b).

Article 8.11. Technical Cooperation and Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade (the Committee), which shall comprise officials from the contact points of the Parties.

2. The Parties shall provide each other with the name of the governmental organisation that shall be their contact point and the contact details of relevant officials on that organisation, including telephone, fax, email and other relevant details. The Parties shall notify each other promptly of any change of their contact points or any amendments to the details of the relevant officials.

3. The Gommittee shall have the responsibility for implementing and monitoring the operation of this Chapter, and in particular:

(a) identifying priority sectors for enhanced cooperation; (b) establishing work programmes in priority areas;

(c) coordinating participation in work programmes with interested persons and organisations in the territories of the Parties;

(d) monitoring the work programmes;

(e) addressing any issue that a Party may raise related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;

(f) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;

(g) where appropriate, facilitating sectoral cooperation among governmental and non-governmental accreditation agencies and _ conformity assessment bodies in the Partiesâ territories;

(h) exchanging information on developments in non-governmental, regional and multilateral forums engaged in activities related to standardisation, technical regulations and conformity assessment procedures;

(i) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods among them;

(j) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and

(k) reporting to the Commission on the implementation of this Chapter, as it considers appropriate.

4. A Party shall, on request, give favourable consideration to any sector- specific proposal another Party makes for further technical cooperation under this Chapter.

5. The Committee shall conduct meetings to promote and monitor the implementation and administration of this Chapter at least once a year, or more frequently on the request of one of the Parties, via teleconference, video- conference or any other means as mutually determined by the Parties.

6. Where a Party takes a measure to manage an immediate risk that it considers goods covered by an Annex to this Chapter may pose to health, safety or the environment, it shall notify the measure and the reasons for the imposition of the measure to the other Parties, with the time limit as specified in the implementing arrangements.

Article 8.12. Technical Consultations

1. A Party may initiate technical consultations with another Party through the respective contact points with the aim of resolving any matter arising under this Chapter.

2. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within a reasonable period of time from the request for technical consultations by email, teleconference, video-conference, or through any other means, as mutually determined by the Parties. The Parties shall, from time to time, stipulate in writing the length of time that they consider to be reasonable.

3. If a Party considers it necessary, it may request that the Committee facilitate such technical consultations.

4. Such technical consultations are without prejudice to the rights and obligations of the Parties under Chapter 15 (Dispute Settlement.

Article 8.13. Annexes and Implementing Arrangements

1. The Parties, in accordance with Chapter 17 (Administrative and Institutional Provisions), may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessment applicable to trade among them.

2. The Parties, in accordance with Article 8.11, may develop Implementing Arrangements setting out details for the implementation of Annexes referred to in Paragraph 1, or arrangements made in relation to any work programmes established under Article 8.11.

3. The Parties shall seek to incorporate any existing arrangements concerning technical regulations and conformity assessment procedures that are specifically applicable to trade between two or more of the Parties into Annexes and Implementing Arrangements.

Chapter 9. COMPETITION POLICY

Article 9.1. Objectives

1. The Parties recognise the strategic importance of creating and maintaining open and competitive markets that promote economic efficiency and consumer welfare.

2. To this end each Party is committed to reducing and removing impediments to trade and investment including through:

(a) application of competition statutes to all forms of commercial activity, including both private and public business activities; and

(b) application of competition statutes in a manner that does not discriminate between or among economic entities, nor between origin and destination of the production.

3. The Parties recognise that anti-competitive business conduct may frustrate the benefits arising from this Agreement. The Parties undertake to apply their respective competition laws in a manner consistent with this Chapter so as to avoid the benefits of this Agreement in terms of the liberalisation process in goods and services being diminished or cancelled out by anti-competitive business conduct.

Article 9.2. Competition Law and Enforcement

1. Each Party shall adopt or maintain competition laws that proscribe anti- competitive business conduct with the objective of promoting economic efficiency and consumer welfare.

2. With a view to preventing distortions or restrictions on competition the Parties will give particular attention to anti-competitive agreements, concerted practices or arrangements by competitors and abusive behaviour resulting from single or joint dominant positions in a market. These practices refer to goods and services and may be carried out by any enterprise irrespective of the ownership of that enterprise.

3. Competition law shall apply to all commercial activities. However, each Party may exempt specific measures or sectors from the application of their general competition law, provided that such exemptions are transparent and undertaken on the grounds of public policy or public interest. Exemptions of the Parties as at the date of entry into force of this Agreement are set out in Annex 9.A.

Those exemptions shall not have the objective of negatively affecting trade among the Parties. Should any Party be considering additions to its list of exemptions that it considers may affect trade with another Party, it will inform that Party, which may request consultations under Article 9.5. The Commission shall implement any additions to or removals from the list of exemptions through an Implementing Arrangement.

4. Each Party shall establish or maintain a competition authority responsible for the enforcement of its measures to proscribe anti-competitive business conduct. The enforcement policy of each Partyâs competition authority shall not discriminate on the basis of the nationality of the subjects of their proceedings to the extent that they carry on a business within the territory of that Party.

5. Each Party shall ensure that a person subject to the imposition of a sanction or remedy for violation of competition laws is provided with the opportunity to be heard and present evidence, and to seek review of such a sanction or remedy in a domestic court or independent tribunal.

Article 9.3. Cooperation

1. The Parties agree to cooperate and coordinate in the area of competition policy by exchanging information on the development of competition policy. The Parties also recognise the importance of cooperation and coordination between their respective competition authorities to further effective competition law enforcement in their respective jurisdictions. Accordingly, the Parties shall cooperate on issues of competition law enforcement, including notification, consultation and exchanges of information.

2. The Parties through their respective competition authorities will seek a cooperation agreement after the date of the entry into force of this Agreement. Article 9.4: Notifications

1. Each Party shall notify the other Parties of an enforcement activity regarding an anti-competitive business conduct if it:

(a) considers that the enforcement activity is liable to substantially affect another Party's important interests;

(b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of another Party; or

(c) concerns anti-competitive acts taking place principally in the territory of another Party.

2. Notification shall take place at an early stage of the procedure, provided that this is not contrary to the Parties' competition laws and does not affect any investigation being carried out.

Article 9.4. Notifications

1. Each Party shall notify the other Parties of an enforcement activity regarding an anti-competitive business conduct if it:

(a) considers that the enforcement activity is liable to substantially affect another Party's important interests;

(b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of another Party; or

(c) concerns anti-competitive acts taking place principally in the territory of another Party

2. Notification shall take place at an early stage of the procedure, provided that this is not contrary to the Parties' competition laws and does not affect any investigation being carried out.

Article 9.5. Consultations and Exchange of Information

1. At the request of any Party, the Parties shall consult on any issue adversely affecting the competitive interests for trade or investment among them within the objectives of this Chapter.

2. Information or documents exchanged between the Parties in relation to any consultation conducted pursuant to the provisions of this Chapter shall be kept confidential. No Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party that provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Parties before such disclosure is made. The Parties may agree to the public release of information that they do not consider confidential.

Article 9.6. Public Enterprises and Enterprises Entrusted with Special or Exclusive Rights, Including Designated Monopolies

1. Nothing in this Chapter prevents a Party from designating or maintaining public or private monopolies according to their respective laws.

2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties shall ensure that, following the date of entry into force of this Agreement, no measure is adopted or maintained that distorts trade in goods or services among the Parties, which is contrary to this Agreement and contrary to the Partiesâ interests, and that such enterprises shall be subject to the rules of competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

Article 9.7. Dispute Settlement

1. Nothing In this Chapter Permits a Party to Challenge Any Decision Made by a Competition Authority of Another Party In Enforcing the Applicable Competition Laws and regulations.

2. No Party shall have recourse to any dispute settlement procedures under this Agreement for any issue arising from or relating to this Chapter.

Chapter 10. INTELLECTUAL PROPERTY

Article 10.1. Definitions for the Purposes of this Chapter:

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement;

Intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement namely: copyright and related rights; trade marks; geographical indications; industrial designs; patents; layout designs (topographies) of integrated circuits; protection of undisclosed information. (1)

(1) For the purpose of this Chapter “intellectual property” also includes the protection of plant varieties.

Article 10.2. Intellectual Property Principles

1. The Parties recognise the importance of intellectual property in promoting economic and social development, particularly in the new digital economy, technological innovation and trade.

2. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

3. The Parties are committed to the maintenance of intellectual property rights regimes and systems that seek to:

(a) facilitate international trade, economic and social development through the dissemination of ideas, technology and creative works;

(b) provide certainty for right-holders and users of intellectual property over the protection and enforcement of intellectual property rights; and

(c) facilitate the enforcement of intellectual property rights with the view, inter alia, to eliminate trade in goods infringing intellectual property rights.

Article 10.3. General Provisions

1. The Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which they are party. To this end, nothing in this Chapter shall derogate from existing rights and obligations that Parties have to each other under the TRIPS Agreement or other multilateral intellectual property agreemenis.

2. Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with this Agreement. In particular, nothing in this Chapter shall prevent a Party from adopting measures necessary to prevent anti-competitive practices that may result from the abuse of intellectual property rights.

3. Subject to each Party's international obligations the Parties affirm that they may:

(a) provide for the international exhaustion of intellectual property rights;

(b) establish that provisions in standard form non-negotiated licenses for products do not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws;

(c) establish provisions to facilitate the exercise of permitted acts where technological measures have been applied; and

(d) establish appropriate measures to protect traditional knowledge.

4. The Parties shall provide for reproduction rights and communication to the public rights to copyright owners and phonogram producers that are consistent with the World Intellectual Property Organization Copyright Treaty (WCT) and the World Intellectual Property Organization Performances and Phonograms Treaty (WPPT). The Parties shall provide performersâ rights consistent with the TRIPS Agreement. The Parties may establish limitations and exceptions in their domestic laws as acceptable under the Berne Convention for the Protection of Literary and Artistic Works (1971), the TRIPS Agreement, the WCT and the WPPT. These provisions shall be understood to permit Parties to devise new exceptions and limitations that are appropriate in the digital environment.

5. Subject to their obligations under the TRIPS Agreement, each Party may limit the rights of the performers and producers of phonograms and broadcasting entities of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.

Article 10.4. Trade Marks

1. Each Party shall afford an opportunity for interested parties to oppose the application of a trade mark and request cancellation of a registered trade mark.

2. In relation to trade marks, Parties are encouraged to classify goods and services according to the classification of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979).

Article 10.5. Geographical Indications

1. The terms listed in Annex 10.A are recognised as geographical indications for wines and spirits in the respective Party, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to domestic laws,â in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territories of the other Parties.

2. At the request of a Party, the Commission may decide to add or remove geographical indications from Annex 10.A.

Article 10.6. Country Names

The Parties shall provide the legal means for interested parties to prevent commercial use of country names of the Parties in relation to goods in a manner which misleads consumers as to the origin of such goods.

Article 10.7. Cooperation

The Parties agree to cooperate, consistent with the principles set out in Article 10.2. Such cooperation may include, inter alia:

(a) the notification of contact points for the enforcement of intellectual property rights;

(b) exchange of information relating to developments in intellectual property policy in their respective agencies. Such developments may include, but are not limited to, the implementation of appropriate limitations and exceptions under copyright law and the implementation of measures concerning the appropriate protection of digital rights management information;

(c) exchange of information on the implementation of intellectual property systems, aimed at promoting the efficient registration of intellectual property rights;

(d) promotion of the development of contacts and cooperation among their respective agencies, including enforcement agencies, educational institutions and other organisations with an interest in the field of intellectual property rights;

(e) policy dialogue on initiatives on intellectual property in multilateral and regional forums;

(f) exchange of information and cooperation on appropriate initiatives to promote awareness of intellectual property rights and systems; and

(g) such other activities and initiatives as may be mutually determined among the Parties.

Chapter 11. GOVERNMENT PROCUREMENT

Article 11.1. Definitions for the Purposes of this Chapter:

build-operate-transfer contract and public works concession contract mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, 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;

entity means an entity listed in Annex 11.A;

government procurement or procurement means the process by which entities purchase goods and services;

measures relating to government procurement means any law, regulation, policy, or procedure of general application relating to government procurement;

offsets means conditions used to encouraged local development or improve the balance of payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements;

publish means to disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public;

supplier means a natural or legal person of a Party that provides or could provide goods or services to an entity;

technical specification means a tendering requirement that: (a) sets out the characteristics of:

(i) | goods to be procured, such as quality, performance, safety and dimensions, or the process and methods for their production, or

(ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions;

(b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service; or

(c) sets out conformity assessment procedures prescribed by an entity.

Article 11.2. Objectives

The objectives of this Chapter are to recognise the importance of conducting government procurement in accordance with the fundamental principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination.

Article 11.3. Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to government procurement by any contractual means, including purchase and 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 11.A, and their successors other than those subsequently corporatised, commercialised or privatised;

(b) in which the contract has a value not less than the relevant threshold converted into respective currencies as set out in Annex 11.C; and

(c) subject to any other conditions specified in the Annexes. 2. This Chapter does 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) non-contractual agreements, or any form of assistance to persons or governmental authorities, including foreign assistance, grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, sponsorship arrangements and governmental provision of goods and services;

(c) purchases funded by international grants, loans or other assistance, where the provision of such assistance is subject to conditions inconsistent with the provisions of this Chapter;

(d) procurement of goods and services (including construction) outside the territory of the procuring Party, for consumption

outside the territory of the procuring Party;

(e) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt; or

(f) hiring of government employees or other long-term staff and personnel, and related employment measures.

3. Each Party shall ensure that its entities 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.

Article 11.4. National Treatment and Non-Discrimination

1. With respect to any measures regarding government procurement covered by this Chapter, each Party shall grant to goods, services and suppliers of the other Parties treatment no less favourable than that accorded by it to domestic goods, services and suppliers.

2. With respect to any measures regarding government procurement covered by this Chapter, no 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, another 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 another Party.

3. A Party shall not discriminate in favour of any enterprise, whether or not the Party is a shareholder in that enterprise.

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 duties and charges, other import regulations, or to measures affecting trade in services other than measures specifically governing procurement covered by this Chapter.

Article 11.5. Rules of Origin

For the sole purpose of determining customs duties applicable to goods imported for purposes of government procurement, the Parties shall apply the same rules of origin that are used to determine customs duties applicable to imports of goods for other purposes.

Article 11.6. Prohibition of Offsets

Each Party shall ensure that its entities do not consider, seek or impose offsets at any stage of a procurement.

Article 11.7. Non-Disclosure of Information

1. The Parties, their entities and their 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 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 a Party or its entities to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

Article 11.8. Publication of Information on Procurement Measures

Each Party shall promptly publish:

(a) its measures relating to government procurement covered by this Chapter; and

(b) any modifications to such measures in the same manner as the original publication.

Article 11.9. 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 among 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 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 an entity shall not seek or accept 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, if to do so would prejudice fair competition.

Article 11.10. Valuation of Contracts

In calculating the value of contracts for the purposes of implementing this Chapter entities shall base their valuation on the maximum total estimated value of the procurement over its entire duration including optional purchases, premiums, fees, commissions, interests and revenue streams or other forms of remuneration provided for in such contracts.

Article 11.11. Tendering Procedures

Except as provided for in Article 11.18 entities shall award contracts by means of open tendering procedures, in the course of which any interested supplier may submit a tender or apply to meet conditions for participation in a procurement. (1)

(1) The Parties understand that further procurements under contracts, which are awarded consistently with this Chapter, in particular Article 11.10, that provide that goods and services will be available to entities on the same terms and conditions as the original contract are considered consistent with this Chapter.

Article 11.12. Notice of Intended Procurement

1. For each procurement covered by this Chapter, entities shall publish in advance a notice of intended procurement inviting interested suppliers to submit a

' The Parties understand that further procurements under contracts, which are awarded consistently with this Chapter, in particular Article 11.10, that provide that goods and services will be available to entities on the same terms and conditions as the original contract are considered consistent with this Chapter.

tender or apply to meet conditions for participation in the procurement, except as provided for in Article 11.18.

2. The information in each notice of intended procurement shall include a description of the intended procurement; any conditions that suppliers must fulfil to participate in the procurement, including the time limits for submission of tenders; and contact details for obtaining of all relevant documenis.

3. Entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. These means shall be accessible free of charge, during the entire period established for tendering, through a single electronic point of access specified in Annex 11.B.

4. Where an entity, during the course of a procurement, modifies the criteria referred to in the notice of intended procurement, it shall publish or transmit all such modifications in writing:

(a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in all other cases, in the same manner as the original information was transmitted; and

(b) in adequate time to allow such suppliers to modify and resubmit their tenders, as appropriate.

5. Each notice of intended procurement under Paragraph 1 shall be published sufficiently in advance to provide interested suppliers of all Parties 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.

6. Notwithstanding Paragraph 5, entities shall provide no less than 10 days between the date on which the notice of intended procurement is published and the final date for the submission of tenders.

Article 11.13. Tender Documentation

1. Tender documentation provided to suppliers shall contain all information necessary to permit them to prepare and submit responsive tenders, including the essential requirements and evaluation criteria for the award of the procurement contract.

2. Where contracting entities do not offer direct access to the entire tender documents and any supporting documents by electronic means, entities shall promptly make available the tender documentation at the request of any supplier of the Parties.

3. An entity shall endeavour to reply promptly to any reasonable request for explanation or relevant information made by a supplier, provided that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract. The explanation or information provided to a supplier may be provided to all suppliers that are invited to tender.

4. Where an entity, during the course of a procurement, modifies the essential requirements and evaluation criteria of the tender documentation, 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 the original information was transmitted; and

(b) in adequate time to allow such suppliers to modify and resubmit their tenders, as appropriate.

Article 11.14. Awarding of Contracts

1. The Parties shall ensure that its 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, a tender must, at the time of opening, 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 whose tender is determined to offer the best value for money or be the most advantageous in terms of the essential requirements and evaluation criteria set forth in the tender documentation.

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.

Article 11.15. Post-Award Information

1. Entities shall promptly publish or inform suppliers that have submitted a tender of the contract award decision.

2. Entities shall, on request from an unsuccessful supplier, promptly provide pertinent information concerning 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 11.16. Conditions for Participation

1. Where an entity requires suppliers to satisfy registration, qualification, or any other conditions before being permitted to

participate in a procurement, each Party shall ensure that a notice inviting suppliers to apply for registration, qualification or demonstration of the suppliersâ satisfaction of any other conditions for participation is published sufficiently in advance for interested suppliers to prepare and submit responsive applications and for entities to evaluate and make their determinations based on such applications.

2. Entities shall consider for a particular procurement those suppliers of another 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 before the award of the contract.

3. Any conditions for participation in the procurement, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. The financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity and its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organisations.

4. 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 11.17. Lists of Registered or Qualified Suppliers

1. An entity may establish for continuing use a list of suppliers registered or qualified to participate in procurements. A current updated list of registered or qualified suppliers shall be publicly available. The entity shall ensure that suppliers may apply for participation in the list of registered or qualified suppliers at any time, and that all qualifying applicants are included within a reasonable period of time, taking into account the conditions for participation and the need for verification. Where an entity requires 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 procedures and 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 established for the award.

2. The entity shall publish annually or otherwise make available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods and services for which the list of suppliers may be used; and

(b) the conditions to be satisfied by suppliers for inclusion on the list of registered or qualified suppliers.

3. Entities shall notify qualified suppliers of the termination of, or of their removal from a list of registered or qualified suppliers and state the reason for this action.

Article 11.18. Exceptions to Open 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 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 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

the entity does not substantially modify the essential requirements of the procurement in the contract as awarded;

(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 procuring 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 the principles and procedures laid down in 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;

in so far as it is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of an open tendering procedure, and the use of such procedure would result in serious injury to the entity, the entity's programme responsibilities or the Party. For purposes of this Subparagraph, lack of advance planning by an entity or

its concerns relating to the amount of funds available to it do not constitute unforeseeable events;

(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 provision is not intended to cover routine purchases from regular suppliers; or

(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.

2. The Parties shall ensure that, whenever it is necessary for entities to resort to a procedure other than open tendering procedures based on the circumstances set forth in Paragraph 1, the entities shall maintain a record or prepare a written report providing specific justification for the contract.

Article 11.19. 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 eliminate any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Article 11.20. Domestic Review of Supplier Complaints

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement in which they have, or have had, an interest. Where appropriate, a Party may encourage suppliers to seek clarification from its entities with a view to facilitating the resolution of any such complaints.

2. Each Party shall provide suppliers of any one of the other Parties with non- discriminatory, timely, transparent and effective access to an administrative or judicial body competent to hear or review complaints of alleged breaches of the procuring Party's laws, regulations, procedures and practices regarding procurement in the context of procurements in which they have, or have had, an interest.

3. Each Party shall make information on complaint mechanisms generally available.

4. Compensation for any breach of measures implementing this Chapter may be limited to the costs for tender preparation reasonably incurred by the supplier for the purpose of the procurement.

Article 11.21. Encouraging Use of Electronic Communications In Procurement

1. The Parties shall seek to provide opportunities for government procurement to be undertaken through the Internet or a comparable computer-based telecommunications network.

2. In order to facilitate commercial opportunities for their suppliers under this Chapter, each Party shall maintain a single

electronic portal for access, to comprehensive information on government procurement supply opportunities in its territory, and information on measures relating to government procurement shall be available. The contact point or points from whom suppliers can obtain information on government procurement shall either be specified in Annex 11.B, or be set out in the information on the single electronic portal.

3. The Parties shall encourage, to the extent possible, the use of electronic means for the provision of tender documents and receipt of tenders.

4. The Parties shall endeavour to ensure policies and procedures for the use of electronic means in procurement are adopted that:

(a) protect documentation from unauthorised and undetected alteration; and

(b) provide appropriate levels of security for data on, and passing through, the procuring entityâs network.

5. Each Party shall encourage its entities to publish as early as possible in the fiscal year information regarding the "entities" indicative procurement plans in the electronic portal referred to in Paragraph 2.

Article 11.22. Exceptions

1. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order, or safety; (b) necessary to protect human, animal or plant life or health; (c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic or not for profit institutions, or of prison labour.

3. The Parties understand that Subparagraph 2(b) includes environmental measures necessary to protect human, animal or plant life or health.

Article 11.23. Modifications and Rectifications of Annexes

1. A Party may modify its coverage under this Chapter in conformity with Article 17.2 (Functions of the Commission), provided that it:

(a) notifies the other Parties of the modification; and

(b) provides the other Parties, within 30 days following the date of such notification, appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding Subparagraph 1(b), no compensatory adjustments shall be provided to the other Parties where the modification by a Party of its coverage under this Chapter concerns:

(a) the situation where the business or commercial operations or functions of any of its entities or part thereof are constituted or established as an enterprise with a legal entity separate and distinct from the government of a Party, regardless of whether or not the government holds any shares or interest in such a legal entity; or

(b) rectifications of a purely formal nature and minor amendments to Annex 11.A or Annex 11.B, including those under Subparagraph (a), made through an Implementing Arrangement in accordance with Article 17.2 (Functions of the Commission).

Chapter 12. TRADE IN SERVICES

Article 12.1. Definitions for the Purposes of this Chapter:

Commercial presence means any type of business or professional establishment, including through:

(a) the constitution, acquisition or maintenance of a legal person; or

(b) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;

enterprise means an enterprise as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities.

Such measures include measures affecting: (a) the production, distribution, marketing, sale, and delivery of a service; (b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence, including commercial presence in its territory of a service supplier of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service;

service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service;

specialty air services means any non-transportation air services, such as aerial fire fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party;

trade in services or supply of services means the supply of a service:

(a) from the territory of one Party into the territory of another Party (”cross- border mode“);

(b) in the territory of one Party by a person of that Party to a person of another Party (”consumption abroad mode“);

(c) by a service supplier of one Party, through commercial presence in the territory of another Party ”commercial presence mode“); or

(d) by a national of a Party in the territory of another Party (“presence of natural persons mode”).

Article 12.2 . Objectives

The objectives of this Chapter are to facilitate expansion of trade in services on a mutually advantageous basis, under conditions of transparency and progressive liberalisation, while recognising the rights of Parties to regulate services, including to introduce new regulations, and the role of governments in providing and funding public services, giving due respect to national policy objectives including where these reflect local circumstances.

Article 12.3. Scope

(b) government procurement, which means any law, regulation, policy, 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; (1)

(c) services supplied in the exercise of governmental authority;

(d) subsidies or grants provided by a Party or a state enterprise, (2) or any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;

(e) measures affecting natural persons seeking access to the employment market of a Party; or

(f) measures regarding citizenship, nationality, residence or employment on a permanent basis.

3. This Chapter shall not apply to air transport services, whether scheduled or non-scheduled, or to related services in support of air services, (3) other than the following:

(a) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(b) the selling and marketing of air transport services;

(c) computer reservation system services;

(d) speciality air services; and

(e) international air transportation services as set out in the Multilateral Agreement on the Liberalisation of International Air Transportation (MALIAT), and, to the extent that there are any inconsistencies between this Agreement and those of the MALIAT, the rights and obligations under the MALIAT at any given time shall prevail.

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to that other Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying benefits under this Chapter.

(1) In the event of any inconsistency between this Chapter and Chapter 11 (Government Procurement) the latter Chapter shall prevail to the extent of the inconsistency.

(2) This includes government supported loans, guarantees, and insurance.

(3) For example, ground handling services.

Article 12.4. National Treatment

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

Article 12.5. Most-Favoured-Nation Treatment

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

Article 12.6. Market Access

No Party shall, either on the basis of a regional subdivision or on the basis of its entire territory, adopt or maintain:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements 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; (4)

(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.

(4) This paragraph does not cover measures of a Party which limit inputs for the supply of services.

Article 12.7. Local Presence

No Party May Require a Service Supplier of Another Party to Establish or Maintain a Representative Office or Any Form of Enterprise, or to Be Resident, In Its Territory as a Condition for the Supply of a Service.

Article 12.8 . Non-Conforming Measures

1. Articles 12.4, 12.5, 12.6 and 12.7 shall not apply to:

1. (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 III, 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 12.4, 12.5, 12.6 and 12.7.

2. Articles 12.4, 12.5, 12.6 and 12.7 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 IV.

Article 12.9. 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 among them on a mutually advantageous basis.

Article 12.10. Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements 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; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In determining whether a Party is in conformity with its obligations under Paragraph 2, account shall be taken of international standards of relevant international organisations applied by that Party.

4. Where a Party requires authorisation for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorisation requirements that are within the scope of Article 12.8(2).

5. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral forums in which the Parties participate) enter into effect, the Parties shall jointly review these results with a view to their incorporation in this Agreement. The Parties agree to coordinate on such negotiations as appropriate.

Article 12.11. Professional Qualifications and Registration

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 licenses or certifications granted in a particular Party or non-Party.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 12.5 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of another Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in Paragraph 1, whether existing or future, shall afford adequate opportunity for another Party, upon request, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Partyâs territory 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. As set out in Annex 12.B, the Parties agree to facilitate the establishment of dialogue among their regulators and/or relevant industry bodies with a view to the achievement of early outcomes on recognition of professional qualifications and/or professional _ registration. Such outcomes may be achieved through harmonisation, recognition of regulatory outcomes, recognition of professional qualifications and professional registration awarded by one Party as a means of complying with the regulatory requirements of another Party whether accorded unilaterally or by mutual arrangement, including where appropriate through an Implementing Arrangement.

6. The initial priority areas for work on professional qualification and professional recognition requirements are engineers, architects, geologists, geophysicists, planners, and accountants. The priority areas and the recognition outcomes achieved on priorities shall be reviewed within the time periods set out in Article 12.9.

Article 12.12. Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:

(a) service suppliers of another Party where the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the territory of any Party; or

(b) service suppliers of another Party where the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of any Party.

Article 12.13. Transparency

1. Each Party shall publish promptly or otherwise make publicly available international agreements pertaining to or affecting trade in services to which it is a signatory.

2. Each Party shall respond promptly to all requests by any other Party for specific information on any of its measures of general application which pertain to or affect the operation of this Chapter or international agreements within the meaning of Paragraph 1.

3. Each Party shall also designate one or more enquiry points to provide specific information to the other Parties, upon request, on all such matters.

Article 12.14. Subsidies

Notwithstanding Article 12.3, 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 their incorporation into this Agreement.

Article 12.15. Payments and Transfers

Except as provided in Annex 12.C, each Party shall permit all payments and transfers for current transactions and capital movements, with regard to trade in services.

Chapter 13. TEMPORARY ENTRY

Article 13.1. Definitions for the Purposes of this Chapter:

Business person means a natural person who has the nationality of a Party according to Annex 2.A, who is engaged in trade in goods or supply of services;

immigration measure means any law, regulation, policy or procedure affecting the entry and stay of foreign nationals;

temporary entry means the entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

Article 13.2. Objectives

1. The objectives of this Chapter are to facilitate the temporary entry of business persons of any Party engaged in trade in goods or supply of services among the Parties through streamlined, transparent immigration clearance procedures for temporary entry, while at the same time ensuring border security and protecting the domestic labour force and permanent employment in the territories of the Parties.

2. The Parties affirm their voluntary commitments established in the APEC Business Travel Card ”Operating Framework“.

Article 13.3. Scope

1. This Chapter does not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

2. In respect of business persons seeking entry under Chapter 12 (Trade in Services), the Parties affirm their rights and obligations under GATS, in particular the Annex on Movement of Natural Persons Supplying Services under the Agreement, regarding each Partiesâ specific commitments relating to movement of natural persons.

Article 13.4. Exchange of Information

1. No later than 6 months after the entry into force of this Agreement, the Parties shall exchange information on measures that affect the temporary entry of business persons through the contact points designated under Article 14.5 (Contact Points).

2. When a Party modifies or amends an immigration measure that affects the temporary entry of business persons, such modifications or amendments shall be published and made available in such a manner as will enable business persons of the other Parties to become acquainted with them.

Article 13.5. Review

1. Two years after the entry into force of this Agreement, the Parties shall review the rules and conditions applicable to movement of natural persons, with a view to achieving a comprehensive chapter on temporary entry, covering broad categories of business persons, such as may be proposed by any Party.

2. If the Parties achieve a mutually advantageous balance of rights in the

negotiations foreseen in Paragraph 1, the review will also address the scope of the definition of business person set out in Article 13.1.

Chapter 14. TRANSPARENCY

Article 14.1. Definitions for the Purposes of this Chapter:

Administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations and that is relevant to the implementation of this Agreement but does not include:

(a) a determination or ruling made in administrative or quasi-judicial proceedings that applies to a particular person, good, or service of another Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 14.2. 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 published or otherwise made available (1) in such a manner as to enable interested persons and Parties to become acquainted with them.

2. When possible, each Party shall:

(a) publish in advance any measure referred to in Paragraph 1 that it proposes to adopt; and

(b) provide, where appropriate, interested persons and Parties with a reasonable opportunity to comment on such proposed measures.

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

Article 14.3. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures affecting matters covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 14.2(1) to particular persons, goods, or services of the other Parties in specific cases that:

"Including through the Internet or in print form. 14-1

(a) | wherever possible, persons of another 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) such persons 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 14.4. 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 such decision shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 14.5. Contact Points

1. Each Party shall designate a contact point or points to facilitate communications among the Parties on any matter covered by this Agreement.

2. On the request of another Party, the contact points shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

Article 14.6. Notification and Provision of Information

1. Where a Party considers that any proposed or actual measure might materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement, that Party shall notify the interested Party, to the extent possible, of the proposed or actual measure.

2. On request of another Party, a Party shall provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification, request, or information under this Article shall be conveyed to the other Parties through their contact points.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Chapter 15. DISPUTE SETTLEMENT

Article 15.1. Objectives

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes among the Parties concerning their rights and obligations under this Agreement.

Article 15.2. Scope

1. Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(b) wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or that another Party has otherwise failed to carry out its obligations under this Agreement; or

(c) wherever a Party considers that an actual or proposed measure of another Party causes nullification or impairment in the sense of Annex 15.A.

2. Subject to Article 15.3, 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 parties.

Article 15.3. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another trade agreement to which the disputing Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. The complaining Party shall notify the other Parties in writing of its intention to bring a dispute to a particular forum before doing so. Where a Party wishes to have recourse to a different dispute settlement forum from that notified by another complaining Party, the complaining Parties shall consult with a view to reaching agreement on a single forum in which to settle the dispute.

3. Once a complaining Party has initiated dispute settlement proceedings under Article 15.6, under the WTO Agreement or any other trade agreement to which the disputing Parties are party, (1) the forum selected shall be used to the exclusion of the others.

4. Where there is more than one dispute on the same matter arising under this Agreement against a Party, the disputes shall be joined.

(1) For the purposes of this Article, dispute settlement proceedings under the WTO Agreement or any other trade agreement are deemed to have been initiated upon a request by a Party for the establishment of a panel or by referral of a matter to an arbitral tribunal.

Article 15.4. Consultations

1. Any Party may request in writing consultations with any other Party with respect to any actual or proposed measure of that Party that it considers inconsistent with this Agreement or any other matter that it considers might affect the operation of this Agreement, which shall be circulated to all Parties to this Agreement through the Contact Points designated in accordance with Article 14.5 (Contact Points).

2. All such requests for consultations shall set out the reasons for the request, including the identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. The Party to which a request for consultations is made shall reply to the request in writing within 7 days after the date of its receipt. The response to the request for consultations shall be circulated to all Parties.

4. Whenever a Party other than the consulting Parties considers that it has an interest in the consultations, such Party may notify the consulting Parties within 7 days after the notification of the request for consultations, of its desire to be joined in the consultations. The Party complained against shall give positive consideration to any request from a Party to attend consultations requested by any other Party.

5. The Parties shall enter into consultations within a period of no more than:

(a) 15 days after the date of receipt of the request for matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

6. The consulting Parties shall make every attempt to reach a mutually satisfactory resolution of any matter through consultations under this Article. To this end, the consulting Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

7. With a view to reaching a mutually satisfactory resolution of the matter, the requesting Party may make representations or proposals to the responding Party, which shall give due consideration to the representations or proposals made to it.

8. In consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

Article 15.5. Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures undertaken voluntarily if the disputing Parties so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular the positions taken by the disputing Parties during these proceedings, shall be confidential and without prejudice to the rights of any Party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any disputing Party. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are concluded without an agreement between the disputing Parties, the complaining Party may request the establishment of an arbitral tribunal under Article 15.6.

4. If the disputing Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal convened under Article 15.6.

Article 15.6. Establishment of an Arbitral Tribunal

1. The complaining Party may request, by means of a written notification addressed to the Party complained against, the establishment of an arbitral tribunal if the consulting Parties fail to resolve the matter within:

(a) 45 days after the date of receipt of the request for consultations under Article 15.4;

(b) 30 days after the date of receipt of the request for consultations under Article 15.4 in a matter regarding perishable goods; or

(c) such other period as the consulting Parties agree.
2. Such notification shall also be communicated to all Parties.
3. The request to establish an arbitral tribunal shall identify:

(a) the specific measure at issue;

(b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and

(c) the factual basis for the complaint.

4. Unless otherwise agreed by the disputing Parties, the arbitral tribunal shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

5. Notwithstanding Paragraphs 1, 3, and 4, an arbitral tribunal may not be established to review a proposed measure.

Article 15.7. Composition of Arbitral Tribunals

1. The arbitral tribunal shall comprise three members.

2. In the written notification pursuant to Article 15.6, the complaining Party or Parties requesting the establishment of an arbitral tribunal shall designate one member of that arbitral tribunal.

3. Within 15 days of the receipt of the notification referred to in Paragraph 2, the Party to which it was addressed shall designate one member of the arbitral tribunal.

4. The disputing Parties shall designate by common agreement the appointment of the third arbitrator within 15 days of the appointment of the second arbitrator. The member thus appointed shall chair the arbitral tribunal.

5. If all 3 members have not been designated or appointed within 30 days from the date of receipt of the notification referred to in Paragraph 2, at the request of any Party to the dispute the necessary designations shall be made by the Director- General of the WTO within a further 30 days.

6. The Chair of the arbitral tribunal shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed by any of the Parties, nor have dealt with the matter in any capacity.

7. 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, any Party; and

(d) comply with the code of conduct for panelists established under the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement.

8. Individuals may not serve as arbitrators for a dispute in which they have participated pursuant to Article 15.5.

9. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

10. The date of establishment of the arbitral tribunal shall be the date on which the Chair is appointed.

Article 15.8. Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination 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 findings and rulings of the arbitral tribunal shall be binding on the disputing Parties.

3. The arbitral tribunal shall, apart from the matters set out in Article 15.9, regulate its own procedures in relation to the

rights of Parties to be heard and its deliberations in consultation with the disputing Parties.

4. An arbitral tribunal shall take its decisions by consensus; provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.

Article 15.9. Rules of Procedure for Arbitral Tribunals

1. Unless the disputing Parties otherwise agree, the arbitral tribunal proceedings shall be conducted in accordance with the Model Rules of Procedure for Arbitral Tribunals set out at Annex 15.B.

2. Unless the disputing Parties otherwise agree within 20 days from the date of delivery 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 the Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 15.6 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute.â

3. If a complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

4. At the request of a disputing Party or on its own initiative, the arbitral tribunal may seek scientific information and technical advice from experts as it deems appropriate. Any information so obtained shall be submitted to the disputing Parties and any third Party for comment.

5. Unless the arbitral tribunal determines otherwise because of the particular

circumstances of the case, a disputing 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 disputing Parties in equal shares.

Article 15.10. Suspension or Termination of Proceedings

1. The disputing 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. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the disputing Parties agree otherwise.

2. The disputing 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.

Article 15.11. Initial Report

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 and the submissions and arguments of the Parties.

2. Unless the disputing Parties otherwise agree, the arbitral tribunal shall:

(a) within 90 days after the last arbitrator is selected; or

(b) in cases of urgency including those relating to perishable goods within 60 days after the last arbitrator is selected,

present to the disputing Parties an initial report. 3. The initial report shall contain: (a) findings of fact; (b) the determination of the arbitral tribunal as to whether a disputing Party has not conformed with its obligations under this Agreement or that a disputing Partyâs measure is causing nullification or impairment in the sense of Annex 15.A or any other determination requested in the terms of reference; and

(c) the decision of the arbitral tribunal on the dispute.

4. In exceptional cases, if the arbitral tribunal considers it cannot release its initial report within 90 days, or within 60 days in cases of urgency, it shall inform

the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days unless the disputing Parties otherwise agree.

5. Arbitrators may furnish separate opinions on matters not unanimously agreed.

6. A disputing Party may submit written comments to the arbitral tribunal on its initial report within 15 days of presentation of the report or within such other period as the disputing Parties may agree.

7. After considering any written comments on the initial report, the arbitral tribunal may reconsider its report and make any further examination it considers appropriate.

Article 15.12. Final Report

1. The arbitral tribunal shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree. The disputing Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

2. If in its final report the arbitral tribunal determines that a disputing Party has not conformed with its obligations under this Agreement, or that a Party's measure is causing nullification or impairment within the sense of Annex 15.A, the decision, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

3. No arbitral tribunal may, either in its initial report or its final report, disclose which arbitrators are associated with majority or minority opinions.

Article 15.3. Implementation of Final Report

1. The final report of an arbitral tribunal shall be binding on the disputing Parties and shall not be subject to appeal.

2. Unless the disputing Parties decide otherwise, they shall implement the decision contained in the final report of the arbitral tribunal within a reasonable period of time if it is not practicable to comply immediately.

3. If the arbitral tribunal determines that a measure of a Party that is taken by local government is not in conformity with its obligations under this Agreement, the Party shall notify the other Parties of the steps, such as legislative, regulatory or administrative steps, which the Party will take to implement the decision of the arbitral tribunal.

4. The reasonable period of time shall be mutually determined by the disputing Parties, or where the disputing Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral tribunal's report, either Party to the dispute may refer the matter to the arbitral tribunal, which shall determine the reasonable period of time following consultation with the disputing Parties.

Article 15.14. Compliance Within Reasonable Period of Time

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the decision of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal.

2. The arbitral tribunal shall provide its report to the disputing Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, if shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the disputing Parties otherwise agree.

Article 15.15. Compensation and Suspension of Benefits

1. If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance with the decision of the arbitral tribunal under Article 15.12 within the reasonable period of time established in accordance with Article 15.13, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If the arbitral tribunal decides that a Partyâs measure is causing nullification or impairment in the sense of Annex 15.A and the nullification or impairment is not addressed within the reasonable period of time established in accordance with Article 15.13, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

3. A complaining Party may suspend the application of benefits of equivalent effect to the responding Party 30 days after the end of the reasonable period of time established in accordance with Article 15.13. Benefits may not be suspended while the complaining Party is pursuing negotiations under Paragraphs 1 or 2.

4. Compensation and the suspension of benefits shall be temporary measures. Neither compensation nor the suspension of benefits is preferred to full implementation of a decision to bring a measure into conformity with this Agreement. Compensation and suspension of benefits shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's decision has done so, or a mutually satisfactory solution is reached.

5. In considering what benefits to suspend pursuant to Paragraph 3:

(a) the complaining Party should first seek to suspend benefits in the same sector(s) as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with the obligations derived of this Agreement or to have caused nullification or impairment in the sense of Annex 15.A; and

(b) _ if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector(s), it may suspend benefits in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

6. Upon written request of the Party concerned, the original arbitral tribunal shall determine whether the level of benefits suspended by the complaining Party is excessive pursuant to Paragraph 3. If the arbitral tribunal cannot be established with its original arbitrators, the proceeding set out in Article 15.7 shall be applied.

7. The arbitral tribunal shall present its determination within 60 days from the request made pursuant to Paragraph 6, or if an arbitral tribunal cannot be established with its original arbitrators, from the date on which the last arbitrator is selected. The ruling of the arbitral tribunal shall be final and binding. It shall be delivered to the disputing Parties and be made publicly available.

Article 15.16. Compliance Review

1. Without prejudice to the procedures in Article 15.15, if the responding Party considers that it has eliminated the non-conformity or the nullification or impairment that the arbitral tribunal found, it may refer the matter to the arbitral tribunal by providing written notice to the other Party. The arbitral tribunal shall issue its report on the matter within 90 days after the responding Party provides notice.

2. If the arbitral tribunal decides that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under in Article 15.15.

Chapter 16. STRATEGIC PARTNERSHIP

Article 16.1. Definitions

For the purposes of this Chapter, primary industry encompasses activities in the agriculture and fisheries sectors (including activities in production, harvesting, processing and manufacturing of food products and their derivatives) and the forestry sector.

Article 16.2. Objectives

1. The Parties agree to establish a framework for cooperation between two or more of the Parties as a means to expand and enhance the benefits of this Agreement for building a strategic economic partnership between them.

2. The Parties will establish close cooperation aimed inter alia at:

(a) strengthening and building on existing cooperative relationships among the Parties, including a focus on innovation, research and development;

(b) creating new opportunities for trade and investment, promoting competitiveness and innovation including the involvement of public and private sectors;

(c) supporting the important role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development;

(d) encouraging the presence of the Parties and their goods and services in the respective markets of Asia, Pacific and Latin America; and

(e) increasing the level of and deepening cooperation activities among the Parties in areas of mutual interest.

Article 16.3. Scope

1. The Parties affirm the importance of all forms of cooperation, with particular attention given to economic, scientific, technological, educational, cultural and primary industry cooperation in contributing towards implementation of the objectives and principles of this Agreement. Cooperation among the Parties may be extended to other areas as agreed by the Parties.

2. Possible areas of cooperation will be developed through Implementing Arrangements.

3. Cooperation among the Parties should contribute to achieving the objectives of the Trans-Pacific Strategic Economic Partnership Agreement through the identification and development of innovative cooperation programmes capable of providing added value to their relationships.

4. Cooperation among the Parties under this Chapter will supplement the cooperation and cooperative activities among the Parties set out in other Chapters of this Agreement.

Article 16.4. Economic Cooperation

1. The aims of economic cooperation will be:

(a) to build on existing agreements or arrangements already in place for trade and economic cooperation; and

(b) to advance and strengthen trade and economic relations among the Parties.

2. In pursuit of the objectives in Paragraph 1, the Parties will encourage and facilitate, as appropriate, the following activities, including, but not limited to:

(a) policy dialogue and regular exchanges of information and views on ways to promote and expand trade in goods and services among the Parties;

(b) keeping each other informed of important economic and trade issues, and any impediments to furthering their economic cooperation;

(c) providing assistance and facilities to businesspersons and trade missions that visit each other's country with the knowledge and support of the relevant agencies;

(d) supporting dialogue and exchanges of experience among the respective business communities of the Parties;

(e) establishing and developing mechanisms for providing information and identifying opportunities for business cooperation, trade in goods and services, investment, and government procurement;

(f) stimulating and facilitating actions of public and/or private sectors in areas of economic interest, including to explore opportunities in third markets; and

(g) working together to promote the use of English and other languages as tools for small and medium enterprises, and in the use of information technology tools to assist the learning process, as agreed by the APEC Economic Leaders at their 12th meeting.

Article 16.5. Cooperation In Research, Science and Technology

1. The aims of cooperation in research, science and technology, carried out in the mutual interest of all Parties and in compliance with their policies, particularly as regards the rules for use of intellectual property resulting from research, will be:

(a) to build on existing agreements or arrangements already in place for cooperation in research, science and technology;

(b) to encourage, where appropriate, government agencies, research institutions, universities, private companies and other research organisations in each other's country to conclude direct arrangements in support of cooperative activities, programmes or projects within the framework of this Agreement; and

(c) to focus cooperative activities towards sectors where mutual and complementary interests exist.

2. In pursuit of the objectives in Paragraph 1, the Parties will encourage and facilitate, as appropriate, the following activities, including, but not limited to:

(a) identifying strategies, in consultation with universities and research centres, that encourage joint postgraduate studies and research visits;

(b) exchange of scientists, researchers and technical experts;

(c) exchange of information and documentation;

(d) promotion of public/private sector partnerships in the support of the development of innovative products and services; and

(e) cooperation in regional and other governmental and nongovernmental forums in areas of mutual interest.

Article 16.6. Education

1. the Aims of Education Cooperation Will Be:

(a) to build on existing agreements or arrangements already in place for cooperation in education; and

(b) to promote networking, mutual understanding and close working relationships in the area of education among the Parties.

2. In pursuit of the objectives in Paragraph 1, the Parties will encourage and facilitate, as appropriate, exchanges between and among their respective education-related agencies, institutions, organisations, in fields such as:

(a) education quality assurance processes;
(b) on-line and distance education at all levels;
(c) primary and secondary education systems;

(d) higher education;
(e) technical education and vocational training;
(f) industry collaboration for technical and vocational training; and
(g) teacher training and development.
3. Cooperation in education can focus on:
(a) the exchange of information such as teaching and curriculum materials, teaching aids, and demonstration materials, as well as the organisation of relevant specialised exhibitions and seminars;

(b) joint planning and implementation of programs and projects, and joint coordination of targeted activities in agreed fields;

(c) development of collaborative training, joint research and development, across graduate and postgraduate studies;

(d) the exchange of teaching staff, administrators, researchers and students in relation to programmes that will be of mutual benefit;

(e) gaining understanding of each Parties' education systems and policies including information relevant to the interpretation and evaluation of qualifications, potentially leading to discussions between institutions of higher learning on academic credit transfer and the possibility of mutual recognition of qualifications;

(f) collaboration on the development of innovative quality assurance resources to support learning and assessment, and the professional development of teachers and trainers in training and vocational education; and

(g) encouraging and facilitating the development of public and / or private ventures in education.

Article 16.7. Cultural Cooperation

The Aims of Cultural Cooperation Will Be to:

(a) build on existing agreements or arrangements already in place for cultural cooperation; and

(b) promote the exchange of information and practice among the Parties.

Article 16.8. Primary Industry

1. The aims of cooperation in primary industry, carried out in the mutual interest of all Parties and in compliance with their policies, will be:

(a) to build on existing Agreements or Arrangements already in place for cooperation in agriculture and forestry;

(b) to encourage and promote better understanding between the primary sectors in each country;

(c) to encourage, where appropriate, the development of scientific knowledge and technical cooperation among government agencies, research institutions, universities, private companies and other research organisations in each othersâ countries and to conclude direct arrangements in support of cooperative activities, programmes or projects within the framework of this Agreement;

(d) to direct cooperative activities towards sectors where mutual and complementary interests exist; and

(e) to promote international trade liberalisation in the primary industry sectors, develop trade and promote commercial partnerships, including common projects in third countries.

2. In pursuit of the objectives in Paragraph 1, the Parties will encourage and facilitate, as appropriate, the following activities in the primary industry sectors including, but not limited to:

(a) encouraging the expansion of opportunities for contact;

(b) promoting the exchange of information, ideas and research;

(c) encouraging specific industry exchanges and joint ventures, including in relation to research, to develop the primary industry sectors;

(d) encouraging universities in their countries to strengthen their links in the area of primary industry sectors including through the exploration of multi-disciplinary and multi-institutional degree courses; and

(e) encouraging the promotion of primary industry sectors related education services and other activities.

3. To facilitate cooperation in the primary industry sectors, the Parties will also work towards:

(a) promoting compliance with, and enforcement of, international rules relating to trade in primary industry sectors products;

(b) promoting transparency and public participation in decision-making relating to the Partiesâ primary industry sectors; and

(c) identifying and resolving issues that hamper the effectiveness of cooperation in the primary industry sectors.

Article 16.9. Mechanisms for Cooperation

1. The Parties will designate a contact point to facilitate communication on possible cooperation activities. The contact point will work with government agencies, private sector representatives and educational and research institutions in the operation of this Chapter.

2. The Parties agree that the mechanisms for cooperation will take the form of:

(a) regular meetings of the Commission to discuss cooperative areas of interest; and

(b) meetings as required between the relevant institutions (including, but not limited to, the relevant government agencies, Crown Research Institutes, and universities of the Parties to help foster closer cooperation in thematic areas.

3. The Parties will make maximum use of diplomatic channels to promote dialogue and cooperation consistent with this Agreement.

Article 16.10. Cooperation with Non-Parties

The Parties recognise the value of international cooperation for the promotion of sustainable development and agree to develop, where appropriate, projects of mutual interest, with non-Parties.

Article 16.11. Resources

With the aim of contributing to fulfilling the cooperation objectives of this Agreement, the Parties commit themselves to providing, within the limits of their own capacities and through their own channels, the appropriate resources, including financial resources.

Article 16.12. Specific Functions for the Commission In Cooperation Matters

Notwithstanding the provisions of Article 17.2 (Functions of the Commission) the Commission shall have, in particular, the following functions:

(a) oversight of the implementation of the cooperation framework agreed by the Parties;

(b) encouraging the Parties to undertake cooperation activities under the cooperation framework agreed by the Parties;

(c) making recommendations on the cooperation activities under this Chapter, in accordance with the strategic priorities of the Parties; and

(d) review, through regular reporting from each Party, the operation of this Chapter and the application and fulfillment of its objectives.

Chapter 17. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Article 17.1. Establishment of the Trans-Pacific Strategic Economic Partnership Commission

The Parties hereby establish a Trans-Pacific Strategic Economic Partnership Commission (Commission) which may meet at the level of Ministers or senior officials, as mutually determined by the Parties. Each Party shall be responsible for the composition of its delegation.

Article 17.2. Functions of the Commission

1. The Commission shall:

(a) consider any matters relating to the implementation of this Agreement;
(b) review within 2 years of entry into force of this Agreement and at least every 3 years thereafter the economic relationship and partnership among the Parties, consider any proposal to amend this Agreement or its Annexes and otherwise oversee the further elaboration of this Agreement;

(c) supervise the work of all Committees and working groups established under this Agreement;

(d) explore measures for the further expansion of trade and investment among the Parties and identify appropriate areas of commercial, industrial and technical cooperation between relevant enterprises and organisations of the Parties; and

(e) consider any other matter that may affect the operation of this Agreement.

2. The Commission may:

(a) establish committees and working groups, refer matters to any committee or working group for advice, and consider matters raised by any committee or working group;

(b) further the implementation of the Agreement's objectives by approving any modifications (1) of, *inter alia*:

(i) the Schedules contained in Annex I (Elimination of Customs Duties), by accelerating the elimination of customs duties;

(ii) the rules of origin established in Annex II (Specific Rules of Origin); or

(iii) the lists of entities and covered goods and services and thresholds contained in Annexes 11.A and 11.C of the Chapter 11 (Government Procurement).

(c) further the implementation of the Agreement's objectives through Implementing Arrangements;

(d) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(e) seek the advice of non-governmental persons or groups on any matter falling within its responsibilities where this would help the Commission make an informed decision; and

(f) take such other action in the exercise of its functions as the Parties may agree.

(1) The acceptance of any modification by a Party is subject to the completion of any necessary domestic legal procedures of that Party. Chile shall implement the actions of the Commission through Acuerdos de Ejecución, in accordance with article 50, numeral 1, second paragraph, of the *Constitución Política de la República de Chile*.

Article 17.3. Rules of Procedure of the Commission

1. The Commission may take decisions on any maiter within its functions as set out in Article 17.2 by mutual agreement of those Parties present at the meeting of the Commission. Any decision affecting a Party shall only be taken by the Commission with the express agreement of that Party.

2. The Commission shall convene annually, or at such other times as the Parties may mutually agree. Annual sessions of the Commission shall be chaired successively by each Party. Other sessions of the Commission shall be chaired by the Party convening the meeting.

3. The Party chairing a session of the Commission shall provide any necessary administrative support for such session. Decisions of the Commission shall be notified to the Parties by the Party chairing that session of the Commission.

Chapter 18. GENERAL PROVISIONS

Article 18.1. Annexes and Footnotes

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

Article 18.2. Relation to other International Agreements

Nothing in this Agreement shall derogate from the existing rights and obligations of a Party under the WTO Agreement or any other multilateral or bilateral agreement to which it is a party.

Article 18.3. 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.

Article 18.4. Application

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. (1)

(1) For greater certainty, this does not pre-judge the rights of the Parties under Chapter 15 (Dispute Settlement) and specifically Article 15.6(3) (Establishment of an Arbitral Tribunal).

Article 18.5. Distinctive Products

1. The Parties shall endeavour after one year following the entry into force of this Agreement, that they will consider the recognition of distinctive products. (2)

2. If any Party grants in the future to a third party recognition of distinctive products, it shall extend this recognition automatically to it on a non discrminatory basis.

(2) With respect to Chile, it will be seeking the recognition as distinctive products of Chile: Pisco Chileno (Chilean Pisco), Pajarete, and Vino Asoleado.

Article 18.6. Disclosure of Information

Nothing in this Agreement shall be construed to require any Party to furnish or allow access to information the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its legislation;

(b) be contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(c) impede law enforcement; or

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

Article 18.7. Confidentiality

Where a Party provides information to another 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 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.

Chapter 19. GENERAL EXCEPTIONS

Article 19.1. General Exceptions

1. For the purposes of Chapters 3 through 8 (Trade in Goods, Rules of Origin, Customs Procedures, Sanitary and Phytosanitary Measures, Technical Barriers to Trade and Trade Remedies), Article XX of GATT 1994 and its interpretive notes 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 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For greater certainty, the Parties understand that the measures referred to in Article XX(f} of GATT 1994 include measures necessary to protect specific sites of historical or archaeological value, or to support creative arts of national value. (1)

4. For the purposes of Chapter 12 (Trade in Services), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

5. For the purposes of Chapter 12 (Trade in Services), 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 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 of national value.

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

Article 19.2. 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 (2)

(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 international relations, or

(iii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Commission shall be informed to the fullest extent possible of measures taken under Subparagraphs 1(b) and (c) and of their termination.

(2) For greater certainty, nothing in this Agreement shall be construed to prevent a Party from taking any action which it considers necessary for the protection of critical infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

Article 19.3. Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and in services including on payments and transfers.

2. Restrictions adopted or maintained under Paragraph 1 shall:

(a) be consistent with the conditions established in the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Parties;

(c) not exceed those necessary to deal with the circumstances described in Paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in Paragraph 1 improves; and

(e) be applied on a non discriminatory basis.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be promptly notified to the other Party.

5. The Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations with the other Parties in order to review the measures adopted or maintained by it.

Article 19.4. Taxation Measures 1. for the Purposes of this Article:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxation measures do not include a "customs duty" as defined in Article 2.1 (Definitions of General Application).

2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

3. 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 Article Ill of GATT 1994 and, with respect to services, Articles | and XIV (d) of GATS where applicable.

4. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and such tax convention, the latter shall prevail to the extent of the inconsistency. In the case of

a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

Article 19.5. Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 15 (Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established under Article 15.6 (Establishment of an Arbitral Tribunal) may be requested by Brunei Darussalam, Chile or Singapore to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.

Chapter 20. FINAL PROVISIONS

Article 20.1. Investment Negotiations

Unless otherwise agreed, no later than 2 years after entry into force of this Agreement the Parties shall commence negotiations with a view to including a chapter on investment in this Agreement on a mutually advantageous basis.

Article 20.2. Financial Services Negotiations

Unless otherwise agreed, no later than 2 years after the entry into force of this Agreement the Parties shall commence negotiations with a view to including a self-contained chapter on financial services in this Agreement on a mutually advantageous basis.

Article 20.3. Signature

1. This Agreement shall be open for signature by Brunei Darussalam, Chile, New Zealand and Singapore and shall remain open for signature for a period of 6 months from 15 June 2005.

2. This Agreement shall be subject to ratification, acceptance or approval by signatories.

Article 20.4. Entry Into Force

1. This Agreement shall enter into force on 1 January 2006 for those signatories which have deposited an Instrument of Ratification, Acceptance or Approval provided that at least two signatories have deposited such instrument by that date.

2. In the event that only one signatory has deposited an Instrument of Ratification, Acceptance or Approval before 1 January 2006, this Agreement shall enter into force 30 days after the deposit of the second such instrument.

3. For signatories that deposit an Instrument of Ratification, Acceptance or

Approval after 1 January 2006, the Agreement shall enter into force 30 days following the date of deposit of such instrument.

Article 20.5. Brunei Darussalam

1. Subject to Paragraphs 2 to 6, this Agreement shall be provisionally applied in respect of Brunei Darussalam from 1 January 2006, or 30 days after the deposit of an instrument accepting provisional application of this Agreement, whichever is the later.

2. The provisional application referred to in Paragraph 1 shall not apply to Chapter 11 (Government Procurement) and Chapter 12 (Trade in Services).

3. The obligations of Chapter 9 (Competition Policy) shall only be applicable to Brunei Darussalam if it develops a competition law and establishes a competition authority. Notwithstanding the above, Brunei Darussalam shall adhere to the APEC Principles to Enhance Competition and Regulatory Reform.

4. The Commission shall consider whether to accept the Annexes for Brunei Darussalam under Chapter 11 (Government

Procurement) and Chapter 12 (Trade in Services), no later than two years after the entry into force of this Agreement in accordance with Article 20.4(1) or (2), unless the Commission otherwise agrees to a later date.

5. Upon a decision of the Commission accepting the Annexes referred to in Paragraph 4, Brunei Darussalam shall deposit an Instrument of Ratification, Acceptance or Approval within two months of the decision by the Commission. The Agreement shall enter into force for Brunei Darussalam 30 days after the deposit of such instrument

6. Unless the Commission decides otherwise, if the conditions in Paragraph 4 or 5 are not met, the Agreement shall no longer be provisionally applied to Brunei Darussalam.

Article 20.6. Accession

1. This Agreement is open to accession on terms to be agreed among the Parties, by any APEC Economy or other State. The terms of such accession shall take into account the circumstances of that APEC Economy or other State, in particular with respect to timetables for liberalisation.

2. The agreement on the terms of accession shall enter into force 30 days

following the date of deposit with the depositary of an Instrument of Accession which indicates acceptance or approval of such terms.

Article 20.7. Amendments 1. the Parties May Agree on Any Modification of or Addition to this Agreement.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

3. If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult on whether to amend this Agreement.

Article 20.8. Withdrawal

Any Party may withdraw from this Agreement. Such withdrawal shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Depositary. If a Party withdraws, the Agreement shall remain in force for the remaining Parties. Article 20.9: Depositary State and Functions

1. The original of this Agreement shall be deposited with the Government of New Zealand which is hereby designated as the Depositary of this Agreement.

2. The Depositary shall transmit certified copies of this Agreement and any amendments to this Agreement to all signatory States, acceding APEC Economies and other acceding States.

3. The Depositary shall notify all signatory States, acceding APEC Economies and other acceding States of:

(a) each signature, ratification, acceptance, approval or accession to this Agreement in accordance with Articles 20.3, 20.4, and 20.6;

(b) the instrument accepting provisional application in accordance with Article 20.5;

(c) the respective dates on which the Agreement enters into force in accordance with Article 20.4, 20.5 and 20.6; and

(d) any notification of withdrawal received in accordance with Article 20.8.

4. Following entry into force of this Agreement, the Depositary shall transmit a certified true copy of this Agreement to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations. The Depositary shall likewise transmit certified true copies of any amendments which enter into force.

Article 20.10. Authentic Texts

The English and Spanish texts of this Agreement are equally authentic. In the event of divergence, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this

Agreement.

DONE at, ……ON ……2005

For Brunei Darussalam

For the Republic of Chile

For New Zealand

For the Republic of Singapore