FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE REPUBLIC OF INDIA

The Government of New Zealand ("New Zealand") and the Government of the Republic of India ("India"), hereinafter individually referred to as a "Party" and jointly referred to as "the Parties",

RECOGNISING the longstanding bonds of friendship, cooperation, and people-to-people links between them, and the growing strategic partnership between India and New Zealand;

ACKNOWLEDGING the need for a balanced trade agreement that will benefit the economies of both the Parties;

RESOLVING to strengthen their economic relations, further liberalise and expand trade, including through temporary movement of natural persons between the Parties, promote investment, enhance economic growth, create opportunities for workers and businesses, improve living standards, and promote inclusive growth and sustainable development;

SEEKING to establish a clear and predictable legal framework for their trade and economic partnership, so as to enhance the competitiveness of their economies, and to eliminate, and avoid the creation of, barriers between them;

ACKNOWLEDGING the important role and contribution of business in expanding trade between the Parties, and the need to further promote and facilitate cooperation and utilisation of the greater business opportunities provided by this Agreement on the basis of equality and non-discrimination;

RECOGNISING each Party's right to regulate in order to meet national policy objectives, and determining to preserve their flexibility in setting legislative and regulatory priorities in accordance with the rights and obligations provided in this Agreement;

DESIRING to explore new areas of economic cooperation and develop appropriate measures for closer economic cooperation between the Parties; and

CONSCIOUS of their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other international agreements relating to matters covered by this Agreement, to which both Parties are party,

HAVE AGREED as follows:

Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) "Agreement" means the Free Trade Agreement between India and New Zealand;

(b) "Anti-Dumping Agreement" means the Agreement on Implementation of Article VI of General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

(c) "Agreement on Agriculture" means the Agreement on Agriculture, set out in Annex 1A to the WTO Agreement;

(d) "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of General Agreement on Tariffs

and Trade 1994, set out in Annex 1A to the WTO Agreement;

(e) “days” means calendar days, including weekends and holidays;

(f) “GATS” means the General Agreement on Trade in Services, set out in Annex 1B to the WTO Agreement;

(g) “GATT 1994” means the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

(h) “goods” means any merchandise, product, article or material;

(i) “Harmonized System” or “HS” means the Harmonized Commodity Description and Coding System defined in the International Convention on the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, and legal notes, which includes Section Notes, Chapter Notes, and Subheading Notes, as adopted and implemented by the Parties in their respective laws;

(j) “Joint Commission” means the Joint Commission established pursuant to Article 17.1 (Establishment of the Joint Commission);

(k) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(l) “originating goods” means goods that qualify as originating in accordance with Chapter 3 (Rules of Origin);

(m) “perishable goods” means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions;

(n) “Safeguards Agreement” means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement;

(o) “SCM Agreement” means the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement;

(p) “SME” means a small and medium-sized enterprise, including a micro-sized enterprise, and may be further defined, where applicable, according to the respective laws, regulations, or national policies of each Party;

(q) “territory” means:

(i) in respect of India, the territory of the Republic of India in accordance with the Constitution of India, including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights, or exclusive jurisdiction in accordance with its law and the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 and international law;

(ii) in respect of 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;

(r) “TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement;

(s) “WTO” means the World Trade Organization; and

(t) “WTO Agreement” means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Chapter 2. TRADE IN GOODS

Article 2.1. Definitions

For the purposes of this Chapter:

(a) “commercial samples of negligible value” means commercial samples as determined by a Party to be either having a value, individually or in the aggregate as shipped, of not more than the amount specified in a Party’s laws, regulations, or procedures governing temporary admission, or being so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or use except as commercial samples;

(b) “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 or in the territory of a non-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;

(c) “customs duty” means any duty or charge of any kind imposed on or in connection with the importation of a good and any cess, surtax or surcharge imposed in connection with such importation, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;

(ii) fee or other charge in connection with the importation commensurate with the cost of services rendered or imposed in conformity with Article VIII of GATT 1994; or

(iii) anti-dumping duty, countervailing duty or a safeguard measure applied pursuant to the laws of a Party and applied consistently with the provisions of Article VI or XIX of GATT 1994, the Anti-Dumping Agreement, the SCM Agreement or the Safeguards Agreement.

(d) “duty-free” means free of customs duty;

(e) “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;

(f) “import licensing” means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body of the importing Party as a prior condition for importation into the territory of the importing Party;

(g) “Import Licensing Agreement” means the Agreement on Import Licensing Procedures, set out in Annex 1A to the WTO Agreement; and

(h) “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 service, are essentially intended to advertise a good or service, and are supplied free of charge.

Article 2.2. Scope

Unless otherwise provided in this Agreement, this Chapter shall apply to trade in goods of a Party.

Article 2.3. Elimination or Reduction of Customs Duties

1. Each Party shall progressively eliminate or reduce its customs duties on originating goods in accordance with its Schedule to Annex 2A (Schedules of Tariff Commitments).

2. On request of a Party, the Parties may consult to consider accelerating or broadening the scope of the elimination or reduction of customs duties set out in their Schedules to Annex 2A (Schedules of Tariff Commitments). An agreement by the Parties to accelerate the elimination or reduction of a customs duty on a good, or to include a good in Annex 2A (Schedules of Tariff Commitments), shall supersede any duty rate or staging category determined in accordance with their Schedules to Annex 2A (Schedules of Tariff Commitments) for that good when approved by each Party in accordance with its applicable domestic requirements, including internal legal procedures.

3. A Party may at any time unilaterally accelerate or broaden the scope of the elimination or reduction of customs duties set out in its Schedule to Annex 2A (Schedules of Tariff Commitments) on originating goods of the other Party. The Party shall publish as early as practicable before the new rate of customs duty takes effect.

4. If the most-favoured-nation rate of customs duty applied by a Party on a particular good is lower than the rate of customs duty provided for in its Schedule to Annex 2A (Schedules of Tariff Commitments), an importer may claim the most-favoured-nation customs duty and the Party shall apply the lower rate to the originating good of the other Party.

Article 2.4. National Treatment

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

Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, anti-dumping and countervailing duties and safeguard measures) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

Neither Party shall require consular transactions, including any related fees and charges, in connection with the importation of any good of the other Party.

Each Party shall promptly make publicly available on the internet all fees and charges it imposes in connection with importation or exportation including any updates or changes to those fees and charges. Fees and charges shall not be applied until information on them, including the responsible authority, and when and how payment is to be made, has been published, to the extent possible, in the English language.

Each Party shall determine the customs value of goods traded between the Parties in accordance with Article VII of GATT 1994, including its interpretive notes, and Articles 1 through 17 of the Agreement on Implementation of Article

VII of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement, including its interpretative notes.

Classification of Goods and Transposition of Schedules

The classification of goods traded between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonized System and its amendments.

Pursuant to paragraph 1, each Party shall ensure that the transposition of its tariff commitments, undertaken in order to implement Annex 2A (Schedules of Tariff Commitments) in the nomenclature of the revised HS following periodic amendments to HS, is carried out without impairing or diminishing the tariff commitments set out in its Schedule to Annex 2A (Schedules of Tariff Commitments).

Import and Export Restrictions

Unless otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, and to this end Article XI of GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis.

A Party shall only adopt or maintain import licensing procedures which are consistent with the Import Licensing Agreement, and to this end Articles 1 through 3 of the Import Licensing Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

A Party shall publish on an official government website any new or modified import licensing procedure, including any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement. To the extent practicable, the Party shall do so at least 21 days before the new procedure or modification takes effect.

A Party shall be deemed to be in compliance with paragraph 2 with respect to a new or modified import licensing procedure if it notifies that procedure, including the information specified in Article 5(2) of the Import Licensing Agreement, to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement.

At the request of a Party, the other Party shall provide the information specified in Article 5(2) of the Import Licensing Agreement, with regard to any import licensing procedure that it adopts or maintains or changes to an existing licensing procedure.

Neither Party shall adopt or maintain any non-tariff measure on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations or in accordance with this Agreement.

Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 1 and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles to trade between the Parties. Any new measure or modification to an existing measure shall be published as soon as practicable.

Each Party shall allow, in accordance with its laws and regulations, goods regardless of their origin, including their means of transport, to be brought into its territory conditionally relieved from payment of customs duties if such goods:

are intended for re-exportation within a specific period without having undergone any change except normal depreciation and wastage, due to the use made of them; and

are brought into its territory for one of the following purposes:

goods intended for display or use at playgrounds, theatres, exhibitions, fairs or other similar events;

professional equipment, necessary to carry out a trade or profession, which qualifies for temporary entry pursuant to the laws or regulations of the Party;

commercial samples and advertising films and recordings;

containers and pallets which are durable, reusable and that are in use or to be used in the shipment of goods in international traffic;

goods imported exclusively for educational or scientific purposes or cultural activities and events; and

goods imported for sports purposes.

Neither Party shall impose any condition on the temporary admission of the goods referred to in paragraph 1, other than to require that such goods:

are intended for re-exportation without having undergone any change except normal depreciation and wastage due to the use made of them.

be accompanied by a security deposit, if requested by the importing Party, in an amount no greater than the customs duty or charges that would otherwise be owed on importation, releasable on exportation of the good;

be exported on the departure of the person referred to in subparagraph 1(a) or within such period of time as is reasonably related to the purpose of temporary admission;

be capable of identification when exported;

not be sold or leased while in its territory;

not be imported in a quantity greater than is reasonable for its intended use; and

be otherwise admissible into the importing Party's territory under its laws.

If any condition that a Party imposes under paragraph 2 has not been fulfilled, that Party may apply the customs duty and any other charge that would normally be owed on importation of the good, as well as any other charges or penalties provided for under its laws.

Each Party shall at the request of the importer and for reasons deemed valid by its Customs Administration, extend the time limit for temporary admission beyond the period initially fixed, in accordance with its laws and regulations.

Each Party may, in accordance with its laws and regulations, relieve the importer, or other person responsible for goods admitted in accordance with this Article, of liability for failure to export a temporarily admitted good upon presentation of satisfactory proof to the Party's Customs Administration that the good has been destroyed within the original time limit for temporary admission or any lawful extension.

Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall, in accordance with its laws and regulations, grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

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

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

Goods Returned or Re-Entered After Repair or Alteration

A Party may not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or

alteration could be performed in its territory, except that a customs duty may be applied to the value addition resulting from the repair or alteration in accordance with a Party's laws and regulations that was performed in the territory of the other Party.

Paragraph 1 does not apply to:

a good that has not entered into free circulation1 in a Party prior to being exported for repair or alteration; or

any materials used in the repair or alteration which were not in free circulation in the Party where the repair or alteration occurred, unless a payment equivalent to the applicable duty for that material to enter into free circulation has subsequently been made.

A Party may not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration provided such good is exported from the territory of the importing Party in accordance with a Party's laws and regulations.

1 In "free circulation" means the good has cleared customs, applicable duties have been paid, and the good is available for use in the domestic market of the importing Party.

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

destroys a good's essential characteristics or create a new or commercially different good;

transforms an unfinished good into a finished good; or

substantially changes the function of a good.

The Parties reiterate their commitments under the WTO Ministerial Decision on Export Competition, adopted in Nairobi on 19 December 2015, and agree not to maintain any export subsidies that are inconsistent with their obligations under the Agreement on Agriculture for any agricultural product listed in Annex 1 of that agreement.

Publication and Administration of Trade Regulations

Each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings with respect to any matter covered by this Chapter. To this end, Article X of GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis.

To the extent possible, each Party shall make its laws, regulations, decisions and rulings of the kind referred to in paragraph 1 publicly available on the internet.

Data Sharing on Preference Utilisation

For the purpose of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually, or as otherwise agreed by the Committee on Trade in Goods, exchange comprehensive import statistics. Such exchanges shall take place in advance of each meeting of the Committee on Trade in Goods.

The exchange of import statistics shall cover data pertaining to the most recent calendar year available, including value and volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and for the import of those goods that received non-preferential treatment.

The Parties hereby establish a Committee on Trade in Goods ("Goods Committee") composed of government representatives of each Party.

The functions of the Goods Committee shall include:

reviewing and monitoring the implementation and operation of this Chapter;

promoting trade in both agricultural and non-agricultural goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement, and promptly addressing non-tariff barriers to trade in goods between the Parties if not covered by any other committee under this Agreement;

adopt decisions or make recommendations;

addressing issues relating to the administration and operation of tariff-rate quotas;

examining any issues that may arise on matters related to future amendments to the Harmonized System, including

transposition of Parties' Schedules to Annex 2A (Schedules of Tariff Commitments) and on matters related to the classification of goods under the Harmonised System, and endeavouring to seek appropriate solutions through consultation and dialogue, to ensure that the obligations of each Party under this Agreement are not altered;

reviewing data on trade in goods in relation to the implementation of this Chapter;

assessing matters that relate to trade in goods and undertaking any additional work that the Joint Commission may assign to it; and

reporting on its activities and work programme to the Joint Commission.

The Goods Committee shall meet within one year of the date of entry into force of this Agreement and annually thereafter or as otherwise agreed. Meetings may occur in person, or by any other means as mutually determined by the Parties.

The Goods Committee may establish technical working groups to consider any matter relating to this Chapter that creates disruption or may affect trade in goods between the Parties. Any technical working

group established shall report to the Goods Committee on the progress of its work.

Each Party shall, within 60 days of the date of entry into force of this Agreement, designate a contact point to facilitate communication between the Parties on any matter relating to this Chapter. Each Party shall promptly notify the other Party, in writing, of any change to its contact point.

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

Chapter 3. RULES OF ORIGIN

Article 3.1. Definitions and Interpretation

For the purposes of this Chapter:

"aquaculture" including, but not limited to mariculture, means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock, including seed stock imported from non-parties, such as eggs, fry, fingerlings, or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

"CIF value" or "Cost, Insurance and Freight value" means the price actually paid or payable to the exporter for a good when the good is loaded out of the carrier, at the port of importation, including the cost of the good, insurance, and freight necessary to deliver the good to the named port of destination;

"competent authority" means:

for India, the Department of Commerce or its successors; and

for New Zealand, New Zealand Customs Service or its successors;

"customs administration" means:

for India, the Central Board of Indirect Taxes and Customs (CBIC) or its successors; and

for New Zealand, the New Zealand Customs Service or its successors;

"FOB value" or "Free-On-Board value" means the price actually paid or payable to the exporter for a good when it is loaded onto the carrier at the named port of exportation, including the cost of the good and all costs necessary to bring the good onto the carrier;

"fungible goods" means goods that are interchangeable for commercial purposes and whose properties are essentially identical;

"Generally Accepted Accounting Principles" means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad

guidelines for general application, as well as detailed standards, practices and procedures;

“indirect materials” means a material used in the production, testing or inspection of a good but not physically incorporated into the good; or a material used in the maintenance of buildings or the operation of equipment, associated with the production of a good, including:

fuel, energy, catalysts and solvents;

equipment, instruments, devices and supplies used to test or inspect the good;

gloves, glasses, footwear, clothing, safety equipment and supplies;

tools, dies and moulds;

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

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

any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

“issuing authority” means the authority designated by each Party for issuance of Certificates of Origin, as notified from time to time;

“material” means a good that is consumed in the production, physically incorporated or used in the production of another good;

“non-originating material” means a material that does not qualify as originating in accordance with this Chapter, which includes a good or material of undetermined origin;

“originating good” or “originating material” means a good or material that qualifies as originating in accordance with this Chapter;

“packing materials and containers for transportation and shipment” means goods used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

“producer” means a person who engages in the production of a good;

“production” means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling a good;

“preferential tariff treatment” means the customs duty rate applicable to an originating good, pursuant to each Party’s respective Schedule of Tariff Commitments set out in Annex 2A (Schedules of Tariff Commitments);

“QVC” is the qualifying value content of a good, expressed as a percentage;

“value of non-originating materials” is the value of non-originating materials, including materials of undetermined origin, used in the production of the good; and

“value of originating materials” is the value of originating materials used in the production of the good in the territory of one or both Parties.

For the purpose of this Chapter, any cost or value shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Except as otherwise provided in this Chapter, a good shall be regarded as originating if it is:

wholly obtained or produced in the territory of one or both of the Parties, as provided for in Article 3.3 (Wholly Obtained or Produced Goods); or

satisfies all applicable requirements of the Product Specific Rules under Annex 3A (Product Specific Rules of Origin); and

meets all other requirements of the Chapter.

Wholly Obtained or Produced Goods

For the purposes of subparagraph (a) of Article 3.2 (Originating Goods), the following goods shall be considered to be wholly obtained or produced in the territory of one or both of the Parties, if they are:

plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi, algae and live plants grown and harvested, picked, or gathered there;

live animals born and raised there;

goods obtained from live animals born and raised there;

goods obtained by hunting, trapping, fishing, aquaculture, gathering, or capturing there;

minerals and other naturally occurring substances, not included in subparagraphs (a) to (d), extracted or taken from the soil or waters, seabed or subsoil beneath the seabed there;

fish, shellfish, and other marine life extracted or taken from the sea, seabed or subsoil beyond the outer limits of the territories of each Party and, in accordance with international law, outside the territorial sea of non-Parties by vessels that are registered, listed or recorded with a Party and entitled to fly the flag of that Party;

goods produced on board a factory ship registered, listed or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in subparagraph (f);

goods other than fish, shellfish and other marine life extracted or taken from the sea-bed or subsoil beneath the sea-bed outside the territorial sea of a Party, provided that the Party has rights to exploit such sea-bed or subsoil beneath the sea-bed in accordance with relevant international law;

waste and scrap, excluding precious metals, derived from production or consumption there, provided that such goods are fit only for the recovery of raw materials; and

goods produced in the territory of one or both Parties solely from goods referred to in subparagraphs (a) to (i) or from their derivatives at any stage of production.

Each Party shall provide that an originating good or material in the territory of one Party, under the terms of Article 3.2 (Originating goods) and all the other applicable requirements of this Chapter, that is incorporated in the production of a good in the territory of the other Party is considered to originate in the territory of the other Party.

Calculation of Qualifying Value Content

Where a qualifying value content requirement is specified in this Chapter and its Annexes, to determine whether a good is originating, the qualifying value content shall be calculated using one of the following methods:

Build-Down Formula based on the value of non-originating materials: FOB Value - Value of Non Originating materials

QVC =

FOB Value x 100

Build-up Formula: based on the value of originating materials:

Value of Originating materials

QVC =

FOB Value x 100

Value of Materials Used in the Qualifying Value Content

All values for the purposes of calculating qualifying value content shall be determined in accordance with the Customs Valuation Agreement.

All costs shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of a Party where the good is produced.

If a non-originating material is used in the production of a good, the following may be added to the value of originating materials in determining whether the good meets the QVC requirement:

the value of production of non-originating materials undertaken in the territory of one or both Parties; and

the value of originating materials used in the production of the non- originating material in the territory of one or both Parties by one or more producers.

The value of the materials used in production shall be:

for imported materials, the CIF value;

for materials obtained within the territory of a Party:

the price paid or payable by the producer in the Party where the producer is located;

the value as determined for an imported material in subparagraph (a); or

the earliest ascertainable price paid or payable in the territory of the Party; and

for materials that are self-produced, all the costs incurred in the production of the material, which includes general expenses that can be reasonably allocated to the good.

For originating materials, the following expenses may be added to the value of the material, if not included under paragraph 4:

the costs of freight, insurance, packing, and other transport-related costs incurred in transporting the good to the location of the producer of the good;

duties, taxes, and customs brokerage fees on the material, paid in the territory of a Party, other than duties that are waived, refunded, refundable, or otherwise recoverable, which includes credit against duty or tax paid or payable; and

the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

For non-originating materials or materials of undetermined origin, the following expenses may be deducted from the value of the material:

the costs of freight, insurance, packing, and other transport-related costs incurred in transporting the material within the territories of the Parties to the location of the producer of the good;

duties, taxes, and customs brokerage fees on the material, paid in the territory of a Party, other than duties that are waived, refunded, refundable, or otherwise recoverable, which includes credit against duty or tax paid or payable; and

the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

Where the costs or expenses listed in paragraphs 4 through 6 are unknown or evidence of the amount of the adjustment is not available, then no adjustment is allowed for those costs.

Notwithstanding any provisions of this Chapter, the following operations when undertaken on non-originating materials to produce a good shall be considered as insufficient working or processing to confer on that good the status of an originating good:

preserving operations to ensure that the good remains in good condition for the purposes of transport or storage;

packaging or presenting goods for transportation or sale;

simple1 processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling, or uncoiling;

for textiles: attaching accessory articles such as straps, beads, cords, rings and eyelets; ironing or pressing of textiles;

affixing or printing of marks, labels, logos, or other like distinguishing signs on goods or their packaging;

simple dilution with water or another substance that does not materially alter the characteristics of the good;

simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

slaughtering2 of animals;

simple painting and polishing operations;

simple peeling, stoning, or shelling;

simple mixing3 of goods, whether or not of different kinds; or

1 For the purposes of this Article, “simple” describes activities which need neither special skills nor machines, apparatus or equipment specially produced or installed for carrying out the activity.

2 For the purposes of this Article, “slaughtering” means the mere killing of animals.

3 For the purposes of this Article, “simple mixing” describes activities which need neither special skills nor machines, apparatus or equipment specially produced or installed for carrying out the activity.

any combination of two or more operations referred to in subparagraphs (a) through (k).

All operations carried out in a Party on a given good shall be considered together when determining whether the working or processing undergone by that good is to be regarded as insufficient within the meaning of paragraph.

A good, except for those falling within Chapters 50 through 63 of the HS, that does not satisfy a change in tariff classification requirement pursuant to Annex 3A (Product Specific Rules of Origin) shall nonetheless be an originating good if the value of non-originating materials used in the production of the good that do not satisfy the change in tariff classification requirement does not exceed 10 per cent of the FOB value of the good as defined under Article 3.1 (Definitions and Interpretation) and the good meets all of the other applicable requirements in this Chapter.

A good classified in Chapters 50 through 63 of the HS that does not qualify as originating good because certain non-originating materials used in the production of the good do not fulfil the requirements set out in Annex 3A (Product Specific Rules of Origin), shall nonetheless be an originating good if the total weight/value of all such material does not exceed 10 per cent of the total weight/value of that good.

If a good described in paragraph 1 or 2 is also subject to a qualifying value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable qualifying value content requirement.

A good classified as Wholly Obtained (WO) under Article 3.3 (Wholly Obtained or Produced Goods) or Annex 3A (Product Specific Rules of Origin) that does not qualify as an originating good, because certain non-originating materials of other chapters of the HS are used in the production of that good, shall nonetheless be an originating good if the total weight or value of all such non-originating material does not exceed 1 per cent of the total weight or value of that good.

Treatment of Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether the non-originating materials used in the

production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 3A (Product Specific Rules of Origin), or whether the good is wholly obtained or produced.

If the good referred to in paragraph 1 is subject to the qualifying value content requirement, the value of such packaging materials and containers shall be taken into account as value of the originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Treatment of Packing Materials and Containers for Transportation and Shipment

Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining whether the good is originating.

The origin of the accessories, spare parts or tools presented with a good:

shall be disregarded if the good is subject to a change in tariff classification requirement or production process requirements for origin specified in Annex 3A (Product Specific Rules of Origin), and

shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good, if the good is subject to a qualifying value content requirement.

Paragraph 1 of this Article shall only apply where:

the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and

the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

An indirect material shall be considered as neither originating nor non-originating when the qualifying value addition is calculated in accordance with Article 3.5 (Calculation of Qualifying Value Content).

Fungible goods shall be treated as originating based on the:

physical separation of the good; or

use of any inventory management method recognised in the Generally Accepted Accounting Principles of the Party where the production is performed, if originating and non-originating fungible goods are comingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

An inventory management system under subparagraph 1(a) must ensure that no more goods or materials receive originating status than would have been the case if the fungible goods had been physically segregated.

A good shall retain its originating status as determined under Article 3.2 (Originating Goods) if either of the following conditions have been met:

the good has been transported directly from the exporting Party to the importing Party; or

the good has been transported through one or more non-Parties provided that the good has not undergone any subsequent production or other operation outside the territories of the Parties other than unloading, reloading, storing, repacking, relabelling in accordance with the laws and regulations of the importing Party, splitting up of loads, consolidation of loads or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party and the good has remained under customs control in the non-Parties.

Compliance with subparagraph 1(b) shall be evidenced by presenting the customs administration of the importing Party either with customs documents of the non-Parties, or with any other appropriate documentation on request of the customs administration of the importing Party.

Appropriate documentation referred to in paragraph 2 may include commercial shipping or freight documents such as airway bills, bills of lading, multimodal or combined transport documents, a non-manipulation certificate, or other relevant supporting documents as may be requested by the customs administration of the importing Party.

Each Party shall provide that a claim for preferential tariff treatment is based on an applicable Proof of Origin:

a Certificate of Origin issued by an issuing authority; or

an origin declaration completed by:

in India, a status holder;

in New Zealand, an approved exporter; or

subject to a review under paragraph 12, an exporter or producer.

A Certificate of Origin shall bear an authorised signature and official seal of the issuing body or authority, as appropriate. The signature and seal shall be applied manually or electronically.

A Proof of Origin shall:

be in the English language;

bear a unique certification number or unique identification number, as the case may be;

specify that the good is originating and meets the requirements of this Chapter;

contain information as set out in Annex 3B (Certificate of Origin Template) for Certificate of Origin and as set out in Annex 3C (Origin Declaration Template) for an origin declaration by an approved exporter or status holder;

remain valid for 12 months from the date on which it is completed in the case of an origin declaration, or, issued in the case of a Certificate of Origin; and

apply to single importation of one or multiple goods provided that each good qualifies as an originating good separately in

its own right; and

For New Zealand, a Proof of Origin may apply to importations of multiple shipments of identical goods within any period specified in the Proof of Origin, where such period does not exceed 12 months.

A Proof of Origin may indicate two or more invoices for goods contained in a single importation.

Proof of Origin shall be submitted to the customs administration of the importing Party in accordance with the procedures applicable in that Party.

A Proof of Origin shall be forwarded by the exporter, producer, approved exporter, or status holder to the importer. The customs administration may require the original copy.

Neither erasures nor superimposition shall be allowed on a Proof of Origin. Any alterations shall be made by striking out the erroneous material and making any addition(s) that may be required. In case of Certificates of Origin, such alterations may be approved by a person authorised to issue the certificate. In case of Origin Declaration, a new Proof of Origin may be completed by the approved exporter or status holder.

Each Party shall provide that a Proof of Origin shall be issued or completed prior to or at the time of importation.

Notwithstanding paragraph 9, under exceptional circumstances, a Proof of Origin may be issued or completed after importation, bearing the words “ISSUED RETROSPECTIVELY” in the Proof of Origin, and include an explanation to this effect. A Proof of Origin can be issued retrospectively no later than 12 months after the date of importation.

In cases of theft, loss or accidental destruction of a Certificate of Origin, the exporter, producer or an authorised representative thereof may, within the term of validity of the original Certificate of Origin, make a written request to the issuing body or authority that issued the original certificate for a certified copy. The certified copy shall bear the words “CERTIFIED TRUE COPY”. The certified copy shall have the same term of validity as the original Certificate of Origin.

The Parties shall commence a review of this Article on completion of five years from the date of entry into force of this Agreement. This

review will consider the introduction of a Declaration of Origin by an exporter or producer as a Proof of Origin.

For the issue of a Certificate of Origin, the exporter or producer of the goods shall present, or submit electronically through the approved channel, to the issuing body or authority of the exporting Party the following:

an application, together with appropriate supporting information and documents for proving origin; and

the corresponding commercial invoice and other documents necessary to establish the origin of the good.

Multiple items declared on the same Certificate of Origin shall be allowed, provided that each item must qualify separately in its own right.

Each Party may, in accordance with its domestic procedures and if it deems appropriate, allow its issuing body or authority to apply a risk management system to selectively conduct pre-export verification of the application and supporting information filed by an exporter or producer.

The issuing body or authority, as appropriate, shall carry out proper examination of each application for a Certificate of Origin to ensure that:

the application has been duly completed and signed by the authorised signatory;

the origin of the good is in conformity with the requirements of this Chapter; and

the information furnished in the Certificate of Origin corresponds to supporting information and documents submitted.

If the exporter or producer has reason(s) to believe that a Certificate of Origin is based on incorrect information that could affect the accuracy or validity of the Certificate of Origin, they shall be obliged to immediately notify the importer, the issuing body or authority and the customs administration of the importing Party in writing of any change affecting the originating status of each good to which the Certificate of Origin applies.

An importing Party shall not deny a claim for preferential tariff treatment for the sole reason that an invoice was not issued by the exporter, producer, approved exporter, or status holder, or was issued in a third country, provided that the goods meet the requirements of this Chapter.

The Certificate of Origin shall be issued by an issuing body or authority, as appropriate.

Each Party shall within 30 days of the date of entry into force of this Agreement inform the customs administration of the other Party of the issuing body or authority, as appropriate, and contact details of the authorised persons of such body or authority, designated to issue Certificates of Origin under this Agreement.

The Parties shall exchange specimen seals and signatures of the authorised signatories issuing Certificate of Origin.

Each Party shall promptly notify the other Party of any change to its issuing body or authority, as appropriate, and the names, designations, addresses, specimen signatures of authorised persons or seals of such issuing body or authority.

The competent authority in India may, subject to its laws and regulations, grant a status holder certificate to an eligible exporter (hereinafter referred to as “status holder”) established in India to self-certify their Origin Declaration, provided that the status holder accepts full responsibility for declaration of origin of the export product.

The competent authority in India shall after a due process grant status holder certificate to an exporter established in India.

The competent authority in India shall maintain a system to monitor the proper use of status holder certificate. The status holder certificate may be withdrawn if the status holder no longer fulfils the requirements or makes improper use of their status holder certificate.

The competent authority in India shall notify the competent authority in New Zealand of their status holders, their certificate numbers, and any modifications to the list of status holders.

The competent authority in New Zealand may, subject to its laws and regulations, authorise an eligible exporter (hereinafter referred to as “approved exporter”) established in New Zealand to self-certify their Origin Declaration, provided that the approved exporter accepts full responsibility for declaration of origin of the export product.

The competent authority in New Zealand, after due process, shall grant an authorisation number to an approved exporter operating in New Zealand. The authorisation number must be unique for every approved exporter.

The competent authority in New Zealand shall maintain a system to monitor the proper use of an authorisation. The authorisation may be withdrawn if the approved exporter no longer fulfils the requirements or makes improper use of the authorisation.

The competent authority in New Zealand shall notify the competent authority in India of their approved exporters, their authorisation numbers, and any modifications to the list of approved exporters.

Claims for Preferential Tariff Treatment

Except as otherwise provided in Article 3.26 (Denial of Preferential Tariff Treatment), each Party shall grant preferential tariff treatment in accordance with this Chapter to an originating good on the basis of a Proof of Origin.

Unless otherwise provided in this Chapter, for the purposes of claiming preferential tariff treatment, an importing Party shall provide that an importer:

make a declaration that the good qualifies as an originating good;

have a valid Proof of Origin in its possession at the time the declaration referred to in subparagraph (a) is made and provide the same if requested by the importing customs administration; and

if required by an importing Party, demonstrate that the requirements in Article 3.14 (Consignment) have been satisfied.

An importing Party may require that an importer who claims preferential tariff treatment shall provide documents and other information to support the claim.

If a claim for preferential tariff treatment is made without producing the Proof of Origin, the customs administration of the importing Party may deny the preferential tariff treatment or request a guarantee in any of its modalities or may take action necessary in order to preserve fiscal interests, as a pre-condition for the completion of importation operations subject to and in accordance with the laws, regulations and procedures of the importing Party.

Record Keeping Requirements

Each Party shall require that:

its exporters, producers, approved exporter, or status holders and issuing bodies or authorities, as appropriate, retain for at

least 5 years from the date of issuance or completion of the Proof of Origin or a longer period in accordance with its relevant laws and regulations, all records4 necessary to prove that the good for which the Proof of Origin was issued was originating; and

its importers retain, for at least 5 years from the date of importation of the good, or a longer period in accordance with its relevant laws and regulations, all records necessary to prove that the good for which preferential tariff treatment was claimed was originating.

The original Proof of Origin document must be retained in a hard copy written format. All other supporting records may be maintained in any medium that allows for prompt retrieval, including in digital, electronic or written form, in accordance with that Party's laws and regulations.

The exporter, producer, approved exporter, or status holders, shall, upon request of the issuing body or authority, of the exporting Party or the customs administration of the importing Party, make available records for inspection to enable verification of the origin of the good.

4 For greater clarity these records shall include commercial accounting and customs documentation relating to the material(s) used in the production of the good, including but not limited to breakup of costs relating to material(s), labour, other overheads and any other relevant elements such as profits and related components, where these are applicable to the origin criteria.

A Party shall not require a Proof of Origin if the importing Party has waived the requirement or does not require the importer to present a Proof of Origin in accordance with its law.

Post Importation Claim for Preferential Tariff Treatment

Each Party shall provide for an importer of a Party to apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into its territory.

As a condition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer, not later than 12 months after the date of importation or a longer period if specified in the importing Party's laws and regulations, to:

make a claim for preferential tariff treatment;

where applicable, provide a copy of Proof of Origin; and

provide such other documentation relating to the importation of the good as the importing Party may require.

Each Party shall provide that if the importer has reason(s) to believe that the claim for preferential tariff treatment is based on incorrect information that could affect the accuracy or validity of the Proof of Origin, the importer shall correct the importation document, and if applicable, pay any customs duty and penalties owed.

When considering imposing a penalty in relation to a claim for preferential tariff treatment, the customs administrations of the Parties are encouraged to consider a voluntary notification given prior to the discovery of that error by the Party as a mitigating factor, provided that in the case of a notification given by an importer, the importer corrects the error and repays any duties owed.

Verification of Origin and Procedures

For the purposes of determining whether goods imported into a Party from the other Party qualify as originating goods, the importing Party may conduct a verification process. A verification process may be

initiated on importation or after the release of the goods by the customs administration of the importing Party.

A verification process may be initiated based on risk assessment methods, including random selection, or where the importing Party has reasonable doubt as to the authenticity of the origin of the goods.

A verification process for determining whether a good imported into a Party is originating may include the following methods:

a written request or requests for information5 from the importer of the good;

a written request or requests for information on a Certificate of Origin from the exporting party;

a written request or requests for information from the exporter, producer, approved exporter, or status holder of the goods, through the competent authority or issuing authority of the exporting Party,

a request to the competent of the exporting Party to assist in obtaining information from the exporter, producer, approved exporter, or status holder;

a verification visit to the premises of an exporter, producer, approved exporter, or status holder in the territory of the exporting Party,

in the normal course of a verification, the Parties shall utilise the methods in a sequential manner.

For the purposes of subparagraph 3(b):

the customs administration of the importing Party may request the competent or issuing authority, as appropriate, that issued the Certificate of Origin in the exporting Party, to assist it in verifying:

the authenticity of a Certificate of Origin;

the accuracy of any information contained in the Certificate of Origin; and

the authenticity and accuracy of the supporting information and documents, associated to the

5 For the purposes of this Article, where origin has been obtained using a qualifying value content methodology, information shall include breakdown of costs and other relevant elements, such as profit, for the determination of the origin of the good.

Certificate of Origin, and provide copies of the relevant documents where requested;

the customs administration of the importing Party shall provide the competent or issuing authority, as appropriate, with:

the reasons why such assistance is sought;

the Certificate of Origin, or a copy thereof; and

any information and documents as may be necessary for the purpose of providing such assistance; and

the competent or issuing authority in the exporting Party shall provide the information and documentation requested, within:

30 days from the date of receipt of the request, if the request pertains to the authenticity of issue of the Certificate of Origin, including the seal and signatures of the issuing authority;

60 days from the date of receipt of such request, if the request is on the grounds of suspicion of the accuracy of the determination of origin of the product. This period can be extended for up to 30 days, if agreed by the Parties.

Where a written request is made under subparagraph 3(c):

the customs administration of the importing Party shall ensure that the information requested is limited to information pertaining to the fulfilment of the requirements of this Chapter as follows:

Proof of Origin;

information supporting a claim that the good is originating under Article 3.2 (Originating Goods);

information related to the use of the de minimis, direct consignment or cumulation provisions of the Chapter; and

any other information including specific documentation where appropriate;

the customs administration of the importing Party shall provide the exporter, producer, approved exporter or status holder, as appropriate, with:

the reasons why information is being sought;

the Proof of Origin, or a copy thereof; and

any information and documents as may be necessary for the purpose of providing such information; and

the exporter, producer, approved exporter, or status holder, shall provide the information within 60 days from the date of

receipt of a request. This period can be extended for up to 30 days as agreed by the exporter, producer, approved exporter or status holder, and the customs administration of the importing Party.

If the importing Party is not satisfied with the outcomes of the information received after completing the processes identified in subparagraphs 3(a) through 3(d) regarding whether the goods qualify as originating goods according to this Chapter, it may request in writing to the customs administration or competent authority of the exporting Party to seek agreement from the exporter, producer, approved exporter, or status holder of the good to undertake for a verification visit to the premises of the exporter, producer, approved exporter, or status holder to observe the facilities used in the production of the goods concerned, including review of the exporter's, producer's, approved exporter's, or status holder's accounts, or records in relation to the goods concerned or any other check considered appropriate and related to the purpose of the verification visit.

The written request referred to in paragraph 6 shall be as comprehensive as possible and include at a minimum:

the name of the exporter, producer, approved exporter or status holder whose premises are to be visited;

the goods subject to the verification process;

reasons why the outcome(s) of the verification activity conducted under subparagraph 3(a) through 3(d) to that date has not been satisfactory; and

proposed date and time of visit.

The request for a verification visit shall be made no later than 30 days and extendable as agreed by the Parties, following the receipt of the information referred to in subparagraphs 3(a) through 3(d).

Officials from the exporting Party may accompany and assist the officials from the importing Party in their visit to the exporter, producer, approved exporter, or status holder premises. The exporter, producer, approved exporter, or status holder shall identify two or more independent witnesses to be present during the verification visit. The above-mentioned verification visit process, including the actual visit and notification of written determination of the origin of the good, shall

be completed within a maximum period of 6 months from the date when the verification visit was conducted.

When the written consent of the exporter, producer, approved exporter, or status holder for the visit is not obtained within 30 days from the date the customs or competent authority of the exporting Party receives the verification visit request, the customs administration of the importing Party may deny preferential tariff treatment to the good that would have been the subject of the verification visit.

During a verification process, the importing Party shall allow the release of the good, subject to payment of duties or provision of security as provided for in its law.

Upon completion of the verification process, the customs administration of the importing Party shall provide the importer with a written determination of whether the good is originating, along with the basis for the determination. If the exporter, producer, approved exporter, or status holder of the good has been involved in the verification process they shall be notified on the outcome of the verification process.

Upon the issuance of the written determination that the good does not qualify as an originating good, the exporter, producer, approved exporter, or status holder shall be allowed 30 days from the date of receipt of the written determination to provide in writing comments or additional information regarding the eligibility of the good for preferential tariff treatment. The final written determination shall be communicated to the producer or exporter or producer or approved exporter or status holder within 30 days from the date of receipt of the comments or additional information.

Upon the issuance of the written determination that the good qualifies as an originating good, the importing Party shall immediately restore preferential benefits and promptly refunded any duties paid in excess of the preferential duty or release guarantees obtained in accordance with their domestic legislation.

Denial of Preferential Tariff Treatment

The importing Party may deny a claim for preferential tariff treatment if:

it determines that the good does not qualify as originating within the terms of this Chapter or does not satisfy the requirement(s) of this Chapter;

pursuant to a verification under Article 3.25 (Verification of Origin and Procedures), it has not received sufficient

information to determine that the good qualifies as originating including;

the importer, exporter, producer, approved exporter, or status holder, fails to respond to or refuses a written request for information;

the importer, exporter, producer, approved exporter, or status holder, fails to comply with any of the relevant requirements for obtaining preferential tariff treatment;

the importer, exporter, producer, approved exporter, or status holder, or the issuing bodies or authorities, as appropriate, of the exporting Party fail to provide sufficient information and documents, within the prescribed timelines;

the exporter, producer, approved exporter, or status holder, fails to give consent or respond to a request for a verification visit.

If an importing Party denies a claim for preferential tariff treatment, it shall notify the importer in writing along with the reasons for such determination.

If the importing Party establishes non-compliance of the goods with the rules of origin, duties shall be levied in accordance with the law of the importing Party.

Temporary Suspension of Preferential Treatment

If, following a verification procedure, the importing Party establishes that the importer, exporter, producer, approved exporter, or status holder, has persistently or deliberately misrepresented the origin status of the goods, the importing and exporting Party shall consult with a view to take appropriate measures. If these measures are insufficient to prevent a reoccurrence of the misrepresentation, the importing Party may temporarily suspend preferential tariff treatment for that exporter, producer, approved exporter, or status holder.

Based on consultations referred to in paragraph 1 and in any case no longer than 2 months from the date of initiating consultations, a decision whether or not to suspend tariff preference may be taken by the importing Party. The importing Party shall notify the decision, including its reasoning, to the exporting Party, within 30 days after informing the importer accordingly.

If verification procedures have shown that two or more exporters, producers, approved exporters, or status holders, of one Party have

persistently or deliberately misrepresented the origin status of goods in a Proof of Origin for the same good at the six digit HS classification level declared to the customs administration of the importing Party and this same good of these exporters, producers, approved exporters, or status holders, accounts for more than half of the preferential imports of the same good in value terms from the exporting party over a period of 1 year prior to the first verification request, the importing Party may submit the matter to the Technical Committee on Rules of Origin and to the Joint Commission with a view to temporarily suspend preferential treatment for all imports of that good from the exporting Party.

The Technical Committee on Rules of Origin shall discuss the matter and shall make a recommendation to the Joint Commission within 6 months from the date of submission on whether or not the importing Party may suspend the granting of preferential tariff treatment for this good as a temporary measure. The importing Party may only suspend preferential treatment if the recommendation of the Technical Committee on Rules of Origin is agreed by the Joint Commission.

The temporary suspension shall apply only for a period no longer than

6 months or any other period that the Parties agree. Where the condition that gave rise to initial temporary suspension persists at the expiry of the 6-month period, the Party concerned may decide to renew the temporary suspension. Any such renewal shall be subject to periodic consultations within the Technical Committee on Rules of Origin.

Following a temporary suspension at exporter level referred to in paragraph 1 or a Joint Commission decision for temporary suspension as referred to in paragraph 4 and pursuant to the conclusion of consultations between the Parties concerned, and the Parties, where applicable, agree that the exporter, or producer or approved exporter or status holder(s) has adopted appropriate remedial measures, the importing Party shall agree to:

restore preferential benefit to the good with retrospective effect; or

restore preferential benefit to the good with prospective effect, subject to implementation of any mutually agreed measures by one or both Parties.

Each Party shall adopt or maintain measures that provide for the imposition of civil, administrative, and, where appropriate,

criminal sanctions for violations of its customs laws and regulations, including

those governing rules of origin, and the entitlement to preferential tariff treatment under this Agreement.

Any importer, exporter, producer, approved exporter, or status holder, who incorrectly represents any material information relevant to the determination of origin of a good may be liable to be penalised under a Party's law.

Goods in Transport or Storage

In accordance with Article 3.24 (Post Importation Claim for Preferential Tariff Treatment), the customs administration of the importing Party shall grant preferential tariff treatment for an originating good of the exporting Party which, on the date of entry into force of this Agreement:

is in the process of being transported from the exporting Party to the importing Party; or

has not been released from customs control, including an originating good stored in a bonded warehouse regulated by the customs administration of the importing Party.

Minor Discrepancies or Errors

A Party shall not reject a Proof of Origin due to minor errors or discrepancies, such as slight discrepancies between documents, minor omissions of information, spelling, typing or formatting errors, or protrusions from the designated field, provided these minor discrepancies or errors do not create doubt as to the originating status of the good.

The information obtained by the competent authority or customs administration of the importing Party can be utilised for arriving at a decision regarding the determination of origin in respect of a good and can be used in the legal proceedings concerning issues covered by this Chapter and in accordance with each Party's respective law.

Each Party shall protect the information from any unauthorised disclosure in accordance with their respective law.

Technical Committee on Rules of Origin

The Parties hereby establish a Technical Committee on Rules of Origin composed of government representatives of each Party responsible for rules of origin matters to consider any matters arising under this Chapter and its Annexes.

The Technical Committee on Rules of Origin shall consult either in-person or virtually, upon the request of either Party, to ensure that this Chapter and its Annexes is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement and shall cooperate in the administration of this Chapter and its Annexes and mutually resolve any issues that may arise.

The Technical Committee on Rules of Origin shall consult to discuss possible amendments or modifications to this Chapter and its Annexes that may be necessary to reflect changes to the Harmonized System and taking into account developments in technology, production processes or other related matters.

Exchange of Electronic Data on Origin

The Parties shall establish an electronic system to exchange information on Certificates of Origin on entry into force of this Agreement.

The Parties shall, within 12 months from entry into force of this Agreement, establish an electronic system to exchange information on other forms of Proof of Origin. The introduction of other forms of Proof of Origin, such as Origin Declaration, shall be subject to the establishment of an electronic system to exchange information to establish the authenticity of those self-declarations.

Chapter 4. CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1. Definitions

For the purposes of this Chapter:

"arrival" means:

for India, arrival at a Customs station of clearance and once goods are registered with Customs;

for New Zealand, arrival at a Customs port, Customs airport, or at an alternative place of arrival authorised by Customs;

“customs authority” means:

for India, the Central Board of Indirect Taxes and Customs or its successors;

for New Zealand, the New Zealand Customs Service or its successors;

“customs laws” means those laws and regulations administered, applied or enforced by the customs authority of each Party concerning the importation, exportation and transit or transhipment of goods; and

“customs procedures” mean the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to its customs laws.

This Chapter shall apply to customs laws and customs procedures applied to the importation, exportation and transit or transhipment of goods between the Parties.

General Objectives and Principles

Each Party shall ensure that its customs laws and customs procedures are applied in a manner that is consistent, transparent, non-discriminatory and facilitate trade, including through the expeditious clearance of goods.

Customs laws and customs procedures of the Parties shall conform, where possible, to the international standards and recommended practices of the World Customs Organization (the “WCO”) and other relevant international agreements to which the Parties are party.

The customs authority of each Party shall, to the extent possible, periodically review its customs procedures with a view to simplifying such procedures to facilitate trade.

The Parties shall seek to reinforce their cooperation to promote trade facilitation while ensuring effective customs control.

WTO Agreement on Trade Facilitation

The Parties reaffirm their rights and obligations under the WTO Agreement on Trade Facilitation, set out in Annex 1A to the WTO Agreement (“Agreement on Trade Facilitation”).

Publication and Availability of Information

Each Party shall promptly make available, in a non-discriminatory and easily accessible manner, including on the internet, and as far as practicable in English:

customs laws and, to the extent possible, its administrative rulings of general application governing customs matters;

customs procedures for importation, exportation and transit of goods, including the required forms and documents, and a description of such procedures;

details of its enquiry points including points of contact and modes for making information enquiries;

applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

rules for the classification or valuation of goods for customs purposes;

restrictions or prohibitions on the importation, exportation or transit of goods;

penalty provisions for breaches of import, export or transit formalities;

procedures for appeal or review;

hours of operation for relevant customs offices, including those at ports and border crossing points;

information regarding the use of customs brokers and, if applicable, laws, regulations and procedures for becoming a customs broker and for issuing customs broker licenses; and

provisions regarding the correction or amendment of customs transactions and, if applicable, the circumstances when penalties are not imposed.

Each Party shall update the information referred to in paragraph 1 as promptly as possible.

Each Party shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.

Nothing in this Article shall require a Party to publish law enforcement procedures and internal operational guidelines, including those related to conducting risk analysis and targeting methodologies.

Each Party shall establish or maintain enquiry points for customs matters relevant to trade in goods, which may be contacted in English through the internet. A Party that receives an enquiry in English shall answer that enquiry in English.

Each Party shall endeavour not to require the payment of a fee for answering enquiries. If payment of a fee is required, the Party shall limit the amount of its fees and charges to the approximate cost of services rendered.

Each Party shall ensure that responses to enquiries are provided within a reasonable period of time, which may vary depending on the nature or complexity of the request.

Public Consultation and Information before Entry into Force

Each Party shall publish in advance, and on the internet, any proposed customs laws relevant to international trade in goods, with a view to affording interested persons an opportunity to comment on them.

Each Party shall, in a manner consistent with its law, ensure that new or amended customs laws are published on the internet, or information on them made otherwise publicly available, as early as possible before their entry into force to enable traders and other interested parties to become acquainted with them.

Paragraphs 1 and 2 shall not apply to:

changes to duty rates or tariff rates;

measures that have a relieving effect;

measures the effectiveness of which would be undermined as a result of compliance with paragraph 1;

measures applied in urgent circumstances; or

minor changes to the Party's law.

Each Party shall, prior to the importation of a good of the other Party into its territory, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information. An advance ruling shall be issued with regard to:

tariff classification;

the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts, in accordance with the Customs Valuation Agreement;

whether a good is originating in accordance with Chapter 3 (Rules of Origin); and

any other matters the Parties may agree.

Each Party shall issue an advance ruling as expeditiously as possible, within 150 days or in such shorter time as prescribed in its customs laws, after it receives a request, provided that the applicant has submitted all the information that the receiving Party requires to make the advance ruling. This may include a sample of the good for which the applicant is seeking an advance ruling, if necessary to evaluate the request.

A Party may request that the applicant provide additional information at any time during the course of an evaluation of an application for an advance ruling, necessary to evaluate the request. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the applicant has provided.

A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review, or in circumstances set out in the Party's customs laws.

A Party that intends to decline a ruling shall:

provide the applicant an opportunity to be heard; or

communicate the potential grounds to decline a ruling and allow the applicant to provide more information to support the application.

A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and circumstances, and the basis for its decision to decline to issue the advance ruling.

Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least three years provided that the law, facts and circumstances on which the ruling is based remain unchanged.

The importing Party may, in accordance with that Party's customs laws, modify, revoke or find the advance ruling non-binding:

if the ruling was in error, or based on incorrect facts or mistake of law;

if there is a change in the material facts or circumstances on which the ruling was based;

to conform with a judicial decision or a change in its law; or

if the ruling was based on incomplete, incorrect, false or misleading information or obtained by fraud or misrepresentation of facts.

Where a Party revokes or modifies an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision.

Neither Party shall apply a revocation or modification of an advance ruling retroactively to the detriment of the applicant unless the ruling was based on incomplete, incorrect, false, or misleading information provided by the applicant or obtained by fraud or misrepresentation of facts.

Each Party shall publish on the internet, at least:

the requirements for the application for an advance ruling, including the information to be provided and the format;

the time period by which it will issue an advance ruling; and

the length of time for which the advance ruling is valid.

An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it, and on the applicant.

Each Party shall provide, upon written request of an applicant, an opportunity to review or appeal an advance ruling or the decision to revoke or modify it.

Subject to any confidentiality requirements in its law, a Party may publish its advance rulings, including on the internet.

Each Party shall ensure that any person to whom it issues an administrative decision on a customs matter has the right to:

an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and

a judicial appeal or review of the decision.

Each Party shall ensure that its procedures for review and appeal are carried out in a non-discriminatory manner without undue delay.

Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given within the period of time provided for in its laws and regulations or without undue delay, the person has the right to further administrative or judicial appeal or review or any other recourse to a judicial authority in accordance with that Party's laws and regulations.

Each Party shall provide a person to whom it issues an administrative decision on the basis of a review or appeal referred to in paragraph 1 with the reasons for the administrative decision in writing, so as to enable such a person to have recourse to appeal procedures where necessary.

Each Party shall:

to the extent practicable, make electronic systems accessible to customs users;

allow a customs declaration to be submitted in electronic format;

permit the electronic payment of duties, taxes, fees and charges collected by its customs authority and incurred upon importation and exportation, according to its law;

endeavour to implement common standards and elements for import and export data, in accordance with the WCO Data Model;

take into account, as applicable, standards, recommendations, models, and methods developed by relevant international organisations, including WCO, and WTO.

Each Party shall adopt or maintain simplified customs procedures for the efficient release of imported goods in order to facilitate trade between the Parties.

Pursuant to paragraph 1, each Party shall adopt or maintain customs procedures that:

provide, for the release of goods by customs within a period no longer than that required to ensure compliance with its laws and regulations1, and as rapidly as possible after the arrival of the goods, but in any case, within 48 hours of arrival, provided that:

all information and documentation2 necessary to release the goods has been submitted on or prior to arrival of the goods; and

the goods are not subject to physical examination or inspection;

provide for electronic submission and processing of customs information relating to an import in advance of the arrival of the goods to expedite the release of goods from customs control upon arrival;

allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities, provided that the goods are eligible for release;

allow for the release of goods prior to the final determination of customs duties, taxes, fees, and charges when these are not determined prior to or promptly upon arrival, provided that the goods are otherwise eligible for release. Before releasing the goods, a Party may require that an importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument; and

if applicable and to the extent possible, provide for, in accordance with its laws and regulations, clearance of certain goods with a minimum of documentation.

1 This may include necessary clearances from other regulatory agencies or payment of any customs duties, taxes, fees and charges.

2 This may include information and documentation required by other regulatory agencies.

If a Party allows for the release of goods conditioned on the provision of a security, that Party shall adopt or maintain procedures that:

ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;

ensure that the security shall be discharged as soon as possible after that Party's customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled; and

allow importers to provide security using a form other than cash, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

Each Party shall, provided the applicable requirements are met, allow goods intended for release in its territory to be moved under customs control from the point of entry into the Party to another customs office or station in its territory where the goods are intended to be released.

Nothing in this Article shall require a Party to release a good if the Party's requirements for release of the good have not been met.

Each Party shall adopt or maintain expedited customs procedures for express shipments, at least for those goods entered through air cargo facilities, while maintaining appropriate customs control and selection. These procedures shall:

provide for information and documentation necessary to release an express shipment to be submitted, and where possible processed, before the shipment arrives;

minimise the documentation required for the release of expedited shipments, and to the extent possible, provide for release based on a single submission of information on certain shipments through electronic means;

provide for these shipments, under normal circumstances, to be released in the shortest possible time after arrival and in any case endeavouring to release these shipments in 24 hours, provided that all necessary information and documentation3 has been

3 This may include information and documentation required by other regulatory agencies.

submitted, the goods are not subject to physical examination or inspection and all requirements have been met; and

apply to shipments of any weight or value recognising that a Party may require formal entry procedures as a condition for release, including declarations and supporting documentation and payment of customs duties, based on the good's weight or value.

If a Party has an existing procedure that provides the treatment in paragraph 1, this provision does not require that Party to introduce separate expedited release procedures.

Nothing in this Article prevents a Party from requiring additional procedures and any necessary information and documentation as a condition for the release of restricted or controlled goods, including declaration and supporting documentation for the assessment and payment of applicable duties, taxes, fees and charges.

For the purposes of this Article, "perishable goods" means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

With a view to preventing avoidable loss or deterioration of perishable goods, each Party shall:

provide, in normal circumstances, for perishable goods to be released in the shortest possible time after arrival, endeavouring to release within 24 hours, provided that:

the Party has received all information and documentation4 required to release all the goods in the import entry on or prior to arrival of the goods;

the goods, or any other goods in the same import entry, are not subject to physical inspection or examination; and

all regulatory checks required for release have been completed; and

4 This may include information and documentation required by other regulatory agencies.

in exceptional circumstances, where it would be appropriate to do so, provide for the release of perishable goods outside the business hours of its customs authority.

Each Party shall give appropriate priority to perishable goods when scheduling and conducting any examination or inspection that may be required.

Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of goods to such storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. Each Party shall, where practicable and consistent with its laws and regulations, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Nothing in this Article shall require a Party to release a good if the Party's requirements for release of the good have not been met.

Each Party shall adopt or maintain a risk management framework, including electronic data-processing, for customs control that enables its customs authority to focus its examination and inspection activities on high-risk consignments and expedite the release of low-risk consignments.

Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.

Each Party shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders and type of means of transport.

Each Party may also select, on a random basis, consignments for examination and inspection activities referred to in paragraph 1 as part of its risk management.

In order to facilitate trade, each Party shall periodically review and update, if considered appropriate, the risk management framework specified in paragraph 1.

Each Party shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.

Without prejudice to the rights of any Party to use other types of preshipment inspection not covered by paragraph 1, each Party is encouraged not to introduce or apply new requirements regarding their use.

Paragraph 2 refers to preshipment inspections covered by the Agreement on Preshipment Inspection, set out in Annex 1A to the WTO Agreement, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

Formalities Related to Importation, Exportation and Transit

Each Party shall limit controls, formalities and the number of documents required in the context of trade in goods between the Parties to those necessary and appropriate to ensure compliance with its laws and regulations and thereby simplify to the greatest extent possible the respective procedures.

With a view to minimising the incidence and complexity of import, export and transit formalities and to decreasing and simplifying import, export and transit documentation requirements, each Party shall ensure, as appropriate, that such formalities and documentation requirements are:

applied with a view to a rapid release and clearance of goods, particularly perishable goods;

applied in a manner that aims at reducing the time and cost of compliance; and

the least trade restrictive.

Each Party shall establish or maintain a single window that enables importers to:

electronically submit documentation or data requirements for the importation of goods to the participating authorities or agencies; and

check or be informed of the status of the release of their goods.

Each Party shall endeavour to:

expand or improve the functionality of its single window to enable exporters to submit documentation or data requirements for the exportation of goods to the participating authorities or agencies, if it does not already do so; and

enable traders to access, through its single window and in a timely manner, information from participating authorities or agencies conveying where in the clearance process their goods are.

In cases where documentation or data requirements have already been received through the single window, the same documentation or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions as set out in a Party's laws and procedures.

In building and maintaining its single window system, each Party shall take into account, as appropriate, standards, recommendations, models and methods developed by various international organisations such as the WCO, the United Nations Centre for Trade Facilitation and Electronic Business and the WTO.

With a view to expediting the release of goods, each Party shall:

adopt or maintain post-clearance audit to ensure compliance with its customs laws and customs procedures;

conduct post-clearance audits in a risk-based manner, which may include appropriate selectivity criteria;

conduct post-clearance audits in a transparent manner. Where an audit is conducted and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the reasons for the results and the audited person's rights and obligations; and

wherever practicable, use the result of post-clearance audit in applying risk management.

Each Party shall, in its laws or regulations, set a minimum period for which relevant records must be kept.

The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

Each Party shall maintain measures imposing criminal, civil or administrative penalties, whether solely or in combination, for violations of the Party's customs laws or procedures.

Each Party shall ensure that any penalty imposed by its customs authority is dependent on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.

Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties. Each Party shall ensure that it maintains measures to avoid creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 2.

Each Party shall allow the correction or amendment of an error in customs transaction, as permissible under a Party's customs laws, that may be a potential breach of the Party's customs laws or procedures, prior to the discovery of the error by the Party, if the correction or amendment is done in accordance with the Party's customs laws or procedures, and any owed duties, taxes, fees and charges, including interest, is paid.

Each Party is encouraged to require its customs authority, when imposing a penalty for a breach of its customs laws or procedures, to consider as a potential mitigating factor the voluntary disclosure of the breach prior to its discovery by the customs authority.

Each Party shall, where appropriate, provide in its customs laws or procedures, or shall otherwise give effect to, a limited period within which

its customs authority may initiate proceedings to impose a penalty relating to a breach of its customs laws or procedures.

Each Party shall ensure that if a penalty is imposed by its customs authority for a breach of its customs laws or procedures, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the customs law or procedure used for determining the penalty amount.

Each Party shall ensure that penalties for breaches of its customs laws or procedures are imposed only on the person(s) legally responsible for the breach.

The Parties agree not to require the mandatory use of customs brokers.

Each Party shall:

publish any measures on the use of customs brokers; and

apply transparent and objective rules if and when licensing customs brokers.

The Parties shall, in accordance with their laws, regulations and customs procedures and subject to the availability of resources, encourage cooperation and exchange of information with each other on customs matters.

The customs authority of each Party shall assist each other, in accordance with its laws, regulations and customs procedures and subject to the availability of resources, in relation to:

the implementation and operation of this Chapter;

developing and implementing customs best practice and risk management techniques;

simplifying and harmonising customs procedures;

sharing with each other their respective experiences in developing and maintaining their single window systems;

exchanging information, including information on best practices, relating to customs matters. Such exchanges of information shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the Cooperative Arrangement between the Central Board of Indirect Taxes & Customs of the Government of the Republic of India and the New Zealand Customs Service in Customs Matters done at Wellington on 06 August 2024; and

such other customs issues as may be mutually determined by the Parties.

Each Party shall establish or maintain a trade facilitation partnership programme for operators who meet specified criteria, hereinafter referred to as the Authorised Economic Operator ("AEO") programme. Each Party's Programme shall operate in accordance with internationally recognised standards which the respective Parties have accepted, such as the WCO SAFE

Framework and Article 7.7 of the Agreement on Trade Facilitation.

Each Party shall publish its specified criteria to qualify as an AEO. The specified criteria shall relate to compliance, or the risk of non-compliance, in accordance with requirements specified in the Party's customs laws and procedures.

The specified criteria to qualify as an AEO shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail. The specified criteria shall be designed or applied so as to allow the participation of small and medium-sized enterprises.

The AEO programme shall include specific benefits for operators that meet the specified criteria, taking into account the commitments of each Party under paragraph 7.3 of Article 7 of the Agreement on Trade Facilitation.

Each Party is encouraged to measure the average time required for the release of goods by its customs authority periodically, and to publish the findings thereof, using tools such as the Guide to Measure the Time Required for the Release of Goods issued by the World Customs Organization with a view to:

assessing the Party's trade facilitation measures; and

considering opportunities for further improvement of the time required for the release of goods.

Each Party is encouraged to share with the other Party its experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

Each Party shall adopt or maintain measures governing the collection, protection, use, disclosure, retention, correction, and disposal of information that relates to a trader and that is collected for the purposes of administering and enforcing its customs laws.

Each Party shall maintain, in conformity with its law, the confidentiality of all information collected as part of its customs processes and shall protect that information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates.

Each Party shall ensure that the information collected as part of its customs processes shall be used or disclosed solely for the administration and enforcement of customs matters, including in any proceedings before courts or tribunals for failure to comply with customs laws, or as otherwise authorised or required under the Party's law.

The Parties shall communicate to each other information on their applicable laws and regulations

Committee on Customs and Trade Facilitation

The Parties hereby establish a Committee on Customs and Trade Facilitation ("Committee") composed of government representatives of each Party responsible for customs and trade facilitation matters to consider any matters arising under this Chapter.

The functions of the Committee shall include:

ensuring the appropriate administration, uniform interpretation and implementation of the provisions contained in this Chapter;

cooperating in an endeavour to further simplify and implement the customs procedures of this Chapter;

sharing information on best practices;

where appropriate, exchanging information on matters related to this Chapter;

consider and discuss technical issues arising from the implementation of this Agreement, without prejudice to Chapter 19 (Dispute Settlement);

considering any matters referred to it by the Committee on Trade in Goods or the Joint Commission; and

any other matter as the Committee mutually agrees.

The Committee shall meet either in person or virtually within six months of the date of entry into force of this Agreement and thereafter annually unless otherwise agreed by the representatives of the Parties or without undue delay at the request of either Party.

The Committee may decide on its own rules of procedure, in the absence of which the rules of procedure of the Joint

Commission shall apply mutatis mutandis.

The Committee shall report to the Joint Commission on the results and conclusions from each of its meetings.

Chapter 5. TRADE REMEDIES

Section A. Anti-dumping, Subsidies and Countervailing Measures

Article 5.1. Anti-Dumping Measures

Nothing in this Agreement affects the rights and obligations of the Parties under Article VI of GATT 1994 and the Anti-Dumping Agreement with regard to the application of anti-dumping measures.

Subsidies and Countervailing Measures

Nothing in this Agreement affects the rights and obligations of the Parties under Article VI of GATT 1994 and the SCM Agreement with regard to the application of countervailing duty measures.

If a Party takes a decision to impose anti-dumping or countervailing duty, it may consider applying a duty less than the margin of dumping or the amount of the subsidy, as relevant, where such lesser duty would be adequate to remove the injury to the domestic industry in accordance with the Party's laws and regulations.

Section B: Global Safeguard Measures

Article Article 5.4

Global Safeguard Measures

Nothing in this Agreement affects the rights and obligations of the Parties under Article XIX of GATT 1994, and the Safeguards Agreement.

Section C

Bilateral Safeguard Measures

Article Article 5.5 Definitions

For the purposes of this Section:

"bilateral safeguard measure" means a measure referred to in paragraph 2 of Article 5.6 (Application of a Bilateral Safeguard Measure);

"domestic industry" means, with respect to an imported good, the producers as a whole of a like or directly competitive good operating within the territory of a Party, or those producers whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of the good;

"elimination or reduction of a customs duty" means any elimination or reduction of customs duty in accordance with paragraph 1 of Article 2.3 (Elimination or Reduction of Customs Duties);

"serious injury" means a significant overall impairment in the position of a domestic industry;

"threat of serious injury" means a serious injury that is clearly imminent. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

"transition period" means, in relation to a good, the period from the date of entry into force of this Agreement until 14 years after the date on which the elimination or reduction of the customs duty on that good is completed.

Application of a Bilateral Safeguard Measure

If, as a result of the elimination or reduction of a customs duty under this Agreement, an originating good from a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing a like or directly competitive good, the other Party may during the transition period, apply either of the bilateral measures provided for in paragraph 2.

If the conditions in paragraph 1 are met, the importing Party may apply one of the following bilateral safeguard measures:

suspension of the further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or

increase in the rate of customs duty on the good concerned to a level which does not exceed the lesser of:

the most-favoured-nation applied rate of customs duty on the good in effect at the time the bilateral safeguard measure is applied; and

the most-favoured-nation applied rate of customs duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

Neither Party shall apply or maintain a bilateral safeguard measure or provisional bilateral safeguard measure under this Chapter to any good imported under a tariff rate quota established by the Party under this Agreement.

A Party may apply a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with the procedures and requirements provided for in Articles 3 and 4.2 of the Safeguards Agreement, and to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

A Party shall notify the other Party immediately in writing upon it initiating an investigation described in paragraph 1 and shall provide adequate opportunity for prior consultations with the other Party in advance of applying a bilateral safeguard measure, with a view to reviewing the information arising from the investigation and exchanging views on the bilateral safeguard measure.

Each Party shall ensure that its competent authorities complete any such investigation within one year of the date of its initiation.

Neither Party shall apply or maintain a bilateral safeguard measure:

except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry;

for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of

the applying Party determine, in conformity with the procedures specified in this Article, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry and that there is evidence that the industry is adjusting.

Regardless of its duration, any bilateral safeguard measure or provisional bilateral safeguard measure shall terminate at the end of the transition period.

No bilateral safeguard measure shall be applied again to the import of a good which has been previously subject to such a measure, for a period of time equal to that during which such measure was applied, or one year since the expiry of such measure, whichever is longer.

Notwithstanding the provisions of paragraph 6, a bilateral safeguard measure with a duration of 180 days or less may be applied again to the import of a good if:

at least one year has elapsed since the date of introduction of a bilateral safeguard measure on the import of that good; and

a bilateral safeguard measure has not been applied on the same good more than twice in the five-year period immediately preceding the date of the first imposition of the bilateral safeguard measure.

A Party shall not apply a bilateral safeguard measure or provisional bilateral safeguard measure on a good that is subject to a global safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement. A Party shall not continue to maintain a bilateral safeguard measure or provisional bilateral safeguard measure on a good that becomes subject to a global safeguard measure.

In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is more than one year, the Party that applies the measure shall progressively liberalise it at regular intervals during its period of application.

When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect in accordance with the Party's Schedule to Annex 2A (Schedules of Tariff Commitments for Goods) but for the

bilateral safeguard measure.

Provisional Bilateral Safeguard Measures

In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a provisional bilateral safeguard measure pursuant to a preliminary determination by its competent

authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and have caused serious injury, or threat of serious injury, to its domestic industry.

Before applying a provisional bilateral safeguard measure the applying Party shall notify the other Party of the preliminary determination and shall immediately initiate consultations after applying the provisional bilateral safeguard measure.

A provisional bilateral safeguard measure shall not be maintained for more than 200 days, during which time the applying Party shall comply with Article 5.6 (Application of a Bilateral Safeguard Measure) and Article 5.7 (Conditions and Limitations).

The applying Party shall refund promptly any increase in customs duty paid as a result of the adoption of the provisional bilateral safeguard measure if the applying Party's investigating authority determines that the requirements of paragraph 1 of Article 5.6 (Application of a Bilateral Safeguard Measure) are not met.

The duration of any provisional bilateral safeguard measure shall be counted as part of the period described in subparagraph 4(b) of Article 5.7 (Conditions and Limitations).

A Party applying a bilateral safeguard shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect or equivalent to the value of the additional duties expected to result from the application of the bilateral safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application or the extension of the bilateral safeguard.

If the consultations under paragraph 1 do not result in the Parties agreeing on trade liberalising compensation no later than 30 days after consultations begin, the Party whose goods are subject to the bilateral safeguard measure may suspend substantially equivalent concessions to the trade of the Party applying the bilateral safeguard. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects.

The right to take action referred to in paragraph 2 shall not be exercised for the first two years that the measure is in effect, which includes the

period of time that any provisional bilateral safeguard measure has been in effect.

Originating agricultural goods from a Party shall not be subject to any duties applied by a Party pursuant to a special safeguard taken under the Agreement on Agriculture.

Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under Section A or B of this Chapter.

Chapter 6. SANITARY AND PHYTOSANITARY MEASURES

Article 6.1. Definitions

For the purposes of this Chapter:

the definitions set out in Annex A to the SPS Agreement shall apply;

"competent authorities" mean those national government authorities within each Party recognised by the national government as responsible for developing and administering sanitary and phytosanitary ("SPS") measures within that Party;

"emergency measure" means a sanitary or phytosanitary measure that is applied by the importing Party to the products of the exporting Party to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the Party applying the measure; and

"SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures, set out in Annex 1A to the WTO Agreement.

The Parties shall take into consideration the terms and definitions of relevant international organisations, such as the Codex Alimentarius Commission ("Codex"), the World Organisation for Animal Health ("WOAH") and the International Plant Protection Convention ("IPPC"). In the event of an inconsistency between those terms and definitions and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

The objectives of this Chapter are to:

reaffirm the rights and obligations of both Parties under the SPS Agreement, while supporting its enhanced implementation;

provide a framework and mechanisms to facilitate bilateral trade between the Parties, while protecting human, animal or plant life or health;

enhance transparency and deepen mutual understanding of each Party's regulations and procedures relating to SPS measures, and ensure that such measures do not create unjustified barriers to trade; and

strengthen cooperation, communication and consultation between the Parties.

This Chapter applies to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

Affirmation of the SPS Agreement

The Parties reaffirm their rights and obligations with respect to each other under the SPS Agreement.

Nothing in this Chapter shall affect the rights and obligations of each Party under the SPS Agreement.

Each Party shall base its sanitary and phytosanitary measures with respect to trade with the other Party on relevant international standards, guidelines or recommendations, where they exist, except as otherwise provided in the SPS Agreement.

The Parties shall strengthen their cooperation on risk assessment in accordance with the SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.

When conducting a risk assessment specific to trade between them, the importing Party shall:

on request, inform the exporting Party of the progress, including the reason for any delays;

consider options that are not more trade-restrictive than required to achieve its appropriate level of protection, taking into account technical and economic feasibility; and

provide an opportunity for the exporting Party to comment.

Based on mutually agreed priorities, each Party shall endeavour to progress requested risk assessments for products and, once completed, endeavour to ensure trade is facilitated without undue delay.

Without prejudice to emergency measures, the importing Party shall not stop the importation of a product of the other Party solely for the reason that the importing Party is undertaking a review of a sanitary or phytosanitary measure, if the importing Party permitted importation of the product of the other Party at the time of the initiation of the review.

Adaptation to Regional Conditions

The Parties recognise the concepts of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence, as set out in Article 6 of the SPS Agreement and that the adaptation of SPS measures to recognise regional conditions is an important means of facilitating trade. In developing SPS measures based on regionalisation, the Parties shall take into account the relevant decisions of the WTO SPS Committee and relevant international standards, guidelines and recommendations.

The Parties may cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each other for such recognition. In doing so, the Parties may promote information sharing in this area and on related matters. The Parties may agree to recognise regionalisation decisions, including official control programmes, zones and compartments, and the associated certification variations, including for WOAH or IPPC recognised treatments, ahead of changes to their regional animal or plant health status.

If the importing Party adopts or maintains an SPS measure applicable to the exporting Party, and the exporting Party establishes officially controlled regional conditions, the exporting Party may request the importing Party recognise its regional conditions for any relevant pest or disease.

When the importing Party has received such a request for recognition of regional conditions from the exporting Party and has determined that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time. If the

exporting Party so requests, the importing Party shall also explain the process it undertakes for recognising regional conditions.

Reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures for the assessment.

On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment.

If the importing Party adopts a measure that recognises specific regional conditions of the exporting Party, the importing Party shall communicate that decision to the exporting Party in writing and implement the measure within a reasonable period of time.

If the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognise the regional conditions of the exporting Party, the importing Party shall provide the exporting Party the rationale for its decision in writing within a reasonable period of time.

If there are circumstances that result in the importing Party modifying or revoking a determination recognising regional conditions of the exporting Party, the importing Party shall notify the exporting Party as soon as possible. On request of the exporting Party, the Parties shall cooperate to assess whether the determination can be reinstated.

The Parties shall strengthen cooperation on equivalence in accordance with the SPS Agreement, taking into account relevant decisions of the WTO SPS Committee and relevant international standards, guidelines and recommendations, in order to facilitate trade between them.

The importing Party shall accept the sanitary or phytosanitary measures of the other Party as equivalent even if these measures differ from their own or from those used by other countries, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of protection or that its measures have the same effect in achieving the objective as the importing Party's measures. The Parties recognise that equivalence can be accepted for a specific measure or measures related to certain product or categories of products or on a system-wide basis.

In determining equivalence, the importing Party shall take into account available information and experience as well as the knowledge of the regulatory competence of the exporting Party.

A Party shall, upon request, enter into consultations with the aim of achieving bilateral recognition agreements or arrangements of equivalence on the specified SPS measures.

As part of consultations, on request by the exporting Party, the importing Party shall explain and provide:

the rationale and objective of its measures; and

the specific risks its measures are intended to address.

The exporting Party shall provide necessary information in order for the importing Party to commence an equivalence assessment. Once the assessment commences, the importing Party shall, upon request, without undue delay explain the process and plan for making an equivalence determination.

The consideration by the importing Party of a request from the exporting Party for recognition of equivalence of its measures with regard to a specific product, or group of products, shall not be in itself a reason to disrupt or suspend ongoing imports from the exporting Party.

When the importing Party has concluded its assessment, it shall notify the equivalence determination to the exporting Party in writing. If an equivalence determination does not result in recognition by the exporting Party, the importing Party shall provide the exporting Party with the rationale for its decision.

If a Party proposes to adopt, modify, amend, repeal or remove an SPS measure which it considers may have a significant impact on trade in products that are the subject of an equivalence agreement or arrangement between the Parties, it shall notify the other Party and indicate its likely effect on recognition of equivalence.

Following such a notification from the exporting Party, the importing Party shall continue to apply its determination of equivalence unless it considers that the equivalence agreement or arrangement is no longer sufficient to meet its appropriate level of protection. If the importing Party considers that equivalence can be maintained under new or revised

conditions it shall consult with the exporting Party on their development.

If the importing Party considers that equivalence cannot be maintained and it can no longer apply its determination of equivalence, the exporting Party may request consultations with the aim of once again

achieving a bilateral recognition arrangement of equivalence, consistent with the provisions of this Article.

Certification, Import Permits and Approval Procedures

Each Party shall ensure measures related to certification, import permit and approval procedures are in accordance with relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines or recommendations.

The Parties may strengthen cooperation with respect to paragraph 1, including on import permit requirements, with a view to reduce duplication between the Parties.

The Parties shall work cooperatively to promote the implementation of paperless trade through electronic SPS certification.

Where certification is required for trade in a product, the importing Party shall ensure that such certification is applied, in meeting its SPS objectives, only to the extent necessary to protect human, animal or plant life or health.

Where import permits are required for trade in a product, the importing Party shall endeavour to ensure that such permits reflect those requirements that are necessary to meet its appropriate level of protection and are issued without undue delay and on a non-discriminatory basis.

The Parties may develop simplified certificate models and attestations where equivalence, regionalisation or other recognitions have been agreed under this Chapter.

The Parties may also develop simplified establishment and product approval processes based on the recognition of control, inspection and approval processes already applied in the territory of the other Party.

Each Party shall undertake audits in accordance with the relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines or recommendations.

An audit shall be systems-based and conducted to assess the effectiveness of the official regulatory controls of the competent

authorities of the exporting Party, or apply to individual establishments or facilities where necessary, to provide the required assurances and meet the SPS measures of the importing Party.

Prior to the commencement of an audit, the importing Party and the exporting Party shall exchange information and endeavour to agree on the objectives and scope of the audit and other matters related specifically to the commencement of an audit.

The importing Party shall set forth its findings, preliminary conclusion and, if applicable, its recommendation in a draft audit report to the exporting Party with an opportunity to comment on it and take any such comments into account before making its conclusions and taking any action. The importing Party shall provide a detailed report and its summary, setting out its conclusions in writing, to the exporting Party within a reasonable period of time.

Measures taken by the importing Party as a consequence of its audit shall be supported by objective evidence and data, take into account the importing Party's knowledge of, relevant experience with, and confidence in, the exporting Party, and shall not be more trade-restrictive than necessary to achieve the importing Party's appropriate level of protection. Any such objective evidence and data shall be provided to the audited Party, on request.

Any costs incurred by the auditing Party shall be borne by the auditing Party, unless the Parties agree otherwise.

The auditing Party and the audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information acquired during the auditing process.

Each Party shall undertake import checks in accordance with relevant provisions of Annex C of the SPS Agreement and take into account the relevant decisions of the WTO SPS Committee, and international standards, guidelines or recommendations.

Import checks, conducted in accordance with the importing Party's laws, regulations, and sanitary and phytosanitary requirements, shall be based on the sanitary and phytosanitary risk associated with importations from the exporting Party. The import checks shall be carried out in a manner that is not more trade-restrictive than required to achieve its appropriate

level of protection and be applied without undue delay using appropriate risk-based sampling methodologies. The Parties may agree to amend the frequency or intensity of import

checks that would normally apply to a commodity class based on the performance of each other's national controls.

In the event that import checks reveal a non-compliance, the final decision or action taken by the importing Party shall be appropriate to the sanitary and phytosanitary risk associated with the importation of the non-compliant product.

If an importing Party prohibits or restricts the importation of a good of an exporting Party on the basis of an import check finding sanitary or phytosanitary non-compliance, the importing Party shall notify the importer or its representatives and, where appropriate, the exporting Party and certifying competent authority, of such non-compliance.

The importing Party shall provide the importer or its representatives located within the territory of the importing Party and, where appropriate, the exporting Party and certifying competent authority with an opportunity for a review of the decision. If a review is undertaken, the importing Party shall consider any relevant information submitted to assist it in the review, and it shall carry out the review within a reasonable period of time.

When significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Party, the Parties shall, on request of either Party, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.

Unless there is a clearly identified high risk, the importing Party shall provide means other than destruction to manage the risk, such as relabelling, treatment, where available, or re-export.

Contact Points and Competent Authorities

By the date of entry into force of this Agreement, each Party shall:

designate a contact point to facilitate communication and the exchange of information between the Parties on matters arising under this Chapter;

provide the other Party with a list of its competent authorities responsible for developing and administering SPS measures within its territory, including a description of their structure, organisation and division of functions and responsibilities; and

the list of contact points and competent authorities shall be recorded in an implementing arrangement.

Each Party shall notify the other Party of any changes to its contact point and significant changes in the structure, organisation and division of responsibility within its competent authorities.

Transparency and Exchange of Information

Each Party shall, in accordance with the transparency obligations contained in the SPS Agreement, notify the contact point referred to in Article 6.11 (Contact Points and Competent Authorities) of the other Party of any new or revised SPS measures that may affect trade between the Parties, including emergency measures imposed to protect human, animal or plant life or health.

When the information referred to in paragraph 1 has been made available via notification to the WTO's Central Registry of Notifications, or to the relevant international organisation, the requirements in paragraph 1 shall be deemed to have been fulfilled.

A Party shall respond within a reasonable period of time to any request for relevant information or clarification from the other Party regarding its SPS measures, including with respect to model certificates or attestations.

In implementing this Chapter, both Parties shall take into account relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.

A Party may request relevant information from the other Party on any matter arising under this Chapter, or any other SPS measure of the other Party affecting trade between the Parties, where such information has not already been included in a notification to the SPS Committee or has not otherwise been made publicly available. A Party that receives a reasonable request for information shall provide available information to the requesting Party within a reasonable period of time.

If the importing Party determines that there is a significant, sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure, the importing Party shall notify the exporting Party of the non-conformity.

Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of trade facilitating nature, the Party proposing an SPS measure shall normally allow at least 60 days for the other Party to

provide written comments on the proposed measure after it makes a notification to the WTO. If feasible and appropriate, the Party proposing the measure may allow more than 60 days. The Party proposing the measure shall consider

any reasonable request from the other Party to extend the comment period.

The Parties through the Committee on SPS matters shall explore opportunities for further cooperation, collaboration and information exchange, including through their competent authorities, on SPS matters of mutual interest, consistent with the objectives of this Chapter. This may include the provision of technical assistance and capacity building, subject to the availability of appropriate resources.

In undertaking cooperation activities, the Parties shall endeavour to coordinate with bilateral, regional or multilateral work programmes with the objective of avoiding unnecessary duplication and maximising the use of resources.

The Parties hereby establish a Committee on SPS Measures ("SPS Committee") under Article 17.5 (Committees and Subsidiary Bodies), consisting of representatives from relevant competent authorities and government agencies of each Party.

The SPS Committee shall review the progress made by the Parties in implementing their commitments under this Chapter and may establish ad-hoc subsidiary working groups to consider specific issues relating to the implementation of this Chapter.

The SPS Committee shall provide a forum to facilitate information exchange and enable either Party to raise and discuss any SPS matter related to trade, including biosecurity matters, between the Parties. The SPS Committee may also develop action plans including those that may relate to cooperation and capacity building.

The Parties may, where mutually agreed, develop bilateral implementing arrangements to set out mutually determined understandings and details for applying this Chapter, including for example those documenting the recognition of: Equivalence; Regionalisation; Product Treatments; Certification, Controls, Inspections and Approval Processes; Import Permits; Audits; Establishment Lists; Import Checks; changes to contact points and competent authorities; the use of CODEX or National Maximum Residue Limits for import; and any other matter as mutually decided.

The SPS Committee shall meet within one year of the date of entry into force of this Agreement and thereafter as mutually determined by the Parties. Meetings may occur in person, by teleconference, by video conference, or through any other means as mutually determined by both the Parties. The SPS Committee shall establish its rules of procedure at its first meeting. All decisions of the SPS Committee shall be made by consensus.

The SPS Committee may hold joint meetings with the Biosecurity, Food and Primary Products Committee to consider additional matters within the regulatory authority of the competent authorities. The SPS Committee shall provide any recommendations or report to the Joint Commission as necessary.

If a Party has specific trade concerns regarding SPS measures proposed or implemented by the other Party, it may request technical consultations with the other Party. The other Party shall respond promptly to any reasonable request for such consultation.

The Parties shall hold such technical consultations within 30 days of the date of the request, unless otherwise agreed by the Parties.

Where a Party considers that an SPS measure of the other Party is affecting its trade with the other Party, it may, through the contact points referred to in Article 6.11 (Contact Points and Competent Authorities) or other established communication channels, request a detailed explanation of the SPS measure, including the scientific basis of the measure. The other Party shall respond promptly to any request for such an explanation. The Parties shall endeavour to reach a mutually satisfactory resolution.

The technical consultations may be conducted via teleconference, videoconference, or through any other means agreed by the Parties.

If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health and that may have an effect on trade between the Parties, that Party shall notify the other Party of that measure through the contact point referred to in Article 6.11 (Contact Points and Competent Authorities) as soon as possible. The importing Party shall take into consideration any information provided by the other Party in response to the notification.

On request of the other Party, a Party adopting an emergency SPS measure shall engage in technical consultations within 15 days of the date of such request, unless otherwise agreed by the Parties.

The importing Party shall consider any information provided in a timely manner by the exporting Party when making decisions with respect to one or more consignments that, at the time of adoption of an emergency SPS measure, are being transported between the Parties.

If a Party adopts an emergency measure, it shall review the scientific basis of that measure within six months of the date of the adoption of the measure, with the aim of revoking or developing a revised measure that would permit trade to recommence, and provide the results of the review to the other Party on request. If the emergency measure is maintained after the review of the measure, the importing Party shall periodically review the measure at least every six months thereafter based on the most recent available information, and, upon request, shall explain the reasons for the continuation of the emergency measure.

If the exporting Party considers, on the basis of scientific evidence, that an emergency measure is being maintained by the importing Party without reasons, it may provide that evidence to the other Party and request the other Party to review the measure or engage in technical consultations under Article 6.15 (Technical Consultations).

Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.

The SPS Committee shall undertake a review of the application of dispute settlement under this Chapter four years from the date of entry into force of this Agreement. Following the review, the SPS Committee may submit recommendations to the Joint Commission for their consideration.

Chapter 7. TECHNICAL BARRIERS TO TRADE

Article 7.1. Definitions

For the purposes of this Chapter, the terms and their definitions provided in Annex 1 of the Agreement on Technical Barriers to Trade, set out in Annex 1A to the WTO Agreement (“TBT Agreement”) shall apply.

The objectives of this Chapter are to facilitate trade in goods between the Parties by:

ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;

furthering the implementation of the TBT Agreement;

promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;

facilitating information exchange and cooperation between the Parties in the field of standards, technical regulations, and conformity assessment procedures including in the work of relevant international bodies; and

addressing the issues that may arise under this Chapter.

This Chapter shall apply to the standards, technical regulations, and conformity assessment procedures of central government bodies that may affect trade in goods between the Parties. This Chapter shall not apply to:

any sanitary or phytosanitary measure, which is covered by Chapter 6 (Sanitary and Phytosanitary Measures); and

purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter by local government bodies, and non-governmental bodies within its territory which are responsible for the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures.

Nothing in this Chapter shall prevent a Party from preparing, adopting, applying, or maintaining standards, technical regulations, and conformity assessment procedures in a manner consistent with the TBT Agreement and this Chapter.

The Parties reaffirm their rights and obligations under the TBT Agreement.

The Parties recognise the important role that international standards, guides, and recommendations can play in supporting greater alignment of technical regulations, conformity assessment procedures, and national standards, and in reducing

unnecessary barriers to trade.

In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its decision on the principles set out in the relevant 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 (G/TBT/9, 13 November 2000, Annex 4), and subsequent relevant decisions and recommendations in this regard, adopted by the WTO Committee on Technical Barriers to Trade ("WTO TBT Committee").

With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies that prepare, adopt and apply national standards accept and comply with Annex 3 of the TBT Agreement.

The Parties shall, where appropriate, strengthen coordination and communication with each other in the context of discussions on

international standards and related issues in other international fora, such as the WTO TBT Committee.

Where modifications to the contents or structure of the relevant international standards were necessary in developing a Party's national standards, that Party shall, on request of the other Party, encourage its standardising body or bodies to provide information on the differences in the contents and structure, and the reason for those differences. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic persons.

Further to paragraph 5, each Party shall ensure that its standardising body or bodies do not prepare, adopt or apply standards with a view to, or with the effect of, creating unnecessary obstacles to international trade.

Each Party shall encourage cooperation between its standardising body or bodies in its territory and the standardising body or bodies of the other Party, in areas such as:

exchange of information on standards;

exchange of information relating to standard setting procedures; and

international standardising activities in areas of mutual interest.

Each Party shall use relevant international standards or the relevant parts of them, to the extent provided in paragraph 4 of Article 2 of the TBT Agreement, as a basis for its technical regulations. Where a Party does not use such international standards, or their relevant parts, as a basis for its technical regulations, and these may have an effect on the trade of the other Party, it shall, on request from the other Party, explain the reasons why such standards have been considered inappropriate or ineffective to achieve the aims of its technical regulations.

In implementing paragraph 2 of Article 2 of the TBT Agreement, each Party shall consider available alternatives in order to ensure that the proposed technical regulations to be adopted are not more trade-restrictive than necessary to fulfil a legitimate objective.

Each Party shall give positive consideration to accepting as equivalent, technical regulations of the other Party, even if those regulations differ from its own, provided it is satisfied that those regulations adequately fulfil the objectives of its own regulations.

Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.

In implementing paragraph 8 of Article 2 of the TBT Agreement, where a Party does not specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics, the Party shall endeavour to, on request of the other Party, provide its reasons for doing so.

Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, each Party shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in an exporting Party to adapt their products or methods of production to the requirements of an importing Party. For the purposes of this paragraph, the Parties understand that "reasonable interval" shall mean normally a period of not less than six months, except where this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation.

On request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, the requested Party shall endeavour to provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.

Each Party shall uniformly and consistently apply its technical regulations that are prepared and adopted by its central government bodies to its territory.

Conformity Assessment Procedures

Further to paragraph 4 of Article 5 of the TBT Agreement, each Party shall ensure that central government bodies use relevant international standards or their relevant parts as a basis for their conformity assessment procedures, except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Party concerned.

Each Party recognises the importance of accepting the results of conformity assessment procedures conducted in the other Party with a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of conformity assessments.

Each Party shall ensure, wherever possible, that results of conformity assessment procedures in the other Party are accepted, even when those procedures differ from its own, unless those procedures do not

offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

A Party shall, on request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Party.

Each Party recognises that, depending on the situation of the Party and the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party. Such mechanisms may include:

mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the other Party;

cooperative voluntary arrangements between accreditation bodies or those between conformity assessment bodies in the other Party;

the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by the other Party;

the designation of conformity assessment bodies in the other Party;

unilateral recognition by a Party of results of conformity assessment procedures conducted in the other Party; and

a manufacturer's or supplier's declaration of conformity.

Upon reasonable request by a Party, the other Party shall exchange information or share experiences on the mechanisms referred to in paragraph 5, including their development and application, with a view to facilitating the acceptance of the results of conformity assessment procedures.

The Parties recognise the important role that relevant international, including regional, organisations can play in cooperation in the area of conformity assessment. In this regard, each Party shall take into consideration the participation status or membership in such organisations of relevant bodies in the Parties in facilitating this cooperation.

The Parties agree to encourage cooperation between their relevant conformity assessment bodies in working closer with a view to facilitating the acceptance of conformity assessment results between the Parties.

Each Party shall, wherever possible, permit the participation of conformity assessment bodies of the other Party in its conformity assessment procedures under conditions no less favourable than those accorded to conformity assessment bodies in that Party.

Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies of the other Party in its conformity assessment procedures, it shall, on request of that other Party, explain the reason for its decision to refuse.

The Parties shall strengthen their cooperation between their respective organisations responsible for standards, technical regulations and conformity assessment procedures, consistent with the objectives of this Chapter.

Each Party shall, on request of the other Party, give positive consideration to proposals for cooperation on matters of mutual interest on standards, technical regulations and conformity assessment procedures.

The cooperation referred to in paragraph 2 shall be on mutually determined terms and conditions, may include:

advice, technical assistance or capacity building relating to the development and application of standards, technical regulations and conformity assessment procedures;

cooperation between conformity assessment bodies, both governmental and non-governmental, in the Parties, on matters of mutual interest;

cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by relevant regional and international bodies;

enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; and

strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora.

Each Party shall, on request of the other Party, give consideration to sector-specific proposals for mutual benefit for cooperation under this Chapter.

Where a Party considers the need to resolve an issue related to trade and provisions under this Chapter, it may make a written request for technical discussions. The other Party shall respond as early as possible to such a request.

The Parties shall enter into technical discussions within 60 days of the written request referred to in paragraph 1, unless otherwise mutually determined, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted through any means mutually agreed by the Parties.

Requests for technical discussions shall be made through the Parties' respective contact points designated pursuant to Article 7.14 (Contact Points).

This Article is without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement).

The Parties recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, the Parties shall take into account relevant decisions and recommendations in the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995 (G/TBT/1/Rev.13), as may be revised, issued by the WTO TBT Committee.

Upon written request, a Party shall provide to the other Party, if already available, the full text or summary of its notified technical regulations and conformity assessment procedures in the English language. If unavailable, the Party shall provide to the other Party a summary stating the requirements of the notified technical regulations and conformity assessment procedures in the English language, within a reasonable period of time agreed by the Parties and, if possible, within 30 days after the date of receipt of the written request. The Party writing the summary shall determine the contents of the summary.

Each Party shall endeavour to normally allow 60 days from the date of notification to the WTO in accordance with paragraph 9 of Article 2 and paragraph 6 of Article 5 of the TBT Agreement for the other Party to

provide comments in writing, except where urgent problems of safety, health, environmental protection, or national security arise, or threaten to arise. Each Party shall take the comments of the other Party into account and shall endeavour to provide responses to those comments upon request.

Each Party shall allow persons of the other Party to participate in consultation procedures that are available to the general public for the development of technical regulations, national standards and conformity assessment procedures by the Party, subject to its laws, regulations and procedures, on terms no less favourable than those accorded to its own persons.

The Parties shall ensure that all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures are publicly available.

Unless otherwise provided in this Chapter, any information or explanation requested by a Party pursuant to this Chapter shall be provided by the requested Party, electronically and in the English language, within a reasonable period of time agreed by the Parties and, if possible, within 60 days.

If a Party requires marking or labelling of products in the form of a technical regulation:

the importing Party shall accept that labelling, including supplementary labelling or corrections to labelling, take place in the territory of the importing Party in accordance with its relevant laws, regulations, and customs procedures, as an alternative

to labelling in the exporting Party, unless that labelling is necessary in view of the legitimate objectives referred to in Article 2.2 of the TBT Agreement;

the importing Party shall, unless it considers that legitimate objectives under the TBT Agreement are compromised as a result, endeavour to accept supplementary, non-permanent, or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product; and

provided that it is not misleading, contradictory, inconsistent, or confusing, or that the importing Party's legitimate objectives are not compromised, the importing Party shall permit the following in relation to the information required in the importing Party:

information in other languages in addition to the language required in the importing Party;

internationally accepted nomenclatures, pictograms, symbols, or graphics in addition to those required in the importing Party; and

additional information to that required in the importing Party.

The Parties may develop arrangements to set out areas of cooperation of mutual interest for applying this Chapter, including, where appropriate, in conjunction with other related Chapters.

Committee on Technical Barriers to Trade

The Parties hereby establish a Committee on Technical Barriers to Trade ("Committee"), consisting of representatives of the Parties.

The Committee shall meet at such venues and times as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

The functions of the Committee may include:

monitoring the implementation and operation of this Chapter;

coordinating cooperation pursuant to Article 7.8 (Cooperation);

facilitating technical discussions;

reporting, where appropriate, its findings to the Joint Commission; and

carrying out other functions as may be delegated by the Joint Commission.

Each Party shall, within 60 days of the date of entry into force of this Agreement, designate a contact point or contact points responsible for coordinating the implementation of this Chapter, and notify the other

Party of that contact point or contact points and relevant details, including an email address. Each Party shall promptly notify the other Party of any change to those contact details.

Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from the other Party.

The contact point or contact points may agree to refer issues concerning the implementation of this Chapter to the Committee on Technical Barriers to Trade for consideration.

Chapter 8. TRADE IN SERVICES

Article 8.1. Definitions

For the purposes of this Chapter:

"aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;

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

the constitution, acquisition, or maintenance of a juridical person; or

the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

“computer reservation system services” means services provided by computerised systems that contain information about air carriers’ schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued;

“juridical person” means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;

a juridical person is:

“owned” by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

“controlled” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; or

“affiliated” with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;

“juridical person of a Party” means a juridical person which is either:

constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or the other Party; or

in the case of the supply of a service through commercial presence, owned or controlled by:

natural persons of that Party; or

juridical persons of that Party identified under subparagraph (f)(i);

“measures by a Party affecting trade in services” includes measures in respect of:

the purchase or use of, or payment for, a service;

the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally; and

the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

“monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

“natural person of a Party” means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:

is a national of that Party; or

has the right of permanent residence1 in that Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided no Party is obligated to accord to such permanent residents treatment

1 Where a Party has made a reservation with respect to permanent residents in its Schedules in Annex 8H (Schedule of Specific Commitments - India), Annex 8I (Schedule of Non-Conforming Measures - New Zealand), Annex 8J (Schedule of Specific Commitments on Temporary Movement of Natural Persons - India), Annex 8K (Schedule of Specific Commitments on Temporary Movement of Natural Persons – New Zealand) or Annex 8L (Schedule of Commitments on Temporary Employment Entry – New Zealand) , that reservation shall not prejudice that Party’s rights and obligations in GATS.

more favourable than would be accorded by that Party to such permanent residents;

“person” means a natural person or a juridical person;

“sector” of a service means:

with reference to a commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule in Annex 8H (Schedule of Specific Commitments - India) or Annex 8I (Schedule of Non-Conforming Measures - New Zealand); and

otherwise, the whole of that service sector, including all of its sub-sectors;

"selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising, and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

"services" includes any service in any sector except services supplied in the exercise of governmental authority;

"service consumer" means any person that receives or uses a service;

"service of the other Party" means a service which is supplied:

from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel or its use in whole or in part; or

in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

"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" means a person that supplies a service;2 3

"supply of a service" includes the production, distribution, marketing, sale, and delivery of a service;

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

from the territory of one Party into the territory of the other Party;

in the territory of one Party to the service consumer of the other Party;

by a service supplier of one Party, through commercial presence in the territory of the other Party; and

by a service supplier of one Party, through presence of natural persons of a Party in the territory of the other Party; and

"traffic rights" means the rights for scheduled and non-scheduled services to operate or carry passengers, cargo, and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged, and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

This Chapter shall apply to measures by a Party affecting trade in services.

For the purposes of this Chapter, "measures by a Party" means measures taken by:

central, regional, or local governments and authorities of that Party; and

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

3 The Parties confirm their shared understanding that "service supplier" in this Chapter has the same meaning that it has under subparagraph (g) of Article XXVIII of GATS.

non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities of that Party.

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

This Chapter shall not apply to measures affecting:

government procurement;

subsidies or grants, including government-supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers, or service suppliers;

services supplied in the exercise of governmental authority;

cabotage4 in maritime transport services; and

in respect of air transport services, measures affecting traffic rights however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:

aircraft repair and maintenance services;

the selling and marketing of air transport services; and

computer reservation system services.

This Chapter shall not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment. For greater certainty, this Chapter shall not

4 “Maritime cabotage” means the transportation of passengers or goods between any port or place located in a Party and any other port or place located in that Party and transportation of passengers or goods originating or terminating in the same port or place located in that Party, including transportation of passengers or goods between a port or a place located in that Party and another port, place, installation or structures situated in the Exclusive Economic Zone of that Party or on the continental shelf of that Party. Maritime cabotage shall further include services such as floating storage, offloading, towing, anchor-handling, dredging, off-shore drilling or production, diving support, maintenance support, various types of surveys, cable laying, sea-bed mining operations, pipe-laying, lighterage, salvage, marine construction, hook-up, port and terminal related support services, provided such services are supplied in the above areas by the vessels.

apply to measures regarding citizenship, nationality or residence on a permanent basis.

Each Party shall make commitments under Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment) in accordance with either Article 8.7 (Schedule of Specific Commitments) or Article 8.8 (Schedule of Non-Conforming Measures).

A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment). A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) may also make commitments under Article 8.9 (Additional Commitments).

A Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment). A Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures) may also make commitments under Article

8.9 (Additional Commitments).

For greater certainty, a Party’s schedule in Annex 8H (Schedule of Specific Commitments - India) and Annex 8I (Schedule of Non-Conforming Measures - New Zealand) shall form an integral part of this Chapter.

A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) shall, in the sectors inscribed in its schedule of specific commitments and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of

services, treatment no less favourable than that it accords to its own like services and service suppliers.5

A Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures) shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers, subject to its non-conforming measures as provided in Article 8.8 (Schedule of Non-Conforming Measures).

A Party may meet the requirement under paragraph 1 or 2 by according to services and service suppliers of the other Party,

either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

With respect to market access through the modes of supply identified in subparagraph (s) of Article 8.1 (Definitions), a Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex 8H (Schedule of Specific Commitments - India).6

The measures which a Party shall not adopt or maintain either on the basis of a regional sub-division or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Annex 8H (Schedule of Specific Commitments - India), or subject to its

5 Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

6 If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (s)(i) of Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (s)(iii) of Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

non-conforming measures, as provided in Article 8.8 (Schedule of Non-Conforming Measures) are defined as:

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;

limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

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;

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;

measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Most-Favoured-Nation Treatment

A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) shall, in respect of the sectors and subsectors set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex 8H (Schedule of Specific Commitments - India) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-Party.

A Party making commitments in accordance with Article 8.8 (Schedule of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand), accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-Party.

Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.

The provisions of this Chapter shall not be construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally

produced and consumed.

Schedule of Specific Commitments

A Party making commitments in accordance with this Article shall set out in its Schedule in Annex 8H (Schedule of Specific Commitments - India), the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.9 (Additional Commitments).

With respect to sectors where the commitments referred to in paragraph 1 are undertaken, each Schedule in Annex 8H (Schedule of Specific Commitments - India) shall specify:

terms, limitations, and conditions on market access;

conditions and qualifications on national treatment;

undertakings relating to additional commitments; and

where appropriate, the time frame for implementation of such commitments.

Measures inconsistent with both Article 8.4 (National Treatment) and Article 8.5 (Market Access) shall be inscribed in the column relating to Article 8.5 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.

Schedule of Non-Conforming Measures

For a Party making commitments in accordance with this Article, Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment) shall not apply to:

any existing non-conforming measure that is maintained by that Party at:

the central level of government, as set out by that Party in List A of its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand);

a regional level of government, as set out by that Party in List A of its Schedule in Annex 8I (Schedule of Non-

Conforming Measures - New Zealand); or

a local level of government;

the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and

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 Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.6 (Most-Favoured-Nation Treatment).

Article Article 8.4 (National Treatment), Article 8.5 (Market Access) and Article

8.6 (Most-Favoured-Nation Treatment) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities set out in List B of its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand).

The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standards, or licensing matters, not subject to scheduling, under:

Article Article 8.4 (National Treatment), Article 8.5 (Market Access), or Article 8.6 (Most-Favoured-Nation Treatment), for a Party Making Commitments In Accordance with Article 8.7 (Schedule of Specific Commitments); or

Article Article 8.4 (National Treatment), Article 8.5 (Market Access), or Article 8.6 (Most-Favoured-Nation Treatment), for a Party Making Commitments In Accordance with Article 8.8 (Schedule of Non-Conforming Measures).

A Party making additional commitments under subparagraph 1(a) shall inscribe such commitments in its Schedule in Annex 8H (Schedule of Specific Commitments - India).

A Party making additional commitments under subparagraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand).

A Party making commitments in accordance with Article 8.7 (Schedule of Specific Commitments) ("transitioning Party") shall submit a schedule of non-conforming measures agreed between the Parties in accordance with paragraphs 2 through 6 ("Agreed Schedule") that accords with Article 8.8 (Schedule of Non-Conforming Measures – New Zealand) to the Committee on Trade in Services no later than 6 years after the date of entry into force of this Agreement.

The transitioning Party shall provide to the other Party ("responding Party") its proposed schedule of non-conforming measures within 5 years after the date of entry into force of this Agreement.

The commitments contained in the transitioning Party's proposed schedule of non-conforming measures shall provide an equivalent level of liberalisation and shall not result in a decrease in the level of commitments as compared to the transitioning Party's schedule of specific commitments in Annex 8H (Schedule of Specific Commitments

- India).

The responding Party shall consider the transitioning Party's proposed schedule of non-conforming measures and shall have the opportunity to make comments to ensure that the transitioning Party's proposed schedule of non-conforming Measures meets the requirements specified in paragraph 3. The transitioning Party shall have the opportunity to respond to any comments received and to modify or revise its proposed schedule, as may be necessary, with a view to resolving any ambiguities, omissions, or errors in its proposed schedule of non-conforming measures.

In the event that the verification and clarification process undertaken pursuant to paragraph 4 is not completed within 12 months from the date the transitioning Party's proposed schedule of non-conforming measures is provided to the other Party, the Parties may agree to extend the time as provided under paragraph 1, to any other date agreed to by the Parties.

Upon completion of the verification and clarification process as set out in paragraph 4, the Parties may agree in writing to amend this Agreement by replacing the transitioning Party's Schedule of Specific Commitments in Annex 8H (Schedule of Specific Commitments - India) with the transitioning Party's Agreed Schedule in Annex 8I (Schedule of Non-Conforming Measures - New Zealand). The transitioning Party

may then submit the Agreed Schedule to the Committee on Trade in Services in accordance with paragraph 1.

Notwithstanding Article 20.2 (Amendments), once:

the transitioning Party has submitted its Agreed Schedule to the Committee on Trade in Services in accordance with paragraph 1;

that transitioning Party has notified the responding Party in writing of the completion of its applicable domestic legal procedures; and

the responding Party notifies the transitioning Party in writing of the completion of its applicable domestic procedures,

the transitioning Party's Agreed Schedule shall enter into force between the Parties after 60 days of the responding Party's written notification in accordance with subparagraph (c), or on such other date as the Parties may agree.

A Party (the "modifying Party") may modify or withdraw any commitment in its Schedule in Annex 8H (Schedule of Specific Commitments - India) or Annex 8I (Schedule of Non-Conforming Measures - New Zealand) at any time after three years from the date on which that commitment entered into force, provided that:

it notifies the other Party (the "affected Party") of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal;

upon notification of a Party's intent to make such modification, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment; and

such an agreement between the Parties has been reached.

In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is no less favourable to trade than provided for in the Schedules in Annex 8H (Schedule of Specific Commitments - India) or Annex 8I (Schedule of Non-Conforming Measures - New Zealand) prior to such negotiations.

If agreement under subparagraph 1(c) is not reached between the modifying Party and the affected Party within three months of the commencement of the process under subparagraph 1(a), the modifying Party may refer the matter to a panel

in accordance with the procedures set out in Chapter 19 (Dispute Settlement) or, where agreed between the Parties, to an alternative arbitration procedure. The modifying Party may modify or withdraw a commitment once it has made the compensatory adjustments in conformity with the findings of the panel.

If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the panel, the affected Party may modify or withdraw substantially equivalent benefits in conformity with the findings of the panel.

The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency in trade in services.

Each Party shall:

publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application affecting trade in services and all international agreements pertaining to or affecting trade in services to which the Party is a signatory; and

to the extent practicable, make the measures and international agreements referred to in subparagraph (a) publicly available on the internet and, to the extent provided under its legal framework, in the English language.

Where publication referred to in paragraph 2 is not practicable, such information7 shall be made otherwise publicly available.

To the extent provided for under its domestic legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons of the other Party on measures referred to in subparagraph 2(a) before adoption.

Each Party shall respond promptly to any request by the other Party for specific information on:

7 For greater certainty, such information may be published in each Party's chosen language.

any measures or international agreements referred to in subparagraph 2(a); and

any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services.

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

Each Party shall maintain or institute as soon as practicable judicial, arbitral, or administrative tribunals or procedures which provide, on request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

Nothing in paragraph 2 shall be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the result of the WTO negotiations on disciplines on such measures, pursuant to Article VI.4 of GATS and shall amend this Article, as appropriate, after consultations between the Parties to bring the results of those negotiations into effect under this Chapter. Such disciplines shall aim to ensure that such requirements, inter alia:

are based on objective and transparent criteria, such as competence and the ability to supply the service;

are not more burdensome than necessary to ensure the quality of the service; and

in the case of licensing procedures, are not in themselves a restriction on the supply of the service.

In sectors in which a Party has undertaken commitments, pending the entry into force of disciplines in these sectors pursuant to paragraph 4, that Party shall not apply licensing and qualification requirements and

technical standards that nullify or impair such commitments in a manner which:

does not comply with the criteria outlined in subparagraphs 4(a) through 4(c); and

could not reasonably have been expected of that Party at the time the commitments in those sectors were made.

In determining whether a Party is in conformity with its obligations under subparagraph 5(a), international standards of relevant international organisations8 applied by that Party shall be taken into account.

Where a Party requires authorisation for the supply of a service, that Party shall ensure that its competent authorities:

ensure that any authorisation fees charged for the completion of relevant application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service. For the purposes of this subparagraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision;

within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

to the extent practicable, establish an indicative time frame for processing of an application;

on request of the applicant, provide, without undue delay, information concerning the status of the application;

if the competent authorities consider an application incomplete for processing under the Party's laws and regulations, inform the applicant that the application is incomplete within a reasonable period of time, and on request of the applicant, identify, where practicable, all the additional information that is required to complete the application, and provide the opportunity to remedy deficiencies within a reasonable time frame;

if an application is terminated or denied, to the extent possible and without undue delay, inform the applicant in writing of the

8 "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application;

to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a licence or qualification;

endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and

where they deem appropriate, accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents.

Each Party shall provide adequate procedures to verify the competence of professionals of the other Party. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, ensure that:

the examination is scheduled at reasonable intervals; and

a reasonable period of time is provided to enable interested persons to submit an application.

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities to the extent practicable permit submission of an application at any time throughout the year.9 If a specific time period for applying exists, the Party shall ensure that the competent authorities allow a reasonable period for the submission of an application.

If a Party adopts or maintains measures relating to the authorisation of the supply of a service, the Party shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of the service for which authorisation is required.10

Paragraphs 1 through 10 shall not apply to:

a sector which remains non-committed by reason of a Party's Schedule in Annex 8H (Schedule of Specific Commitments -

9 Competent authorities are not required to start considering applications outside of their official working hours and working days.

10 For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

India) or Annex 8I (Schedule of Non-Conforming Measures -

New Zealand); and

a measure to the extent that such measure is not subject to Article 8.4 (National Treatment) or Article 8.5 (Market Access) by reason of a Party's commitments made in accordance with either Article 8.7 (Schedule of Specific Commitments) or Article

8.8 (Schedule of Non-Conforming Measures).

For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a non-Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the non-Party concerned, or may be accorded autonomously.

If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-Party, nothing in Article 8.6 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.

A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.

A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-Parties 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.

Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common international

standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

As set out in Annex 8D (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory to enter into negotiations for agreements or arrangements on recognition.

Monopolies and Exclusive Service Suppliers

Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 8.4 (National Treatment) and Article 8.5 (Market Access).

Where a Party's monopoly supplier of a service competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

If a Party has a reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraphs 1 or 2, it may request that Party establishing, maintaining, or authorising such a supplier to provide specific information concerning the relevant operations.

This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

authorises or establishes a small number of service suppliers; and

substantially prevents competition among those suppliers in its territory.

Disclosure of Confidential Information

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Party confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.15 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

Each Party shall, on request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Except under the circumstances envisaged in Article 18.4 (Measures to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.

Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund ("IMF") under the Articles of Agreement of the International Monetary Fund, adopted at the United Nations Monetary and Financial Conference (Bretton Woods, New Hampshire) on July 22, 1944 ("IMF Articles of Agreement"), as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its commitments under this Chapter regarding such transactions, except under Article 18.4 (Measures to Safeguard the Balance of Payments) or on request of the IMF.

A Party may deny the benefits of this Chapter:

to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;

to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party; and

in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

by a vessel registered under the laws and regulations of a non-Party; and

by a person of a non-Party which operates or uses the vessel in whole or in part.

A Party may deny the benefit of this Chapter to a service supplier of the other Party, if the service supplier is a juridical person owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

The Parties note the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures based on the principle of non-discrimination. The Parties shall review the incorporation of safeguard measures pending any further developments in the multilateral fora pursuant to Article X of GATS.

In the event that a Party encounters difficulties in the implementation of its commitments under this Chapter, that Party may request consultations with the other Party to address such difficulties.

Notwithstanding subparagraph 3(b) of Article 8.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.

A Party which considers that it is adversely affected by a subsidy of the other Party related to trade in services may request consultations with the other Party on such matters. The requested Party shall accord sympathetic consideration to such a request.

No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.

Recognising that trade in audiovisual services, including film and television co-productions, can significantly contribute to the development of the audiovisual industry and to the intensification of cultural and economic exchange between them, the Parties shall endeavour to enhance cooperation in the sector.

The Parties hereby establish a Committee on Trade in Services ("Services Committee") composed of representatives of each Party.

Unless otherwise agreed by the Parties, the Services Committee shall meet once a year, or without undue delay at the request of either Party. The meetings shall take place in India or in New Zealand alternately or by any other appropriate means of communication, as agreed by the representatives of the Parties.

With respect to issues relating to this Chapter, the Services Committee shall:

monitor and review the implementation and operation of this Agreement;

consider and discuss technical issues arising from the implementation of this Agreement;

adopt decisions or make recommendations;

conduct the preparatory work necessary to support the functions of the Joint Commission, including when the Joint Commission adopts decisions or recommendations; and

provide a forum for the Parties to exchange information, discuss best practices and share implementation experiences.

The Services Committee may decide on its own rules of procedure, in the absence of which the Rules of Procedure of the Joint Commission shall apply mutatis mutandis.

The Services Committee shall report to the Joint Commission on the results and conclusions from each of its meetings.

Each Party shall, within 60 days of entry into force of this Agreement, designate an official contact point to receive and facilitate official communications between the Parties on any matter relating to this Chapter. Each Party shall promptly notify the other Party, in writing, of any change to its contact point. On request of the other Party, the contact point shall:

identify the office or official responsible for the relevant matter; and

assist as necessary in facilitating communications with the requesting Party with respect to that matter.

Chapter 9. INVESTMENT PROMOTION AND COOPERATION

Article 9.1. Objectives

1. The objective of this Chapter is to enhance foreign direct investment ("FDI") as a means for fostering economic growth, capital intensity, capacity building and innovation, as well as generating employment opportunities.

2. The Parties seek to deepen their economic relationship through mutually beneficial cooperation, contributing to economic growth, development and prosperity, grounded in the principles of good faith, mutual benefit and the Parties' right to regulate.

3. To fulfil the objectives of this Chapter, New Zealand shall aim to increase foreign direct investment into India from investors of New Zealand in accordance with Article 9.2 (Investment Promotion).

Article 9.2. Investment Promotion

New Zealand shall promote FDI (1) from investors of New Zealand into India with the aim to increase such investment by US Dollars 20 billion within 15 years of the date of entry into force of this Agreement. (2)

(1) Investments routed from outside New Zealand shall be taken into account if shown that the investments are made by investors of New Zealand. Investments routed through New Zealand by investors of non-Parties either not established in New Zealand, or established in New Zealand but without substantial business activities in New Zealand, shall not be considered as investments from New Zealand.

(2) The Parties recognise that India's economic development over the last two decades was accompanied by a sustained increase of nominal FDI into India, reflecting a confidence of foreign investors in the potential of the Indian economy. Based on this observation, and on estimated

nominal GDP growth rate of India over the next 15 years, in line with the past growth rates, New Zealand aims to strengthen its FDI footprint in India, leveraging a full implementation of this Agreement by the Parties.

Article 9.3. Investment Cooperation

1. The Parties recognise the importance of enhancing both the quantity and quality of FDI, including through joint initiatives for research and innovation, technology flows, technical and skill development, exchange of knowledge and capacity building, towards achieving economic growth and development.

2. Cooperation between the Parties in this respect may include:

(a) conducting information exchanges between the Parties to identify investment opportunities of mutual interest with the aim of enhancing FDI, technological advancement, skill development, and growth;

(b) developing strategies and programs to promote investment, R&D collaboration, technology cooperation, and skill development, focusing on high-value-added sectors linked to regional and global value chains, including but not limited to renewable energy, digital services, and infrastructure;

(c) developing mechanisms for joint investments and ventures between enterprises, including with SMEs and seeking to incorporate programs for capacity-building and the exchange of technological know-how into these ventures;

(d) facilitating public-private dialogues for the identification of investment opportunities in, and matchmaking of investors between, the Parties;

(e) facilitating continued skill development, vocational education and training, including for SMEs, including to support the adoption of new technologies and best practices;

(f) encouraging technological partnerships and joint ventures, with an emphasis on technology adoption, and workforce upskilling; and

(g) facilitating partnerships among centres of excellence, government agencies and expert institutes in fields of mutual interest and leveraging such partnerships to further industrial competitiveness and capabilities, technological advancements, skill-development, exchange of technological know-how, and inclusive development.

3. The Parties may cooperate pursuant to paragraph 2 through activities such as:

(a) regular missions in areas of mutual interest with high-ranking delegations;

(b) promoting cooperation with relevant government agencies to expand opportunities for business and industry

(c) annual high-level meetings, virtual or in-person, with the participation of the private sector; to discuss, inter alia, opportunities for enhancing investment, technological advancement, knowledge exchange, and skill development, in sectors of mutual interest, including renewable energy, digital services and other technology-driven sectors;

(d) regular investment promotion events, including at various international fora with participation of the private sector and industry bodies from both Parties, aimed at meeting the objectives of this Chapter;

(e) sector-specific business roundtables; thematic expert exchanges and workshops; and promotional events in India and in New Zealand to identify opportunities of investment, promote stakeholder collaboration, knowledge and technology flows, joint initiatives for research and development, and exchange of skills and vocational training practices in areas of mutual interest;

(f) support for investment promotion agencies and other industry bodies and associations in setting up representations and engagement in each Party's market;

(g) support for vocational education and training projects, especially in sectors where skill gaps are prominent; and

(h) other activities as mutually agreed by the Parties.

Article 9.4. Investment Desks

1. To the extent practicable, each Party shall establish an Investment Desk to support (3) the activities referred to in Article 9.3 (Investment Cooperation).

(3) For greater certainty, such support does not include any amendments or exceptions pertaining to any laws, regulations, procedure, administrative decision, practice or requirement of either Party.

2. In view of promotion activities for investment into India, India shall establish a dedicated Investment Desk to assist (4) investors from New Zealand seeking to invest, investing or having invested, in particular with any problems that may arise. For India, such a desk would also account for India's commitments under paragraph 1.

(4) For greater certainty, "assist" does not include any amendments or exceptions pertaining to any laws, regulations, procedure, administrative decision, practice or requirement of India.

Article 9.5. Contact Points

1. Each Party shall, within 60 days of the date of entry into force of this Agreement, designate an official contact point to address matters related to this Chapter. Each Party shall promptly notify the other Party of any change to its contact point.

2. The contact points shall endeavour to facilitate communication and coordination between the Parties regarding the implementation of this Chapter.

Article 9.6. Transparency (5)

Each Party shall aim to publish (6), or otherwise make publicly available, to the extent practicable, the information (7) necessary for investors to comply with the requirements and procedures for obtaining the authorisation, in such a manner as to enable investors to become acquainted with it.

(5) Chapter 16 (Transparency) or any other transparency related provision in this Agreement shall not apply to this Chapter.

(6) For the purposes of this Chapter, "publish" means to include in an official publication, such as an official journal, or on an official website.

(7) For greater certainty, nothing in this Article shall require a Party to disclose confidential or sensitive information.

Article 9.7. Committee on Investment Promotion and Cooperation

1. In order to pursue the objectives of this Chapter, the Parties hereby establish the Committee on Investment Promotion and Cooperation ("Investment Committee"), which shall be composed of representatives of each Party, and be co-chaired jointly by one representative of each Party.

2. The functions of the Investment Committee shall be to:

(a) assess, review and monitor, the implementation of this Chapter;

(b) undertake reviews of the progress made towards achievement of commitment as set out in Article 9.2 (Investment Promotion) and the implementation of the activities as set out in Article 9.3 (Investment Cooperation);

(c) provide a platform for the Parties to exchange information, review developments, discuss progress and identify additional opportunities of mutual interest for engagement pursuant to Article 9.3 (Investment Cooperation). The outcomes of the reviews may be placed in a Report on Investment Cooperation, identifying achievements, and mutually agreed proposals for the way forward;

(d) seek to resolve any issues or differences pertaining to matters covered by this Chapter;

(e) by mutual agreement of the Parties, engage with the private sector and other stakeholders on exploring opportunities to pursue the objectives of this Chapter;

(f) make recommendations for amendments or modification of this Chapter, as required, by mutual agreement of the Parties;

(g) recommend a mechanism to discuss challenges faced by investors, discuss best practices and exchange information on a

periodic basis, with the intent to find mutually agreeable resolution to such problems;

(h) report and make recommendations to the Joint Commission, as necessary; and

(i) consider any other issues regarding investment opportunities that are referred to it by the Joint Commission.

3. Within 120 days of its first meeting, the Investment Committee shall establish the Working Procedures to govern its functioning and procedures for realising the objectives of this Chapter.

4. The Investment Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Investment Committee shall meet whenever necessary but normally once every two years. The Investment Committee shall meet either physically or through electronic videoconferencing, or other means.

5. Each Party may request at any time, through a notice in writing to the other Party, that a special meeting of the Investment Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.

6. The Investment Committee may, by mutual agreement of the Parties, engage with the private sector, and other stakeholders, on exploring opportunities to pursue the objectives as set out in Article 9.1 (Objectives).

7. The Investment Committee shall make decisions by consensus.

8. In performing its duties, the Investment Committee may work with other committees and subsidiary bodies established under the Agreement.

9. All official communications related to this Chapter shall be undertaken in the English language.

Article 9.8. Consultations

Any differences concerning the fulfilment of the commitment set out in Article 9.2 (Investment Promotion) shall be resolved in accordance with Article 9.9 (Review, Reporting and Three-tier Government-to-Government Consultations).

Article 9.9. Review, Reporting and Three-tier Government-to-Government Consultations

1. The Parties agree to a three-tier government-to-government consultations procedure for resolution of differences raised in relation to the commitment set out in Article 9.2 (Investment Promotion).

2. The Investment Committee shall review progress towards the achievement of the objective to increase investment from New Zealand into India by US Dollars 20 billion (hereinafter “investment objective”) and the commitment undertaken by New Zealand as set out in Article 9.2 (Investment Promotion).

3. The first review by the Investment Committee shall be held no later than five years after the date of entry into force of this Agreement. The second review by the Investment Committee shall be held no later than 10 years after the date of entry into force of this Agreement. The final review by the Investment Committee shall take place 15 years after the date of entry into force of this Agreement. The Parties may mutually agree on a different timeline or additional reviews.

4. For each such review under paragraph 3, the Investment Committee shall review the progress towards achievement of the investment objective and the commitment undertaken by New Zealand as set out Article 9.2 (Investment Promotion) and record its findings in a report titled “Investment Report”, including recording any unforeseen circumstances which have had a material bearing on the progress.

5. In case of occurrence of any unforeseen circumstances including global pandemic, war, geopolitical disruptions, financial crisis or sustained economic underperformance, or other similar factors beyond New Zealand’s control which have had a material bearing on the progress to achieve the objective, the Parties may adjust the investment objective by mutual agreement of the Parties, accordingly through an amendment of Article 9.2 (Investment Promotion).

6. Should the investment objective not be achieved by the final review, and India considers that New Zealand has not fulfilled its commitment set out in Article 9.2 (Investment Promotion), India may request consultations by the Investment Committee. The Investment Committee shall be convened within 30 days of receipt of India’s written request for such consultations.

7. The scope of the consultations shall be limited to determining whether New Zealand has fulfilled its commitment as set out in Article 9.2 (Investment Promotion), and where applicable, to finding a mutually agreed solution between the Parties.

8. The Investment Committee shall endeavour to settle issues within 60 days from convening of the Investment Committee, with due consideration to the final report. This period may be extended by no more than six months by mutual agreement of the Parties.

9. If the Investment Committee determines that the commitment set out in Article 9.2 (Investment Promotion) has not been fulfilled, the Investment Committee shall make recommendations to the Joint Commission.

10. If after the 8-month period from the request of consultations by India, the matter remains unresolved, then the Investment Committee shall refer the matter to the Joint Commission for consultations, with its recommendations.

11. The Joint Commission shall begin consultations upon the receipt of the referral from the Investment Committee under paragraph 9 or paragraph 10, with a view to reaching a mutually agreed solution. If the Joint Commission cannot resolve the matter within six months of the date of receipt of the reference from the Investment Committee, the same shall be referred to the representatives of New Zealand and India at the level of Ministers. Such representatives shall be identified in writing.

12. Such representatives of New Zealand and India shall begin consultations within 30 days of the receipt of the referral from the Joint Commission. The representatives of the Parties shall take no more than six months from the receipt of the referral from the Joint Commission, to arrive at a mutually agreed solution to the matter raised by the requesting Party. If the matter is not fully resolved within six months from the date of receipt of the referral from the Joint Commission, New Zealand may request a grace period of an additional three years. The request shall state the grounds and may outline possible actions from New Zealand towards the achievement of the investment objective set out in Article 9.2 (Investment Promotion). India may consider granting such request with due consideration to the reports of the Investment Committee, and the recommendations of the Joint Commission as well as discussions held by representatives of the Parties at the level of Ministers.

13. Nothing in this Chapter shall require the Parties to disclose any information that they consider confidential. The Parties shall treat as confidential any information designated as such by the Party providing the information.

Article 9.10. Remedial Measures

1. If no mutually agreed solution subsequent to consultations under paragraphs 6 through 12 of Article 9.9 (Review, Reporting and Three-tier Government-to-Government Consultations) has been found, and the grace period, if granted by India, has elapsed, and India determines that New Zealand has not fulfilled its commitment set out in Article 9.2 (Investment Promotion), India may, notwithstanding any other provision under this Agreement, undertake proportionate remedial measures to rebalance the concessions provided to New Zealand by India pursuant to Annex 2A (Schedules of Tariff Commitments).

2. India shall, no later than 30 days before the date on which the remedial measures are due to take effect, notify New Zealand of the remedial measures it intends to take, the grounds for such remedial measures and when they will commence.

3. The Parties agree that the remedial measures are intended to be temporary and shall be terminated once the investment objective set out in Article 9.2 (Investment Promotion) has been achieved.

4. New Zealand may request consultations under the Joint Commission if the remedial measures have continued beyond five years. Such a request shall include the New Zealand's grounds for the request for modification or termination of remedial measures.

5. The Joint Commission shall begin consultations within 30 days of the receipt of the request from New Zealand pursuant to paragraph 4. The Joint Commission will assess the grounds for modification or termination in New Zealand's request, and accordingly, aim to facilitate a mutually agreed solution between the Parties. If the Joint Commission cannot resolve the matter within six months, the same shall be referred to the representatives of New Zealand and India at the level of Ministers.

6. Upon receipt of reference from the Joint Commission pursuant to paragraph 5, the representatives of the Parties at the level of Ministers, will aim to facilitate a mutually agreed solution. If the representatives cannot resolve the matter within six months, the remedial measures will be deemed to be continued until the next such review pursuant to paragraph 7.

7. If the Joint Commission or the representatives at the level of Ministers recommend modification or termination of the remedial measures under paragraphs 5 through 6, the measures necessary to modify or terminate shall be taken within an agreed time period. Unless such remedial measures are terminated, the Joint Commission shall thereafter examine the continuation or modification of the remedial measures every three years following the same procedure, until the remedial measures have ceased to apply.

Article 9.11. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 10. COMPETITION

Article Article 10.1 Objectives

The objectives of this Chapter are to promote fair competition and consumer welfare, in order to facilitate trade and investment flows between the Parties and the efficient functioning of each Party's market through:

the maintenance and enforcement of law to address anti-competitive practices; and

enhancing cooperation on competition law enforcement and competition policy.

The pursuit of these objectives will help the Parties to secure the benefits of this Agreement.

Each Party shall apply its competition law to all commercial activities in its territory1, including to public enterprises, which:

prohibits anti-competitive agreements between enterprises, including cartel agreements;

prohibits the abuse of a dominant position by an enterprise; and

effectively addresses combinations or mergers with substantial anti-competitive effects.

Each Party may provide for certain exemptions from the application of its national competition law provided that those exemptions are transparent, established in law and are based on public policy grounds or public interest grounds.

Each Party shall maintain a national competition authority responsible for the effective application and enforcement of its competition law. Each Party's national competition authority shall be operationally

1 For greater certainty, this paragraph does not preclude a Party from applying its competition law to commercial activities outside its territory in accordance with its laws and regulations.

independent and apply the Party's competition law in a manner which does not discriminate between persons on the basis of nationality.

This Article shall be implemented by each Party in accordance with its laws and regulations.

Each Party shall apply its competition law in a transparent manner, respecting the principles of procedural fairness, including the rights of defence of the enterprises concerned, in particular the right to be heard and the right to judicial review.

Each Party shall ensure that where information which is protected as confidential by its law, is obtained by its national competition authority during investigations, that information is not disclosed, except where required by applicable legal exceptions.

The Parties and their national competition authorities may cooperate to foster effective competition law enforcement and competition policy. This cooperation may include:

exchange of non-confidential information; and

coordination of activities on matters of mutual interest.

Any cooperation shall be compatible with each Party's law and interests, and within the available resources of the Party and its national competition authority.

Each Party may request consultations with the other Party with respect to any matter related to this Chapter. The request for consultations shall set out the reasons for the request. The Party to which the request is made shall accord full and sympathetic consideration to the concerns of the requesting Party.

Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 11. INTELLECTUAL PROPERTY

Section A. General Provisions

For the purposes of this Chapter:

“geographical indication” means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

“intellectual property” means all categories of intellectual property that are covered by Sections 1 to 7 of Part II of the TRIPS Agreement;

“national” means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement; and

“WIPO” means the World Intellectual Property Organization.

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

A Party may adopt 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 Chapter.

A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

Having regard to the underlying public policy objectives of the respective domestic intellectual property systems, the Parties recognise the need to:

promote innovation and creativity;

facilitate the diffusion of information, knowledge, technology (including through technology transfer), culture and the arts; and

protect against unfair competition in accordance with the TRIPS Agreement,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of right holders, users, and the public.

Nature and Scope of Obligations

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own law and practice.

The Parties affirm their obligations set out in the following multilateral agreements:

TRIPS Agreement;

Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 3 October 2001;

Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967, as

amended on 28 September 1979;

Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September 1886, as revised at Paris on 24 July 1971, as amended on 28 September 1979 (“Berne Convention”);

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, done at Madrid on 27 June 1989, as amended on 12 November 2007;

WIPO Performances and Phonogram Treaty, adopted at Geneva on 20 December 1996 (“WPPT”);

WIPO Copyright Treaty, adopted at Geneva on 20 December 1996 (“WCT”);

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on 28 April 1977, as amended on 26 September 1980; and

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, done at Marrakesh on 27 June 2013.

Intellectual Property and Public Health

The Parties affirm their commitment to the Declaration on the TRIPS Agreement and Public Health, adopted at Doha on 14 November 2001 by the Ministerial Conference of the WTO (“Doha Declaration”) and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.

Nothing in this Chapter shall limit a Party’s rights and obligations pursuant to Article 31 and Article 31bis of the TRIPS Agreement, and the Annex and the Appendix to the Annex to the TRIPS Agreement.

Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party’s right to protect public health and, in particular, to promote access to medicines for all.

Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/ AIDS, tuberculosis, malaria, COVID-19, and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection1 of intellectual property rights in accordance with Article 3(1) of the TRIPS Agreement.

A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

not applied in a manner that would constitute a disguised restriction on trade.

Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Each Party shall endeavour, subject to its legal system and practice, to make information concerning application and registration of trade marks, geographical indications, industrial designs, and patents accessible for the general public.

The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights to enable the public to become acquainted with the registered or granted intellectual property rights.

Each Party shall endeavour to make available such information on the internet.

1 For the purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter.

2 The commitment contained in Article 16.4 (Review and Appeal) that a review be ‘prompt’ shall not apply to this Chapter.

Application of Chapter to Existing Subject Matter

This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.

Exhaustion of Intellectual Property Rights

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its law.3

Each Party may provide concessions, such as reduced fees for filing, processing, registration, grant, and maintenance of intellectual property rights, to small and medium enterprises, startups, and educational institutions, in accordance with its laws and regulations.

Article Article 11.13 Cooperation Activities and Initiatives

The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party.

Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, on request, and on terms and conditions mutually agreed upon between the Parties.

3 For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.

Section C: Trade Marks

Article Article 11.14

Types of Signs Registrable as Trade Marks

Neither Party shall deny registration of a trade mark only on the ground that the sign of which it is composed is a sound. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trade mark.

Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trade mark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs for goods or services that are related to those goods or services in respect of which the owner's trade mark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

A Party may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trade mark, and of third parties.

Well-Known Trade Marks

For the purposes of giving effect to the protection of well-known trade marks, as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO from 20 to 29 September 1999.

Procedural Aspects of Examination, Opposition and Cancellation of Registered Trade Marks

Each Party shall provide a system for the examination and registration of trade marks which includes among other things:

communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register the trade mark;

providing the applicant with an opportunity to respond to communications from the competent authorities, to respond to any initial refusal, and to make a judicial appeal against any final refusal to register the trade mark;

providing an opportunity to oppose the registration of a trade mark or to seek cancellation4 of the trade mark; and

requiring decisions in the administrative proceedings of opposition and cancellation to be reasoned and in writing, which may be provided by electronic means.

Each Party shall adopt or maintain a trade mark classification system that is consistent with the Nice Agreement Concerning

the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as revised and amended ("Nice Classification"). Each Party shall provide that:

registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;5 and

goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification and conversely that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

4 For greater certainty, cancellation for the purposes of this Section may be implemented through nullification or revocation proceedings.

5 A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

Term of Protection for Trade Marks

Each Party shall provide that initial registration and each renewal of registration of a trade mark is for a term of no less than 10 years.

Article Article 11.21 Country Names

Each Party may provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

Section E: Geographical Indications

Article Article 11.22

Protection6 of Geographical Indications

The Parties reaffirm that geographical indications may be protected through a trade mark or sui generis system or other legal means.

If a Party provides administrative procedures for seeking protection or recognition of geographical indications, whether through a trade mark or a sui generis system, it shall, in accordance with its laws and regulations, provide procedures that allow at least interested persons to oppose applications for such protection or recognition of a geographical indication.

6 For greater certainty, protection of geographical indications collectively means protection by registration or recognition, as may be applicable to a Party.

Article Article 11.24 Regulatory Review Exception

Without prejudice to the scope of, and consistent with, Article 11.29 (Exceptions), each Party shall provide that a third party may do an act that would otherwise infringe a patent if the act is done for purposes connected with obtaining regulatory approval7 in that Party or a non-Party.

Other Use Without Authorisation of the Right Holder

Nothing in this Chapter shall limit a Party's rights and obligations under the TRIPS Agreement in relation to the use, or authorisation of the use of, a patent without the authorisation of the right holder.

Each Party shall require an applicant for a patent to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of application.

A Party may require a patent applicant to provide information concerning the applicant's corresponding foreign applications and grants.

Patent Working Disclosure Requirement

Each Party may require a patent owner to provide periodic disclosure of information concerning the working of a patent.

Notwithstanding paragraph 1, a Party may require a patent owner to provide a disclosure concerning the working of a patent, in a given case, in accordance with its law.

7 For the purpose of this Article, a Party may treat “regulatory approval” to mean “marketing approval”.

Procedural Aspects of Examination, Opposition, and Invalidation or Cancellation of Registered Patents

Each Party shall provide a system for the examination and grant of patents which includes among other things:

communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register the patent;

providing the applicant with an opportunity to respond to communications from the competent authorities, to respond to any initial refusal, and to make a judicial appeal against any final refusal to grant the patent;

providing an opportunity for interested parties to seek cancellation or invalidation of a granted patent. In addition, each Party may provide an opportunity for interested parties to oppose the grant of the patent;

making decisions in opposition, revocation or invalidation proceedings, to be reasoned and in writing, which may be delivered by electronic means; and

providing an applicant with at least one opportunity to make amendments, corrections or observations, in connection with an application that has been filed8 9 with the competent authority of the Party in accordance with the laws and regulations of that Party.

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

8 For greater certainty, for the purpose of this Article, “filed” does not include notional applications or applications deemed to have been filed in a Party.

9 A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the filing date.

Section G: Industrial Designs

Article Article 11.30

Protection of Registered Industrial Designs

Each Party shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon the holder in accordance with the provisions of the TRIPS Agreement.

A Party may provide limited exceptions to the exclusive rights conferred by the protection of an industrial design, provided that such exceptions do not unreasonably conflict with a normal exploitation of an industrial design and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

Section H: Genetic Resources, Traditional Knowledge, And Traditional Cultural Expressions

Article Article 11.32

Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions

The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.

The Parties affirm the importance of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, adopted at Geneva on 24 May 2024.

The Parties affirm the importance of the work carried out on traditional knowledge and traditional cultural expressions by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and

Folklore.

The Parties shall endeavour to exchange views and information and cooperate through their respective agencies responsible for intellectual property rights covered by this Chapter, with the participation of relevant stakeholders, if such participation is appropriate and

practicable, to enhance the understanding of intellectual property related aspects of genetic resources, traditional knowledge, and traditional cultural expressions.

Patent Examination and Traditional Knowledge Associated with Genetic Resources

The Parties shall endeavour to pursue quality patent examination, which shall include:

that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;

an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;

if applicable and appropriate, the use of databases or digital libraries such as India's Traditional Knowledge Digital Library ("TKDL"), containing traditional knowledge associated with genetic resources; and

if agreed and subject to available resourcing, cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

Article Article 11.34 General Provision

Consistent with the obligations set out in the applicable international agreements to which the Parties are party and in accordance with its laws and regulations, each Party shall provide adequate and effective protection to authors for their works, performers for fixations of their performances in phonograms, producers for their phonograms and broadcasters for their broadcasts.

A Party may provide limitations or exceptions in its domestic law to the rights provided under this Section, but shall confine such limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.

Obligations Concerning Protection of Rights-Management Information

Each Party shall provide adequate and effective legal remedies against any person who knowingly and without authorisation:

removes or alters any electronic rights-management information; or

distributes, imports for distribution, broadcasts or communicates to the public, works or copies of works, knowing that electronic rights-management information has been removed or altered without authorisation.

The Parties recognise the role of collective management societies for copyright and related rights in collecting and distributing royalties based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

Each Party shall encourage the establishment of reciprocal arrangements between their respective collective management societies for the purposes of ensuring easier licensing of content and sharing of rights revenues.

Section J: Enforcement

Article Article 11.38

General Obligation in Enforcement

The Parties shall provide in their respective law for the enforcement of intellectual property rights covered by this Chapter consistent with the TRIPS Agreement, in particular Articles 41 through 61.

Each Party shall, in conformity with its law and the provisions of Part III, Section 4 of the TRIPS Agreement, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importations of counterfeit trade mark or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, administrative or judicial, in the Party in which the border measure procedures are applied, for the suspension by that Party's customs authorities of the release into free circulation of such goods.

A Party may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of Part III, Section 4 of the TRIPS Agreement are met. A Party may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territory in accordance with its law.

Chapter 12. TRADE AND SUSTAINABLE DEVELOPMENT

Article Article 12.1

Scope, Context and Objectives

Recalling the Rio Declaration on Environment and Development and the Agenda 21 adopted by the United Nations Conference on Environment and Development in Rio de Janeiro on 14 June 1992, the Johannesburg Declaration on Sustainable Development and its Plan of Implementation adopted in Johannesburg on 4 September 2002, the International Labour Organization ("ILO") Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Conference at its 86th Session in Geneva on 18 June 1998, as amended in 2022 ("ILO Declaration on Fundamental Principles and Rights at Work"), the ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference at its 97th Session in Geneva on 10 June 2008, as amended in 2022 ("ILO Declaration on Social Justice for a Fair Globalization"), the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" endorsed by the UN General Assembly Resolution 66/288 adopted on 27 July 2012 ("the RIO+20 Outcome Document "The Future We Want"), the UN 2030 Agenda for Sustainable Development, adopted by the UN General Assembly Resolution 70/1 on 25 September 2015 and its Sustainable Development Goals, and the multilateral environmental agreements to which the Parties are party, the Parties affirm their commitment to pursue the objective of sustainable development, whose pillars, economic development, social development and environmental protection are mutually supportive, interdependent and essential requirements of sustainable development.

The Parties agree to promote international trade in such a way as to contribute towards sustainable development for eradicating poverty and hunger, including towards broad-based, sustained and inclusive economic growth, social development, high levels of environmental protection and progress towards long-term strategies for transition, and to work to integrate and reflect this objective in their trade relationship.

For greater certainty, the Parties emphasise that it is their aim to strengthen their trade relations and cooperation in ways that promote sustainable development, and that this Chapter does not oblige the Parties to harmonise their environmental and social standards of protection.

This Chapter embodies a cooperative approach based on common values and interests, taking into account the differences in the Parties' respective levels of development, priorities and circumstances.

For the purposes of this Chapter, "laws and regulations" means:

for India, an Act of the Parliament of India or delegated legislation framed pursuant to an Act of the Parliament of India, which is enforceable by action of the Central or Union level of Government; and

for New Zealand, an Act of the Parliament of New Zealand or a regulation made under an Act of the Parliament of New Zealand by the Governor-General in Council, which is enforceable by action of the central level of government.

Right to Regulate and Upholding Levels of Protection

Recognising the right of each Party, in a manner consistent with the provisions of this Chapter, to set its domestic sustainable development policies and priorities, to establish its own levels of environmental, and labour protection, and to adopt or modify accordingly its relevant laws and policies, each Party shall seek to ensure that its laws, policies and practices provide for and encourage achieving sustainable development as referred to in Article 12.1 (Scope, Context and Objectives).

The Parties are committed not to encourage trade by derogating from or, through a sustained or recurring course of action or inaction, failing to effectively enforce their respective environmental and labour laws in a manner affecting trade between the Parties.

The Parties stress that environmental and labour measures shall not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

The Parties recognise the value of international agreements on the environment and on labour as means to address global and regional environmental and social challenges. The Parties recall that the ILO Declaration on Social Justice for a Fair Globalization states that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes. In this context, the Parties note that their comparative advantage should in no way be called into question. The Parties also stress that neither environmental issues nor labour standards shall be used for protectionist trade purposes.

The Parties, in accordance with their obligations as members of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work, commit to respect, promote and realise, in good faith, the fundamental principles and rights at work which are the subject of the fundamental ILO Conventions.

Each Party affirms their commitment to effectively implement in their laws and practices the ILO Conventions which that Party has ratified. Each Party will make efforts towards ratifying the fundamental ILO Conventions in a promotional and flexible manner without time limits and consistent with the ILO Declaration on Social Justice for a Fair Globalization.

In view of the objectives set out in Article 12.1 (Scope, Context and Objectives), the Parties agree to enhance their cooperation by exchanging information, discussing best practices and sharing implementation experiences in areas of mutual interest, such as:

best practices relating to corporate social responsibility including encouraging businesses to adopt responsible business conduct policies;

relevant aspects of the ILO Decent Work Agenda, such as labour statistics and labour market developments;

sharing expertise, information and best practices in respect of identifying and addressing skill shortages and gaps;

human capital development and the enhancement of employability, including through apprenticeship programmes, lifelong learning, continuous education, training and the development and upgrading of skills;

exploring opportunities for skilling, upskilling and re-skilling to facilitate a just transition and decent work in accordance with the ILO Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All, published by the ILO at Geneva on 2 February 2016 (“ILO Guidelines for a Just Transition”) and the Decent Work Agenda; and

promotion of productive, quality employment and green entrepreneurship linked to sustainable growth, support for workers as part of a just transition in line with the ILO Guidelines for a Just Transition, and skill development for jobs in emerging industries, including environmental industries.

Trade and Gender Equality

The Parties recognise the importance of gender equality and the empowerment of all women in advancing sustainable and inclusive economic growth and development, including through women’s participation in international trade.

The Parties also recognise that gender-responsive policies and practices are important to advancing gender equality and the empowerment of all women. The Parties recognise the importance of adopting, maintaining and implementing women’s economic empowerment and equality laws, regulations, policies and best practices, in line with the Sustainable Development Goal 5 of the UN 2030 Agenda on Sustainable Development. The Parties also recognise the importance of the Convention on the Elimination of all Forms of Discrimination Against Women done at New York City on 18 December 1979 and the Beijing Declaration and Platform for Action, Fourth World Conference on Women done at Beijing on 15 September 1995.

Accordingly, each Party shall endeavour to:

foster women’s entrepreneurship and leadership, including promoting women’s access to the benefits and opportunities of this Agreement;

promote the exchange of information and best practice related to the design, implementation, monitoring, evaluation and strengthening of policies and programmes, aimed at enhancing women’s participation in economic activity, including international trade; and

cooperate to identify and address the barriers faced by women in trade and investment including safety and access to information, networks and finance.

The Parties agree to implement the Agreement and the cooperation activities established under this Article in a manner that advances the full, equal and meaningful participation of women in the economy and in a manner that protects and promotes their human rights and economic wellbeing.

Multilateral Environmental Agreements

The Parties recognise the important role multilateral environmental agreements play in protecting the environment, including reducing biodiversity loss and addressing climate change, and the need for

mutual supportiveness between trade and environmental laws and policies.

The Parties affirm their adherence to the principles reflected in the international environmental instruments referred to in Article 12.1 (Scope, Context and Objectives).

The Parties affirm their commitment to implement the multilateral environmental agreements to which the Parties are a party.

The Parties recognise that in accordance with the objective of sustainable development, the Parties shall allow for the optimal use of the world's resources, and will seek to protect and preserve the environment, and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development. The Parties further recognise the importance, and positive role, that the multilateral trading system and the WTO may play in encouraging sustainable use of resources, sustainable ecosystems, sustainability of services and sustainable long-term growth.

The Parties also recognise the importance of strengthening policies and defining programmes that encourage sustainable and inclusive growth. The Parties recall that the Rio+20 Outcome Document "The Future We Want" provides sufficient flexibility and policy space for the Parties to make their own choices out of a broad menu of options and define their paths towards sustainable development based on each Party's stage of development, national circumstances and priorities.

The Parties also recognise that policy objectives to facilitate the transition to a resource efficient and circular economy includes extending product lifetimes, increasing the proportion of materials and products that are reused and recycled, and reducing waste throughout supply chains.

The Parties recognise the importance of conserving, and sustainably using, biological diversity consistent with relevant multilateral environmental agreements to which the Parties are a party, including the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 and its Protocols, the Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979, the Ramsar Convention on Wetlands, done at Ramsar on 02 February 1971, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973, and the decisions adopted thereunder.

The Parties recognise the importance of the conservation and sustainable management of forests for providing environmental functions and economic and social opportunities for present and future generations.

Accordingly, the Parties shall endeavour to cooperate in areas of mutual interest, including:

sharing best practices in promoting integrated and sustainable management of natural resources and ecosystems, including conservation and sustainable use of biodiversity;

taking appropriate action to conserve biological diversity, including to prevent the spread of invasive alien species;

supporting cooperation between enterprises in relation to goods, services and technologies that contribute to sustainable development;

sharing policy frameworks conducive to the deployment of best available technologies for sustainable development, including with regard to the promotion of eco-innovation, research activities, dissemination of results, and efforts to ensure that such technologies are available in the public domain and are accessible at affordable prices;

promoting the conservation and sustainable management of forests;

encouraging trade in forest products from sustainable supply chains; and

contributing to combatting illegal logging, illegal deforestation, and associated trade, including with respect to communities dependent on forests.

Recognising the importance of cooperation and supportive measures, the Parties affirm their commitment to implement

their respective commitments regarding cooperation and supportive measures, such as financial, technological, technical or capacity building support, as relevant, under the international agreements referred to in this Chapter.

The Parties recognise the importance of conserving and sustainably managing marine fisheries. The Parties also underline the importance of the marine fisheries sector to their development and to the livelihoods of their fishing communities, including artisanal or small-scale fisheries.

Accordingly, the Parties agree to:

support national, regional and international goals to address illegal, unreported and unregulated fishing in accordance with national and international instruments, and by using relevant international frameworks; and

cooperate on aspects of fishery policies and measures bilaterally, regionally, and in international fora as appropriate, which are important to promoting sustainable fishing practices.

The Parties recognise the importance of achieving, the objectives of the United Nations Framework Convention on Climate Change, done at New York on 09 May 1992 (hereinafter referred to as "UNFCCC") and the goals of the Paris Agreement, done at Paris on 12 December 2015, reflecting the principles of the UNFCCC and the Paris Agreement including equity and the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances and based on best available science, in order to address the urgent threat of climate change.

The Parties reaffirm their commitment to implement their respective obligations and commitments under the UNFCCC and the Paris Agreement.

The Parties underline the importance of climate actions, to be implemented in accordance with each Party's national circumstances, capabilities and equity.

Pursuant to paragraph 1, the Parties shall endeavour to cooperate bilaterally, and in other fora, as appropriate, in areas of mutual interest related to mitigation of and adaptation to climate change, including but not limited to the following:

mobilising investment and sustainable finance;

sharing knowledge and evidence-based innovations, including traditional, local and Indigenous knowledge, especially technological innovations, to support solutions to climate change, including climate-smart and resilient agriculture production;

exploring cooperation under Article 6 of the Paris Agreement;

exploring opportunities for climate and energy solutions; and

sharing information on innovation, research and development which promotes clean energy, and climate-friendly technologies.

The Parties recognise cooperation as a means to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to promote sustainable development as they strengthen their trade relations. The Parties recognise that cooperation activities undertaken pursuant to this Agreement seek to complement and build upon existing agreements or arrangements between the Parties.

The Parties shall endeavour to strengthen their cooperation on environment, climate and other issues of mutual interest in relevant bilateral, regional, and multilateral fora in which the Parties participate. Cooperative activities agreed under this Chapter shall align with the Parties' respective national circumstances, environmental commitments, climate commitments and other commitments outlined in the Chapter.

Cooperation under this Chapter may include the following:

technical assistance and capacity building;

mobilising financial resources and instruments;

sharing of know-how and facilitating technology development and transfer in furtherance of the Parties' respective commitments under multilateral environmental agreements;

sharing of information, data and best practices on policies and procedures, including through joint analysis and the exchange of experts;

dialogues, workshops, seminars, conferences, collaborative programmes and projects, including joint research projects on

environmental technologies; and

other means, as the parties may decide.

Each Party shall, as appropriate:

share its priorities for cooperation with the other Party, including the objectives of that cooperation;

propose cooperation activities related to the implementation of this Chapter; and

develop and participate in mutually agreed cooperation activities and programmes in accordance with the priorities identified and agreed by the Parties.

In implementing the cooperation activities under this Chapter, the Parties may invite the views and participation of relevant stakeholders.

Trade and Sustainable Development Committee

The Parties hereby establish the Committee on Trade and Sustainable Development ("Committee") composed of government representatives of each Party.

The Committee shall be jointly co-chaired by the Parties. It shall meet within one year of the date of entry into force of this Agreement and thereafter as agreed by the Parties. Meetings may occur in person, or by any other means of communication as agreed by the representatives of the Parties.

All decisions of the Committee shall be made by agreement of the Parties.

The Committee shall, with respect to this Chapter, have the following functions:

review and monitor the implementation and operation of this Chapter;

discuss technical issues arising from the implementation of this Chapter;

foster understanding and facilitate consultations and dialogue regarding matters arising under this Chapter;

consider priorities and proposals referred to the Committee by the Parties and, where appropriate, agree cooperation activities in accordance with Article 12.9 (Cooperation); and

consider any other matter related to this Chapter, as agreed between the Parties.

The Committee may:

exchange information, discuss best practices and share implementation experiences on issues of mutual interest relating to this Chapter; and

seek advice from, or invite, representatives of relevant business, non-government or other civil society organisations, as agreed by the Parties.

The Committee shall:

report to the Joint Commission on the results and conclusions from each of their meetings; and

carry out any task assigned and any responsibility delegated to it by the Joint Commission.

Each Party shall designate a contact point to receive and facilitate official communications between the Parties on any matter relating to this Chapter.

Each Party shall promptly notify the other Party, in writing, of any changes to its contact point.

The Parties recognise the importance of cooperation and consultation, based on the principle of mutual respect, and shall endeavour to resolve any matter arising under this Chapter.

After a request for information about a matter arising under this Chapter is made, the requesting Party may request in writing consultations with the other Party on the matter.

If a request for consultations is received in accordance with paragraph 2, the Parties shall enter into consultations in good faith no later than 150 days after the receipt of the request, unless agreed otherwise.

The Parties shall endeavour to achieve a mutually satisfactory resolution of the matter through consultations initiated in accordance with paragraph 3. The Parties may agree to seek advice from an independent expert or experts chosen by them to assist. The Parties shall document any outcome.

Consultations shall take place in the Committee on Trade and Sustainable Development.

Consultations may be held in person or by other technological means available.

Consultations under this Article, and the positions taken by the Parties during such consultations shall be confidential. Each Party shall treat any information exchanged in the consultations as confidential unless stated otherwise by the Party sharing the information.

8 The outcomes of consultations under this Article shall be made public, unless the Parties agree otherwise. If the outcome of consultations is published, it shall be published in a jointly agreed report.

9. For greater certainty, where the matter arising under this Chapter regards compliance with obligations under a multilateral environmental agreement to which the Parties are a party, the requesting Party shall, where appropriate, address the matter through the consultative procedure or other procedures under that multilateral environmental agreement.

The Parties shall review this Chapter in accordance with Article 20.4 (General Review), inviting, as appropriate, the views and participation of relevant stakeholders.

Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 13. CULTURAL, TRADE, TRADITIONAL KNOWLEDGE AND ECONOMIC COOPERATION

Article Article 13.1 Objective

The Parties recognise that trade agreements play a role in facilitating and expanding trade, and economic opportunities for, with, and between people, including Māori for New Zealand, as well as addressing disparities, including to enhance trade for, with, and between them, to preserve, protect, and promote traditional knowledge, including traditional systems of medicine, and traditional cultural expressions. The Parties note that traditional knowledge and practices are important contributors to innovation, sustainability, and economic empowerment. The Parties intend to preserve and promote traditional language, culture and heritage that are vital for economic benefit and cultural continuity.

The Parties further recognise that integrating traditional knowledge into this Agreement can lead to shared economic growth, cultural preservation and sustainability. Further, the Parties affirm the importance of defensive protection mechanisms that assist in preventing the misappropriation of traditional knowledge, such as the Traditional Knowledge Digital Library (“TKDL”) of India and New Zealand’s Māori Cultural and Intellectual Property Committees.

The objective of this Chapter is to pursue mutual cooperation to contribute towards the Parties efforts to enable and advance their peoples’ economic and cultural aspirations, including Māori for New Zealand. The Parties recognise that for New Zealand, cooperation under this Chapter should be implemented in a manner consistent with te Tiriti o Waitangi / the Treaty of Waitangi.

The Parties recognise the following relevant multilateral instruments to which the Parties are party:

the United Nations Educational, Scientific and Cultural Organization Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in Paris on 20 October 2005; and

the Convention on Biological Diversity, particularly Article 8(j), adopted in Rio de Janeiro on 5 June 1992.

The Parties, subject to their respective reservations, affirm the following:

the United Nations Declaration on the Rights of Indigenous Peoples, adopted in New York on 13 September 2007 and their respective positions made on that Declaration;1, 2

the United Nations Guiding Principles on Business and Human Rights adopted via Resolution 17/4 by UN Human Rights Council on 16 June 2011;

International Treaty on Plant Genetic Resources for Food and Agriculture done at Rome on 03 November 2001;

TRIPS Agreement and acknowledge the instruction provided under the Doha Declaration, adopted in Doha on 14 November 2001, for the Council for TRIPS to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by WTO members pursuant to Article 71.1 of TRIPS;

the United Nations 2030 Agenda for Sustainable Development, adopted in New York by the UN General Assembly Resolution 70/1 on 25 September 2015; and

United Nations Educational, Scientific and Cultural Organization Convention on the Protection and Promotion of the Diversity of Cultural Expressions done at Paris on 20 October 2005.

The Parties shall avoid duplication of any work, process or cooperation in any other fora and under this Agreement.

1 For greater certainty, this includes qualifying statement by India at the United Nations, accessible at “General Assembly Adopts Declaration on Rights of Indigenous Peoples; ‘Major Step Forward’ towards Human Rights for All, Says President” United Nations Meetings Coverage and Press Releases (GA/10612, 13 September 2007),

<>. India notes that “India voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples on the condition that after independence all Indians are indigenous”.

2 The Parties agree that for India, “Indigenous Peoples” is without prejudice to India’s domestic legal classification, and any recognition of indigenous status shall be in accordance with India’s law or policy.

The Parties acknowledge that cooperation activities under this Chapter shall be carried out within the existing framework set out in this Agreement and be carried out through forms to be agreed upon by the Parties, that may include technical assistance, trainings, exchanges of data and information, seminars and workshops, sharing of best practices, studies, research and innovation, and awareness raising on trade opportunities.

To achieve this Chapter’s objectives, the Parties may coordinate cooperation activities between their people, including Māori for New Zealand, as deemed appropriate. Such cooperation activities may include:

exchanging related information on best practices, lessons learned, and technical matters among the Parties and stakeholders in the Parties;

collaborating on traditional knowledge that may help to innovate or to adapt to new challenges;

exchanging, preserving, documenting or cooperating in traditional medicines and healing systems, including Ayurveda, Yoga, and Naturopathy, Unani, Sowa-Rigpa, Siddha, Homeopathy (“AYUSH”), ethno-medicine , herbalist and ritual-based healing systems for India and Rongoā Māori (a multi-dimensional form of Māori care and healing) for New Zealand, that offer a holistic approach to health and well-being, including physical, mental, emotional and spiritual health;

collaborating to enhance the ability for SMEs, Māori-owned enterprises, tribal enterprises, artisans, and community-led startups to access and benefit from the trade opportunities created by this Agreement, including through promoting information exchange on product certifications and standards, including AYUSH products, and professional qualifications with a view to improving mutual understanding and identifying potential areas for future harmonisation as well as entrepreneurship development, capacity building and other initiatives that empower SMEs, artisans, and community-led startups;

supporting science, research and innovation links, as appropriate;

identifying potential areas of cooperation between businesses for the mutual benefit of both Parties, and developing, supporting and strengthening business networks, cooperation and partnerships, including through trade missions;

promoting trade in sectors relevant for SMEs, Māori-owned enterprises, tribal enterprises, including businesses that relate to or derive from traditional knowledge, biodiversity, and traditional cultural expressions such as arts and crafts, dance, music and tourism;

facilitating study-abroad programmes or other similar educational or research practices, cultural exchanges, research and development;

undertake joint research projects, publications, and extra-curricular academic events;

collaborate and cooperate in training, research and teaching activities for AYUSH and Rongoā Māori (a multi-dimensional

form of Māori care and healing) practitioners;

enhance the dialogue between the Parties to consolidate and expand the trade relationship, understanding, and cooperation in fields of common interest between the people of the Parties; and

any other area of mutual interest that the Parties may agree.

The implementation of this Chapter and activities therein shall be subject to available resources and in accordance with each Party's law and policy.

This Chapter does not impose any legal or financial obligations requiring the Parties to explore, commence or conclude any individual cooperation activities.

Resources for economic cooperation, technical assistance and capacity building under this Chapter shall be provided as mutually agreed by the Parties.

The activities under this Chapter shall be carried out through the Joint

Commission.

Each Party shall designate and notify a contact point for implementing

this Chapter.

Each Party shall promptly notify the other Party of any change to its contact point no later than 7 days from such change.

The contact points shall facilitate communication, coordination, and information exchange between the Parties:

for all matters or activities, the Parties consider relevant under

this Chapter; and

as required for coordinating between any subcommittee, working group, or other subsidiary body established under this Agreement, on matters covered by this Chapter.

Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19

(Dispute Settlement) for any matter arising under this Chapter.

Chapter 14. ECONOMIC COOPERATION AND TECHNICAL ASSISTANCE

Section A: Objectives, Scope and General Provisions

Article Article 14.1 Objectives

The objective of this Chapter is to support the effectiveness and efficiency of the implementation and utilisation of this Agreement through activities that relate to trade, investment and capacity building.

Cooperation and provision of technical assistance under this Chapter is intended to promote and facilitate trade and investment between the Parties and to foster economic growth.

Economic cooperation and technical assistance under this Chapter shall be built upon a common understanding between the Parties to support the implementation of this Agreement, with the objective of maximising its benefits, building capacity, supporting pathways to trade and investment facilitation, and further improving market access and openness to contribute to the sustainable inclusive economic growth and prosperity of the Parties.

The Parties agree that economic cooperation and technical assistance activities under this Chapter should complement existing development and economic cooperative partnerships between the Parties in trade and investment related areas, taking into account the needs that are identified and mutually determined.

The Parties shall strive to promote cooperation and provision of technical assistance under this Chapter for their mutual benefit, in order to promote and facilitate trade and investment between the Parties and foster economic growth, including

through activities that relate to trade, investment and capacity building.

The Parties shall, in accordance with this Chapter:

promote opportunities for cooperation and the provision of technical assistance between the Parties, their respective business communities, scientific and academic communities,

Māori in the case of New Zealand, or other stakeholders as appropriate, in areas of common interest under this Agreement with a view to benefitting from the complementarities of their economies and the opportunities created under this Agreement and with priorities to be mutually determined and subject to available resources; and

where any cooperation or technical assistance activities are agreed under this Chapter, take the necessary steps to facilitate those activities in accordance with the relevant terms as agreed between the Parties.

The Parties acknowledge the provisions to encourage and facilitate cooperation included in other Chapters of this Agreement, including in particular where required for the coordination of regulatory cooperation between the Parties. Cooperation and technical assistance activities under this Chapter may complement and supplement those activities.

Scope of Cooperation Activities and Technical Assistance

Areas of cooperation and technical assistance may include:

any of the thematic areas set out in Annex 14A (Agriculture Cooperation and Technical Assistance Thematic Areas);

any of the thematic areas set out in Annex 14B (Non-

Agricultural and Technical Assistance Thematic Areas); and

any other area of cooperation and technical assistance mutually agreed by the Parties.

In addition to and without limiting the activities identified in relation to each thematic area set out in Annex 14A (Agriculture Cooperation and Technical Assistance Thematic Areas) or Annex 14B (Non-Agricultural and Technical Assistance Thematic Areas) the Parties may cooperate or undertake technical cooperation through activities such as:

exchanging information, technical knowledge and expertise relevant to the area of cooperation;

policy dialogues and sharing best practices;

training, education, skills development, and exchange of personnel, including through visits of experts, scientists and technicians, as well as their participation in seminars, conferences and other professional events;

engaging in dialogues, technical consultations, exchanges and collaborative initiatives;

offering technical support and capacity building;

technology transfer;

conducting joint research and development, including through the organisation of scientific workshops in both countries;

undertaking two-way technical visits and exchanges of experts, researchers, students and relevant professionals, including in-person visits and interactions involving relevant government agencies, academic institutions, industry associations, businesses and relevant stakeholders of both Parties;

collaborative training exercises, in particular for students and graduates from educational institutions in the fields of agriculture, dairying, food technology and other fields as mutually decided;

organisation of trade missions, business and networking events, and trade fairs;

the promotion of collaborative initiatives between entrepreneurs of the Parties; and

any other form of cooperation that may be mutually agreed by the Parties.

Section B: Agriculture Productivity Partnership

Article Article 14.4

Purpose of the Agriculture Productivity Partnership

The Parties hereby establish an Agriculture Productivity Partnership ("APP") to promote productivity in agriculture and allied sectors1 for the purpose of:

establishing a long-term cooperation partnership between New Zealand and India to help increase returns to Indian farmers, fishers and producers through improved productivity in agricultural and allied sectors;

promoting and facilitating engagement in agriculture and allied sectors across the value chain between New Zealand and India to foster economic growth; and

1 For greater certainty, "allied sectors" include livestock, fisheries, apiculture, forestry, and food processing, among others.

the effective implementation and operation of this Chapter in relation to cooperation and technical assistance in agriculture and allied sectors.

For the purpose of this Chapter, cooperation and technical assistance in agricultural and allied sectors, referred to in subparagraph 1(a), includes any cooperation or technical assistance falling within:

sectors associated with the thematic areas set out in Section A of Annex 14A (Agriculture Cooperation and Technical Assistance Thematic Areas);

to the extent they overlap with any of the sectors referred to in subparagraph 2(a), any of the cross-cutting thematic areas set out in Section B of Annex 14A (Agriculture Cooperation and Technical Assistance Thematic Areas); and

any other agriculture or allied sectors or any cross-cutting thematic areas agreed by the Joint Agriculture Productivity Council.

Joint Agriculture Productivity Council

Recognising the purposes of the APP set out in paragraph 1 of Article

14.4 (Purpose of the Agriculture Productivity Partnership) for the agriculture and allied sectors, the Parties hereby establish a Joint Agriculture Productivity Council ("JAPC").

The JAPC shall consist of the following representatives of each Party, or their successors:

for India, the Secretary, Agriculture and Farmers Welfare; and

for New Zealand, the Director General, Ministry for Primary Industries.

The JAPC shall meet on an annual basis, unless otherwise agreed.2

The JAPC shall undertake the following functions:

facilitate the effective implementation and operation of the APP;

2 The Parties note that for the purposes of paragraphs 4 and 5 of Article 14A.2 (Forestry Cooperation) and Article 14A.3 (Horticulture Cooperation) of Annex 14A (Agriculture Cooperation and Technical Assistance Thematic Areas), and as agreed in Annex 2B (Implementation and Review of Economic Cooperation Action Plans and Related Tariff Rate Quotas), the JAPC shall meet every six months, unless otherwise agreed.

provide oversight and review of the progress of agreed cooperation and technical assistance activities under the APP;

review the implementation and progress of other cooperation and technical assistance arrangements and activities in agriculture and allied sectors outside the scope of the APP;

provide an opportunity to the Parties to raise and, if agreed, discuss matters within the wider agriculture relationship between the Parties; and

in relation to cooperation and technical assistance in agricultural and allied sectors under this Chapter:

facilitate the sharing of cooperation and technical assistance priorities between the Parties;

set the overarching direction for cooperation and technical assistance;

consider any proposal or suggested modification of any opportunity, or new ideas for cooperation and technical assistance activities;

promote projects being undertaken under the APP;

by mutual agreement of the representatives of each Party, or their successors, establish, restructure, dissolve and oversee working groups in accordance with Article 14.7 (Working Groups);

coordinate, monitor and review progress of working groups in accordance with sub-subparagraph 2(f)(i) of Article 14.7 (Working Groups);

receive and consider annual reports on progress from working groups; and

report to the Joint Commission in relation to the implementation of cooperation and technical assistance under this Chapter and under other cooperative arrangements in agriculture and allied sectors between the Parties.

The JAPC Group may decide on its own rules of procedure, in the absence of which the rules of procedure of the Joint Commission shall apply mutatis mutandis.

Section C: Committee on Economic Cooperation and Technical Assistance

Article Article 14.6

Operation of Committee on Economic Cooperation and Technical Assistance

The Parties hereby establish a Committee on Economic Cooperation and Technical Assistance ("CECTA") for cooperation and technical assistance in sectors other than agriculture and allied sectors.

The CECTA shall meet on an annual basis, unless otherwise agreed.

The CECTA shall undertake the following functions in relation to any economic cooperation and technical assistance not falling within the scope of the Agriculture Productivity Partnership, including those listed under Annex 14B (Non-Agricultural Cooperation and Technical Assistance Thematic Areas):

facilitate the sharing of cooperation and technical assistance priorities between the Parties;

set the overarching direction for cooperation and technical assistance;

review the implementation and progress of other cooperation and technical assistance arrangements and activities not falling within agriculture and allied sectors or within the CECTA's areas of responsibility;

consider any proposal or suggested modification of any opportunity, or new ideas for cooperation and technical assistance activities;

promote projects being undertaken within CECTA's areas of responsibility;

establish, restructure, dissolve and oversee working groups, based on mutual agreement, in accordance with Article 14.7 (Working Groups);

coordinate, monitor and review progress of working groups in accordance with sub-subparagraph 2(f)(ii) of Article 14.7 (Working Groups);

receive and consider annual reports on progress from working groups; and

report to the Joint Commission in relation to the implementation of cooperation and technical assistance falling within the scope of CECTA.

The CECTA may decide on its own rules of procedure, in the absence of which the rules of procedure of the Joint Commission shall apply mutatis mutandis.

Article Article 14.7 Working Groups

The JAPC or the CECTA may, in relation to any relevant thematic area or sector falling within the scope of their responsibility:

establish, restructure or dissolve working groups, in specific areas of interest;

coordinate, monitor and review, annually, the progress of working groups' activities or projects in operation to assess their overall effectiveness; and

receive and consider reports from working groups.

Each working group shall, unless otherwise agreed in accordance with paragraph 1, undertake the following functions in relation to its relevant sector or thematic area:

agree on a work programme, which sets out activities to be undertaken;

agree on the budget, resources, funding and specificities of activities within that work programme;

monitor and evaluate progress of and, where needed, adapt activities under that work programme;

bring in expertise outside of the governments of the Parties, as agreed, to join that working group or undertake the activities;

where relevant, coordinate the development of any action plan; and

produce a report on the progress of activities conducted under that work programme by the end of each calendar year, and where relevant:

in carrying out the reporting referred to in sub-subparagraph 4(e)(vii) of Article 14.5 (Joint Agriculture Productivity Council) produce that report to the JAPC at least one month prior to the next relevant meeting of the JAPC; or

in carrying out the reporting referred to in subparagraph 3(h) of Article 14.6 (Operation of Committee on Economic Cooperation and Technical Assistance) produce that report to the CECTA at least one month prior to the next relevant meeting of the CECTA,

Each working group may decide on its own rules of procedure, in the absence of which the rules of procedure of the Joint Commission shall apply mutatis mutandis.

Any work programme developed, adopted and maintained under this Chapter shall:

include planned, ongoing and completed activities;

be guided by the objectives and principles agreed in Article 14.1 (Objectives) and Article 14.2 (General Provisions); and

address the mutual priorities of the Parties.

The Parties may develop, agree and implement action plans in relation to an activity, or group of related activities, including where the Parties agree that an activity or group of related activities is not suitable for a work programme as a result of that activity or group of related activities requiring a significant programme of work, resources, investment or other contribution by a Party, non-Parties or other persons.

Where a Party proposes the development of an action plan under paragraph 1 that aligns with the purposes of this Chapter, the other Party shall consider that proposal and, where appropriate and subject to any resourcing constraints, work with the proposing Party to develop

a suitable action plan. Any developed action plan is subject to the agreement of the Parties.

Any action plan developed, agreed and implemented under this Chapter shall:

be guided by the objectives and principles agreed in Article 14.1 (Objectives) and Article 14.2 (General Provisions); and

address the mutual priorities of the Parties.

Section E: Final Provisions

Article Article 14.10

Technology Development, Sharing and Transfer

The Parties acknowledge that agreed cooperation and technical assistance activities under this Chapter may involve the transfer, sharing or use of existing technologies or the development of new technologies.

With respect to areas covered within Annex 14A (Agriculture Cooperation and Technical Assistance Thematic Areas) and Annex 14B (Non-Agricultural and Technical Assistance Thematic Areas), the Parties may identify and agree to share, transfer or jointly develop technologies for mutual benefit.

Where any activity agreed under this Chapter involves the assignment, licence or any other transfer of intellectual property or the development of any new intellectual property, the participants in that activity may enter suitable agreements for that assignment, licence or transfer or to address the rights and responsibilities in relation to any new intellectual property.

The Parties shall undertake appropriate efforts towards the facilitation of such sharing, transfer or development of technology, subject to the mutual agreement of the Parties.

Priorities for cooperation and technical assistance activities shall be decided by the Parties based on their interests, available resources, benefits resulting from those activities, and in accordance with the laws and regulations of the Parties. This is without prejudice to the support

and assistance agreed to be provided by New Zealand, in respect of the cooperation activities agreed under paragraphs 4 and 5 of Article 14A.2 (Forestry Cooperation), and Article 14A.3 (Horticulture Cooperation) of Annex 14A (Agriculture Cooperation and Technical Assistance Thematic Areas), Annex 2B (Implementation and Review of Economic Cooperation Action Plans and Related Tariff Rate Quotas) and the action plans referred to therein. Such support and assistance by New Zealand is excluded from investment by New Zealand in accordance with the Chapter 9 (Investment Promotion and Cooperation).

The Parties, on the basis of mutual benefit, may consider cooperation with, and contributions from, external parties to support their cooperation activities.

Each Party shall, within 60 days of the date of entry into force of this Agreement, designate an official contact point to address matters related to this Chapter. Each Party shall promptly notify the other Party of any change to its contact point.

The contact points shall endeavour to facilitate regular communication and coordination between the Parties and work together to develop and implement cooperative and technical assistance activities as mutually agreed.

Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19

(Dispute Settlement) for any matter arising under this Chapter.

Chapter 15. SMALL AND MEDIUM-SIZED ENTERPRISES

Article Article 15.1 General Principles

The Parties, recognising the fundamental role of SMEs in maintaining dynamism and enhancing competitiveness of their respective economies and their contribution to economic growth, sustainable development, and innovation, shall foster close cooperation between SMEs of the Parties and cooperate in promoting jobs and growth in SMEs.

The Parties recognise the integral role of the private sector in the SME cooperation to be implemented under this Chapter.

Cooperation to Increase Trade and Investment Opportunities for SMEs

With a view to facilitating more robust cooperation between the Parties to enhance commercial opportunities for SMEs, each Party shall seek to increase trade and investment opportunities. In particular, each Party may:

promote cooperation between the Parties' small business support infrastructure including dedicated SME centres, incubators and accelerators, export assistance centres, and other centres, as appropriate, to create an international network for sharing best practices, exchanging market research, and promoting SME participation in international trade, as well as creating business growth in local markets;

strengthen its collaboration with the other Party on activities to promote SMEs owned by women and youth, start-ups, and partnership among these SMEs and their participation in international trade;

enhance cooperation with the other Party to exchange information and best practices in areas including improving SME access to capital and credit, SME participation in government procurement opportunities, and helping SMEs adapt to changing market conditions;

encourage participation in purpose-built mobile or web-based platforms, for entrepreneurs to share information and best practices to help SMEs link with international suppliers, buyers, and other potential business partners;

promote the participation in international trade of SMEs owned by underrepresented groups, such as women, youth, and

minority groups; and

support SMEs to participate in digital trade and e-commerce to take advantage of opportunities resulting from this Agreement.

Each Party shall establish or maintain its own free, publicly accessible website containing information regarding this Agreement, including:

the text of this Agreement;

a summary of this Agreement; and

information designed for SMEs that contains:

a description of the provisions in this Agreement that the Party considers to be relevant to SMEs; and

any additional information that would be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

Each Party shall include in its website, referred to in paragraph 1, links to:

the equivalent website of the other Party; and

to the extent feasible, the websites of its own government agencies and other relevant entities that provide information which the Party considers useful to any person interested in trading, investing, or doing business in that Party's territory.

Subject to each Party's laws and regulations, the information described in subparagraph 2(b) may include:

customs regulations, procedures, or enquiry points;

regulations or procedures concerning intellectual property rights;

technical regulations, standards, quality or conformity assessment procedures;

relevant sanitary or phytosanitary measures relating to importation or exportation;

foreign investment regulations;

business registration procedures;

trade promotion programmes;

competitiveness programmes;

SME investment and financing programmes;

taxation information, such as regulations and reporting procedures, or enquiry points etc.;

government procurement opportunities;

employment regulations; and

other information which the Party considers to be useful for SMEs.

Each Party shall regularly review the information and links on the website referred to in paragraphs 1 and 2 to ensure the information and links are up to date and accurate.

To the extent possible, each Party shall make the information referred to in paragraphs 1 through 3 available in English.

Each Party shall, within 60 days of the entry into force of this Agreement, designate an SME contact point to address matters related to this Chapter. Each Party shall notify the other Party promptly in the event of any change to its contact point.

The contact points shall meet as necessary and shall carry out their work through communication channels such as email, virtual meetings or other means.

Where appropriate and to the extent practicable, the contact points shall:

exchange information to assist in monitoring the implementation of this Agreement as it relates to SMEs;

exchange information including sharing best practices in supporting and assisting SMEs with respect to, among other things, capacity building, training and skill development;

promote seminars, workshops, webinars, mentorship sessions, or other activities to inform SMEs of the benefits available to them under this Agreement;

facilitate regular communication and coordination between the Parties; and

cooperate and coordinate, including with other appropriate agencies of their governments and any relevant committee or subsidiary body established under this Agreement, to develop and implement joint cooperation initiatives that enhance the ability of SMEs to benefit from opportunities arising under this Agreement.

The contact points may:

facilitate provision of recommendations, as necessary, to any relevant committee or the Joint Commission established under this Agreement;

facilitate the development of programmes to assist SMEs to participate and integrate effectively into the Parties' regional and global supply chains;

consider any other matter pertaining to SMEs, including any issues raised by SMEs regarding their ability to benefit from this Agreement; and

seek to cooperate with experts and relevant organisations, as appropriate, in carrying out their activities.

The Parties recognise the importance of cooperation and consultation, based on the principle of mutual respect, and shall endeavour to resolve any matter arising under this Chapter.

Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 16. TRANSPARENCY

Article 16.1. Definitions

For the purposes of this Chapter, "administrative ruling of general application" means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation, that establishes a norm of conduct, and is relevant to the implementation of this Agreement, but does not include:

a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

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

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, and made available in the public domain, including on an official website in such a manner as to enable interested persons and the other Party to become acquainted with them.

With a view to administering its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement in a consistent, impartial, objective, and reasonable manner, each Party shall ensure in its administrative proceedings applying such measures to a particular person, good, or service of the other Party in specific cases that:

wherever possible, persons of the other Party that are directly affected by an administrative proceeding are provided with reasonable notice, 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;

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

it follows its procedures in accordance with its domestic law.

Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals, or procedures, as applicable, for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings are provided with the right to:

reasonable opportunity to support or defend their respective positions; and

a decision based on the evidence and submissions of record.

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 office or authority with respect to the administrative action at issue.

Notification and Provision of Information

To the extent possible, each Party shall notify the other Party of any measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

On request of the other Party, a Party shall within a reasonable period of time provide information and respond to questions pertaining to any measure, whether or not that other Party has been previously notified of that measure.

Any notification, information, document or communication provided under this Article between the Parties shall be in the English language.

Any notification, information, document, or communication under this Article shall be conveyed to the other Party through its relevant contact point pursuant to Article 17.8 (Contact Points and Communications).

Any notification, information, document, or communication under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

Chapter 17. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Article 17.1. Establishment of the Joint Commission

The Parties hereby establish a Joint Commission, which shall be composed of government representatives of the Parties at the level of senior officials or, when agreed by the Parties, at the level of Ministers.

Functions of the Joint Commission

The Joint Commission shall:

assess, review and monitor the implementation and operation of this Agreement;

consider any matter relating to the implementation or operation of this Agreement;

consider ways to further trade and investment between the Parties, including improving market access;

consider any proposal to amend or modify this Agreement, and if appropriate, make recommendations to the Parties;

supervise and coordinate the work of committees, subsidiary bodies and working groups established under this Agreement;

conduct a general review, in accordance with Article 20.4 (General Review); and

consider any other matter that may affect the operation of this Agreement.

The Joint Commission may:

adopt decisions or make recommendations as envisaged by this Agreement;

seek to resolve differences or disputes that may arise under this Agreement without prejudice to the rights of the Parties under Chapter 19 (Dispute Settlement);

as appropriate, issue interpretations of this Agreement;1

establish, assign tasks to, delegate functions to, or consider matters raised by any committee, subsidiary body or working

group;

restructure, reorganise or dissolve any committee, subsidiary body or working group established under this Agreement;

unless otherwise provided in this Agreement, determine the functions of the committees, subsidiary bodies or working groups established under this Agreement;

consider and adopt, subject to the completion of any necessary legal procedures by each Party, modifications to the following parts of the Agreement:

Annex 2A (Schedules of Tariff Commitments);

Annex 3A (Product Specific Rules of Origin);

Annex 19A (Rules of Procedure for Dispute Settlement); and

Annex 19B (Code of Conduct for Dispute Settlement); and

carry out any other such functions as may be agreed by the Parties.

Meetings of the Joint Commission

The Joint Commission shall meet within one year of entry into force of this Agreement. Thereafter, it shall meet every two years, unless the Parties agree otherwise, to consider any matter relating to this Agreement.

Meetings conducted pursuant to paragraph 1 shall be held alternately in the territories of the Parties, unless the Parties agree otherwise. The Party hosting a session of the Joint Commission shall provide any necessary administrative support for such session.

Upon request by a Party, the Joint Commission and any committee, subsidiary body or working group established under this Agreement

1 Interpretations issued by the Joint Commission are binding for panels established under Chapter 19 (Dispute Settlement).

may, if agreed by the Parties, hold special sessions at a mutually convenient date without undue delay.

Each Party shall be responsible for the composition of its delegation.

The Joint Commission shall establish its own rules of procedure at its first meeting. The Joint Commission if necessary, may also establish its own financial arrangements.

Unless otherwise provided in this Agreement, the Joint Commission and any committee, subsidiary body or working group established under this Agreement shall carry out its work through whatever means as appropriate, which may include through electronic means.

The Joint Commission and any committee, subsidiary body or working group established under this Agreement, shall be co-chaired by representatives from both the Parties.

The following committees are hereby established:

Committee on Trade in Goods;

Committee on Rules of Origin;

Committee on Trade Facilitation;

Committee on Sanitary and Phytosanitary Measures;

Committee on Technical Barriers to Trade;

Committee on Trade in Services;

Committee on Trade and Sustainable Development;

Joint Agriculture Productivity Council;

Committee on Economic Cooperation and Technical Assistance; and

Committee on Biosecurity, Food and Primary Products.

A Committee on Investment Promotion and Cooperation is also hereby established.

The following subsidiary bodies are hereby established:

Working Group on Health-Related Services and Traditional Medicine Services;

Working Group on Professional Services;

Working Group on the Temporary Movement of Natural Persons; and

Working Group on Wine, Whisky and Other Distilled Spirits.

The committees and subsidiary bodies referred to in this Article shall meet once a year, or as otherwise agreed. The meetings shall take place in India or in New Zealand alternately or by any other appropriate means of communication, as agreed by the representatives of the Parties. The committees and subsidiary bodies shall agree on their meeting schedule and set their agenda.

The committees and subsidiary bodies shall comprise representatives of each Party and they shall be co-chaired, at an appropriate level, by representatives of each Party.

Committee on Biosecurity, Food and Primary Products

The Committee on Biosecurity, Food and Primary Products, established under Article 17.5 (Committees and Subsidiary Bodies), may, as agreed by the Parties, consider any technical measure that is not being addressed by another Committee under this Agreement, that falls under the jurisdiction of the respective competent authorities responsible for regulation of agricultural, food, forestry and fisheries products (“Food and Primary Products”). Such consideration shall be complementary to and not be a substitute for the functions of committees established under the specific chapters of this Agreement.

The Committee shall comprise representatives of those competent authorities of the Parties that have regulatory authority for the matters under consideration, and shall meet as mutually determined by the Parties in accordance with the agreed agenda. All decisions of the Committee shall be made by consensus. Meetings of the Committee may be in person, or by any other means as mutually determined by the Parties.

The purpose of the Committee is to:

facilitate appropriate coordination on the resolution of technical measures related to the implementation of Chapter 2 (Trade in Goods), Chapter 6 (Sanitary and Phytosanitary Measures),

and Chapter 7 (Technical Barriers to Trade), where such matters may affect the trade in Food and Primary Products;

provide a forum for technical measures referred to in subparagraph (a), for improved communication, cooperation, and consultation between the Parties to facilitate trade between the Parties, including addressing unjustified barriers to trade; and

promote mutual understanding of each Party's regulatory approaches and procedures relating to Biosecurity, Food and Primary Products.

In order to give effect to paragraph 3, the Committee may:

establish, monitor and review work plans; and

initiate, develop, adopt, review, and modify implementing arrangements in relation to such technical measures.

All decisions of the Joint Commission shall be made by mutual agreement of the Parties.

All decisions of the committees, subsidiary bodies or working groups established under this Agreement shall be made by mutual agreement of the Parties.

Contact Points and Communications

Each Party shall designate a contact point to receive and facilitate official communications between the Parties on any matter covered by this Agreement, except for matters for which this Agreement establishes a specific contact point.

Unless otherwise provided in this Agreement, each Party shall notify the other Party in writing of its designated contact

points no later than 60 days after the date of entry into force of this Agreement.

All official communications in relation to this Agreement shall be in the English language.

Each Party shall promptly notify the other Party, in writing, of any changes to its overall contact point or any other contact point.

Chapter 18. EXCEPTIONS AND GENERAL PROVISIONS

Article 18.1. General Exceptions

For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade) of this Agreement, Article XX of GATT 1994, including its interpretative notes, is incorporated into and made part of this Agreement, mutatis mutandis.

For the purposes of Chapter 8 (Trade in Services) and Chapter 9 (Investment Promotion and Cooperation), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, mutatis mutandis.

Nothing in this Agreement shall be construed to:

require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

relating to the production of or 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 out directly or indirectly for the purpose of supplying or provisioning a military establishment;

relating to fissionable or fusionable materials or the materials from which they are derived;

relating to the protection of critical public infrastructure, whether publicly or privately owned, including communications, power and water infrastructure; or

taken in time of national emergency, war or other emergency in international relations; or

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.

Direct Taxation Measures

For the purposes of this Agreement, "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation; and also include the taxes covered under the Convention between the Government of the Republic of India and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, done at Auckland on 17 October 1986, as amended by any Protocols thereto (“India-New Zealand DTAA”).

Nothing in this Agreement shall apply to any direct taxation measure.1

Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention2. In the event of any inconsistency between this Agreement and any tax convention, that convention shall prevail over this Agreement.

In the case of a tax convention between or including the Parties, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the relevant competent authorities of the Parties. The competent authorities shall jointly determine the existence and the extent of such inconsistency.

Nothing in this Agreement shall oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention.

1 For greater certainty, “direct taxation measure” neither includes any indirect taxation measure including customs duties as defined in Article 2.1 (Definitions) nor does it include the measures listed in subparagraphs (i), (ii) and (iii) of Article 2.1 (Definitions).

2 “tax convention” means the India-New Zealand DTAA, or any other international taxation agreement or arrangement

including any other convention for the avoidance of double taxation.

Measures to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may:

in the case of trade in goods, in accordance with GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994, including its interpretative notes, adopt restrictive import measures; and

in the case of trade in services, in accordance with Article XII of GATS, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. The Parties recognise that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions on trade in services to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party from the date such measures are taken.

To the extent that it does not duplicate the process under the WTO or the International Monetary Fund, the Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations with the other Party from the date of notification in order to review the measures adopted or maintained by it.

Tiriti o Waitangi / Treaty of Waitangi

Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by this Agreement, including in fulfilment of its obligations under te Tiriti o Waitangi / the Treaty of Waitangi.

The Parties agree that the interpretation of te Tiriti o Waitangi / the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 19 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 19.7 (Request for Establishment of a Panel) may be

requested by India to determine only whether any measure referred to in paragraph 1 is inconsistent with their rights under this Agreement.

Nothing in this Agreement shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers:

would be contrary to the public interest;

is contrary to any of its legislation including those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

would impede law enforcement; or

would prejudice legitimate commercial interests of particular enterprises, public or private.

Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information designated as confidential by the other Party pursuant to this Agreement.

Information designated as confidential shall be used only for the purposes specified by the Party providing the information.

Notwithstanding paragraph 1, the information designated as confidential and provided pursuant to this Agreement may be transmitted to a third party subject to prior consent of the Party providing the information.

Nothing in this Article shall prevent a Party from disclosing information where it is required to do so under its law, or to the extent that it may be necessary in the context of judicial or quasi-judicial proceedings. In such situations, the Party that has received the information shall notify the other Party of the release or disclosure.

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the laws, regulations and

policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.

Chapter 19. DISPUTE SETTLEMENT

Article 19.1. Definitions

For the purposes of this Chapter:

“Code of Conduct” means the code of conduct referred to in Article

19.11 (Rules of Procedure and Code of Conduct) and set out in Annex 19B (Code of Conduct for Dispute Settlement);

“complaining Party” means the Party requesting consultations under Article 19.5 (Consultations);

“compliance review panel” means a panel reconvened under Article

19.15 (Compliance Review);

“confidential information” means information which is designated as confidential by a Party;

“DSU” means the Understanding on Rules and Procedures Governing the Settlement of Disputes set out in Annex 2 of the WTO Agreement;

“panel” means a panel established under Article 19.7 (Request for Establishment of a Panel);

“reconvened panel” means a panel reconvened under Article 19.16 (Compensation and Suspension of Concessions or Other Obligations) or Article 19.17 (Review after the Suspension of Concessions or Other Obligations);

“responding Party” means the Party to which a request for consultations is made under Article 19.5 (Consultations); and

“Rules of Procedure” means the rules of procedure referred to in Article 19.11 (Rules of Procedure and Code of Conduct) and set out in Annex 19A (Rules of Procedure for Dispute Settlement).

The Parties shall endeavour to agree on the interpretation and application of this Agreement in accordance with customary rules of interpretation of public international law. The Parties shall make every attempt through cooperation

and consultations to arrive at a mutually agreed solution to any matter that might affect its operation.

Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or whenever a Party considers that:

a measure of the other Party is inconsistent with its obligations under this Agreement; or

the other Party has otherwise failed to carry out its obligations under this Agreement.

Unless the Parties agree otherwise, the timeframes and procedural rules set out in this Chapter shall apply to all disputes governed by this Chapter.

Findings, determinations or recommendations of a panel, a compliance review panel, or a reconvened panel cannot add to or diminish the rights, and obligations of the Parties under this Agreement.

The Parties agree that a panel appointed under this Chapter shall interpret and apply this Agreement in accordance with customary rules of interpretation of public international law.

The panel shall take into account any relevant findings in adopted GATT dispute settlement reports, and rulings and recommendations of the WTO Dispute Settlement Body.

If a dispute regarding any matter arises under this Agreement and another international agreement to which the Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute. The forum selected shall be used to the exclusion of other fora.1

For the purposes of this Article, the complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of a panel pursuant to paragraph 1 of

1 The exclusion of other fora includes the exclusion of consultations in those fora.

Article Article 19.7 (Request for Establishment of a Panel) or Requested the

Establishment of, or Referred a Matter to, a Dispute Settlement Panel Under Another International Agreement. Where Panel Procedures Are Not Provided for Under Another International Agreement, the Complaining Party Shall Be Deemed to Have Selected the Forum When It Commences a Dispute Under the Dispute Settlement Procedures In the Relevant International Agreement.

Either Party may request consultations with the other Party with respect to any matter described in Article 19.3 (Scope) by providing written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and any other issue of concern. Each Party shall accord adequate opportunity for consultations regarding the request for consultation made by the other Party.

If a request for consultations is made, the Party to which the request is made shall reply to the request within 10 days of receipt of the request and shall enter into consultations within a period no later than 30 days after the receipt of the request or, within 15 days of receipt of the request in the case of perishable goods, with a view to reaching a mutually agreed solution.

The Parties shall make every effort to reach a mutually agreed solution to any matter through consultations. To this end:

the Parties shall provide sufficient information as may be available at the stage of consultations to enable a full examination of the matter subject to consultations;

the Parties shall endeavour to ensure the participation of personnel of their competent governmental authorities or other regulatory bodies who have responsibility for or expertise in the matter subject to the consultations;

the Parties shall treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information; and

the consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

Good Offices, Conciliation or Mediation

The Parties may at any time agree to good offices, conciliation, or mediation. Such procedures may begin at any time and be terminated by either Party at any time.

Proceedings involving good offices, conciliation, or mediation and the particular positions taken by the Parties in these proceedings shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the dispute proceeds for resolution before a panel established under Article 19.7 (Request for Establishment of a Panel).

Request for Establishment of a Panel

The complaining Party may request the establishment of a panel to examine the matter, if:

the responding Party does not enter into consultations within 30 days of receipt of the request for consultations under Article

19.5 (Consultations) or within 15 days of such a request in the case of perishable goods; or

the Parties fail to resolve the matter within 60 days of receipt of the request for consultations or within 30 days of such a request in the case of perishable goods, or within such other period as the Parties mutually agree.

The request to establish a panel shall be made in writing and shall identify:

the specific measures at issue;

whether consultations have been held; and

a brief summary of the factual, and legal, basis of the complaint sufficient to present the problem clearly, including the relevant provisions of this Agreement at issue.

Once a request for the establishment of a panel is made in conformity with paragraph 2, a panel shall be established in accordance with Article 19.8 (Composition of Panels).

Unless the Parties agree otherwise, a panel shall consist of three members.

Within 30 days of the receipt of the written notification requesting the establishment of a panel, each Party shall appoint one panellist, who may be its national, and provide to the other Party a list of up to four nominees for appointment as the chair. The Parties shall agree on the chair from the nominees proposed by each Party.

Within 45 days of receipt of the request for the establishment of a panel, any panellist not yet appointed shall be appointed by the Parties, on request of either Party, by draw of lot from the list of the candidates proposed in accordance with paragraph 2. Where more than one panellist, including the chair is to be selected by draw of lot, the chair shall be selected first.

Where a Party fails to submit its list of up to four nominees within the period specified in paragraph 2, the chair shall be appointed by random draw of lot from the list of nominees already submitted by the other Party.

The date of establishment of the panel shall be the date on which the last panellist is appointed.

If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist and shall have all the powers and duties of the original panellist. In such a case, the work of the panel and any time period applicable to the panel proceedings shall be suspended for the period beginning the date the original panellist becomes unable to act and ending on the date the new panellist is appointed.

Where a panel is reconvened under paragraph 1 of Article 19.15 (Compliance Review), paragraph 6 of Article 19.16 (Compensation and Suspension of Concessions or Other Obligations), or paragraph 4 of Article 19.17 (Review after the Suspension of Concessions or Other Obligations) the reconvened panel shall, where possible, have the same panellists as in the original panel. If the panel cannot be reconvened with all of its original panellists, the procedures for selection of the panellists set out in paragraphs 2 through 5 shall apply for the appointment of any replacement panellist.

Any person appointed as a panellist pursuant to Article 19.8 (Composition of Panels) shall:

have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

be chosen strictly on the basis of impartiality, objectivity, reliability, sound judgement and independence;

not be employed by, affiliated with, or take instructions from either Party;

not have dealt with the matter in any capacity;

disclose to the Parties information which may give rise to justifiable doubts as to their independence or impartiality; and

comply with the Code of Conduct.

In addition to the requirements under paragraph 1, the chair shall neither be a national of either Party, nor have their usual place of residence in either Party. The chair shall also have experience in dispute settlement procedures.

An individual shall not serve as a panellist for a dispute in which that person has participated under Article 19.6 (Good Offices, Conciliation, or Mediation).

If a Party believes that a panellist is in violation of any of these requirements, the Parties shall consult and, if they agree, the panellist shall be replaced by a new panellist in accordance with the manner prescribed for the appointment of the original panellist. The new panellist shall have all the powers and duties of the original panellist.

Functions and Proceedings of Panels

Unless the Parties agree otherwise, a panel shall perform its functions and conduct its proceedings in a manner consistent with this Agreement, the Rules of Procedure, and the Code of Conduct.

A panel shall make an objective assessment of the matter before it, including an objective assessment of:

the facts of the case;

the applicability of the relevant provisions of this Agreement cited by the Parties;

whether:

the measure at issue is inconsistent with the obligations of this Agreement; or

a Party has otherwise failed to carry out its obligations under this Agreement; and

any other issue of concern that the Parties have jointly requested that the panel address.

Unless the Parties agree otherwise within 30 days of the date of receipt of the request for the establishment of the panel, or within 15 days of the date of receipt of the request for establishment in the case of perishable goods, the panel's terms of reference shall be:

"To examine, in light of the relevant provisions of this Agreement cited by the Parties, the matter referenced in the request for the establishment of the panel under paragraph 1 of Article 19.7 (Request for Establishment of a Panel), and to make and present in a written report, its findings of law and fact and, if jointly requested by the Parties, its recommendations."

Rules of Procedure and Code of Conduct

The Rules of Procedure shall ensure that:

there is at least one hearing before the panel at which each Party may present views orally;

hearings shall be open to the public, unless the Parties agree otherwise;

each Party has an opportunity to provide at least an initial submission;

the panel may at any time during the proceeding address questions in writing to a Party or the Parties;

subject to subparagraph (g), each Party may release to the public its own:

written submissions;

written versions of oral statements; or

responses to any requests or questions from the panel;

subject to consultations with the Parties, the panel may seek information or technical advice from an expert that it deems appropriate; and

confidential information is protected.

The panel, after consulting with the Parties, or on the joint request of the Parties may adopt additional Rules of Procedure not inconsistent with this Chapter or the Rules of Procedure.

The reports of the panel shall be drafted without the presence of the Parties. The panellists shall assume full responsibility for the drafting of the reports. Opinions expressed in the reports of the panel by individual panellists shall be anonymous. The reports shall include any separate or dissenting opinions on matters not unanimously agreed by the panel.

Initial Report

Unless the Parties agree otherwise, the panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information or technical advice it has obtained in accordance with the Rules of Procedure.

Unless the Parties agree otherwise, the panel shall, within 180 days of the date the panel is established, or in the case of perishable goods, endeavour to, within 120 days of the date the panel is established, present to the Parties an initial report containing:

a descriptive section summarising the submissions and arguments of the Parties;

its findings of fact;

its findings as to whether:

the measure at issue is inconsistent with obligations under this Agreement; or

a Party has otherwise failed to carry out its obligations under this Agreement.

any other issue of concern that the Parties have jointly requested that the panel address;

the reasons for the panel's findings; and

if jointly requested by the Parties, its recommendations, if any, on the means to resolve the dispute.

Each Party may submit written comments to the panel on its initial report within 20 days of presentation of the report unless otherwise agreed between the Parties.

If the panel receives written comments from the Parties pursuant to paragraph 4, the panel may reconsider and modify its report, including on the basis of any further examination it considers appropriate after taking into account those comments. The panel shall specify the reasons for any modifications to its report in its final report including a discussion of written comments.

If the panel considers that it cannot present its initial report within the time period specified in paragraph 3, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Any delay shall not exceed a further period of 30 days unless the Parties agree otherwise and in the case of perishable goods, the panel shall make every effort to not exceed 15 days.

Final Report

The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties agree otherwise.

Either Party may make the final report available to the public once it has been presented to the Parties, subject to the protection of confidential information

The final report of a panel shall be binding on the Parties and shall not be subject to appeal.

Where the final report of a panel contains a finding that the measure at issue of the responding Party is inconsistent with its obligations under this Agreement, or that it has otherwise failed to carry out its obligations under this Agreement, the responding Party has an obligation to bring the measure at issue into conformity with this Agreement.

Within 30 days of the presentation of the final report of the panel to the Parties, the responding Party shall notify the complaining Party:

of its intentions with respect to implementation, including an indication of actions it proposes to take to comply with paragraph 2;

whether such implementation can take place immediately; and

if such implementation is not practicable immediately, the reasonable period of time the responding Party would need to implement its proposed actions.

If the responding Party makes a notification that a reasonable period of time is required pursuant to subparagraph 3(c) of Article 19.13 (Implementation of Final Report), it shall, whenever possible, be mutually agreed by the Parties. Where the Parties are unable to agree on the reasonable period of time within 45 days of the presentation of the final report, either Party may request the chair of the panel to determine the reasonable period of time. Such request shall be made no later than 90 days after the presentation of the final report.

Where a request is made pursuant to paragraph 1, the chair of the panel shall present the Parties with a report containing a determination of the reasonable period of time and the reasons for such determination no later than 45 days after the request to the panel.

As a guideline, the reasonable period of time determined by the panel should not exceed 15 months from the date of the presentation of the report made pursuant to paragraph 2. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances. Further, the panel, in the determination of the reasonable period of time, may take into account relevant jurisprudence under Article 21.3(c) of the DSU.

Where there is disagreement as to whether the responding Party has complied with paragraph 2 of Article 19.13 (Implementation of Final Report), a Party may request that the panel reconvene to decide the matter.

A request pursuant to paragraph 1 may only be made after the earlier of either:

the expiry of the reasonable period of time determined in accordance with Article 19.14 (Reasonable Period of Time); or

a notification by the responding Party that it has complied with paragraph 2 of Article 19.13 (Implementation of Final Report).

Any request for the compliance review panel shall provide a brief summary of the factual, and legal, basis for the complaint, including the reason why the complaining Party considers that the responding Party has not complied with paragraph 2 of Article 19.13 (Implementation of Final Report).

When a request is made by the complaining Party in accordance with paragraphs 1 through 3, the compliance review panel shall be reconvened within 30 days of receipt of the request. The period for the compliance review panel proceedings, from the date of its reconvening until the date on which it presents its report to the Parties, shall not exceed 135 days, unless the Parties agree otherwise.

The compliance review panel shall make an objective assessment of the matter before it, including an objective assessment of:

the factual aspects of any implementation action taken by the responding Party to comply with paragraph 2 of Article 19.13 (Implementation of Final Report); and

whether the responding Party has complied with paragraph 2 of Article 19.13 (Implementation of Final Report),

The compliance report of the compliance review panel shall include:

a descriptive part summarising the submissions and arguments of the Parties;

its findings on the facts of the dispute arising under this Article;

its findings on whether the responding Party has complied with paragraph 2 of Article 19.13 (Implementation of Final Report); and

the reasons for such findings.

The compliance review panel shall, where possible, present an interim compliance report to the Parties within 90 days of the panel reconvening pursuant to paragraph 4, and thereafter its final report within 45 days of issuing the interim compliance report. In exceptional cases, if the compliance review panel considers that it cannot release its interim compliance report within this time period, it shall promptly inform the Parties in writing of the reasons for the delay together with an estimate of when it will present its report. The panel shall not exceed an additional period of 30 days and, in the case of perishable goods, shall make every effort to not exceed 15 days.

The compliance review panel shall accord adequate opportunity to the Parties to submit written comments on the interim compliance report. Such comments shall be submitted to the compliance review panel within 20 days of the presentation of the interim compliance report, unless the Parties agree otherwise. After considering any written

comments by the Parties on the interim compliance report, the panel may modify its report and make any further examination it considers appropriate. The panel shall include a discussion in its final compliance report of any comments made by the Parties on the interim compliance report.

Compensation and Suspension of Concessions or Other Obligations

The responding Party shall, if requested by the complaining Party, enter into negotiations with a view to agreeing on mutually acceptable compensation, where:

the responding Party has notified the complaining Party that it will not comply with paragraph 2 of Article 19.13 (Implementation of Final Report) within the reasonable period of time determined in accordance with Article 19.14 (Reasonable Period of Time);

the responding Party has failed to notify pursuant to paragraph 3 of Article 19.13 (Implementation of Final Report); or

the compliance panel finds, pursuant to Article 19.15 (Compliance Review), that the responding Party has failed to comply with the final report.

If:

no mutually satisfactory agreement on compensation is reached within 30 days of the date of the request to enter into negotiations in accordance with paragraph 1; or

the Parties have agreed on compensation but the complaining Party considers that the responding Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the responding Party specifying the level of concessions or other obligations that it intends to suspend equivalent to the level of nullification or impairment. The complaining Party shall have the right to begin suspending concessions or other obligations 30 days after receipt of the written notice.

In considering what benefits to suspend in accordance with paragraph 2:

a complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with this Agreement; and

a complaining Party may suspend concessions or other obligations in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector or sectors.

Any suspension of concessions or other obligations shall be restricted to concessions or other obligations accruing under this Agreement and shall not exceed the level of nullification or impairment.

Notwithstanding paragraph 2, the complaining Party shall not exercise the right to suspend concessions or other obligations under paragraph 2 where:

a review is undertaken in accordance with paragraph 6 or 7; or

a mutually agreed solution has been reached.

If the responding Party:

objects to the level of suspension proposed in the notification made in accordance with paragraph 2 on the basis that it exceeds the level of nullification or impairment;

considers that it has complied with the terms and conditions of any compensation agreed pursuant to paragraph 1; or

claims the complaining Party has failed to follow the principles set out in paragraph 3,

then, the responding Party may request, in writing, no later than 30 days after receipt of the notification referred to in paragraph 2, the panel to reconvene to make findings on the matter.

If a panel is requested to reconvene pursuant to paragraph 6, it shall reconvene within 30 days of receipt of the request. The reconvened panel shall present its findings and determinations to the Parties no later than 60 days after the receipt of the request. In exceptional cases, if the reconvened panel considers that it cannot present its determination within this time period it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will present its decision. The panel shall not exceed an additional period of 30 days and, in the case of perishable goods, shall make every effort to not exceed 15 days.

The panel's findings and determinations shall be provided in writing and shall include:

a descriptive part summarising the submissions and arguments of the Parties;

its findings and determinations on the dispute arising under this Article; and

the reasons for such findings and determinations.

Concessions or other obligations shall not be suspended until the reconvened panel has presented its findings and determinations. Any suspension of concessions or other obligations shall be consistent with the reconvened panel's decision.

Review after the Suspension of Concessions or Other Obligations

Compensation and the suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the responding Party has complied with paragraph 2 of Article 19.13 (Implementation of Final Report) or the Parties have reached a mutually agreed solution, whichever is earlier.

If the right to suspend benefits has been exercised pursuant to paragraph 2 of Article 19.16 (Compensation and Suspension of Concessions or Other Obligations), or mutually acceptable compensation has been agreed pursuant to paragraph 1 of Article 19.16 (Compensation and Suspension of Concessions or Other Obligations), and the responding Party considers that it has complied with paragraph 2 of Article 19.13 (Implementation of Final Report), the responding Party shall notify the complaining Party of the steps it has taken to comply.

Subject to paragraph 4, the complaining Party shall terminate the suspension of concessions or other obligations within 30 days of receipt of the notification in paragraph 2. In cases where compensation has been applied, and subject to paragraph 4, the responding Party may terminate the application of such compensation within 30 days of the complaining Party's receipt of the notification in paragraph 2.

If the Parties disagree on the existence or consistency with this Agreement of any steps notified in accordance with paragraph 2, no later than 30 days after the date of the complaining Party's receipt of the notification, a Party may request the panel in writing to reconvene to examine the matter.2

Paragraphs 5 through 8 of Article 19.15 (Compliance Review) shall apply if the panel reconvenes pursuant to paragraph 4.

If the reconvened panel decides that the steps notified in accordance with paragraph 2 achieve compliance with paragraph 2 of Article 19.13 (Implementation of Final Report), the suspension of benefits or the

2 Where a panel is reconvened pursuant to this paragraph, it may also, on request of a Party, assess whether the level of any existing suspension of concessions or other obligations by the complaining Party is still appropriate and, if not, assess an appropriate level.

application of the compensation, shall be terminated no later than 30 days after the date of the decision.

If the reconvened panel decides that the steps notified in accordance with paragraph 2 do not achieve compliance with paragraph 2 of Article 19.13 (Implementation of Final Report), the suspension of benefits, or the application of the compensation, may continue. Where relevant, the level of suspension of benefits or of the compensation, shall be adapted in light of the decision of the panel.

Suspension or Termination of Proceedings

The Parties may agree that the panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel shall be resumed upon the request of either Party. If the work of the panel has been suspended for more than 12 consecutive months, the authority for the establishment of the panel shall lapse unless the Parties agree otherwise.

The Parties may agree to terminate the proceedings before a panel at any time by jointly notifying the chair to this effect. Before the panel presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The proceedings may be terminated at any time before the presentation of the panel's initial report under Article 19.12 (Reports of the Panel) if the complaining Party withdraws its complaint.

The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 19.3 (Scope).

If a mutually agreed solution is reached during panel proceedings, the Parties shall jointly notify the agreed solution to the panel. Upon such notification, the proceedings of the panel shall terminate.

Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.

All proceedings and all documents submitted to the panel shall be in the English language.

Any time periods provided for in this Chapter may be modified by mutual agreement of the Parties.

Unless agreed otherwise, each Party shall bear the costs of its appointed panellist and its own expenses and legal costs.

Unless the Parties agree otherwise, the costs of the chair of the panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.

Each Party shall designate a contact point for this Chapter and shall notify the other Party of the contact details of that contact point within 30 days of entry into force of this Agreement. Each Party shall promptly notify the other Party of any change to those contact details.

Any request, notification, written submission, or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

Neither Party shall provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement or that the other Party has otherwise failed to carry out its obligation under this Agreement.

Chapter 20. FINAL PROVISIONS

Article 20.1. Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement. Where a side letter to this Agreement explicitly provides that it is an integral part of this Agreement, it shall constitute an integral part of this Agreement.

Article 20.2. Amendments

The Parties may agree, in writing, to amend this Agreement. Such amendments shall enter into force 60 days after the date on which the Parties exchange written notifications confirming that they have completed their respective internal legal procedures necessary for entry into force of the amendments, or on such other date as the Parties agree.

Article 20.3. Relation to other International Agreements

1. Each Party affirms its rights and obligations with respect to each other under existing international agreements to which the Parties are party, including the WTO Agreement.

2. In the event of any inconsistency between this Agreement and any other agreement to which the Parties are party, the Parties shall, on request of a Party, consult with a view to reaching a mutually satisfactory solution.

3. If any international agreement, or a provision therein, that has been referred to in this Agreement or incorporated into this Agreement is amended after entry into force of this Agreement, the Parties shall, at the request of either Party, consult on whether to amend this Agreement.

Article 20.4. General Review

1. The Parties, through the Joint Commission, shall undertake a general review of this Agreement at senior officials' level within one year of the date of entry into force of this Agreement and thereafter every two years, or at such times as may be agreed by the Parties.

2. Any review pursuant to paragraph 1 shall take into account:

(a) facilitating trade and investment through further liberalisation of market access for goods and services;

(b) that balanced outcomes flow from the implementation and overall operation of this Agreement;

(c) that the disciplines contained in this Agreement remain relevant to the trade issues and challenges confronting the Parties;

(d) the work of relevant committees, subsidiary bodies or working groups established under this Agreement, including reviews under relevant Chapters;

(e) relevant developments in international fora; and

(f) any other matters as may be agreed by the Parties.

Article 20.5. Termination

A Party may terminate this Agreement by giving the other Party notice in writing. Such termination shall take effect six months after the date of the notification, or on such other date as the Parties may agree.

Article 20.6. Entry Into Force

This Agreement shall enter into force 30 days after the date on which the Parties exchange written notifications confirming that they have completed their internal legal procedures necessary for entry into force of this Agreement, or on such other date as the Parties may agree.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in two originals at New Delhi on this twenty-seventh day of April 2026.

ANNEX 19A. RULES OF PROCEDURE FOR DISPUTE SETTLEMENT

Section A: Definitions and General Provisions

Rule 1 Definitions

For the purposes of this Annex:

“adviser” means a person retained by a disputing Party to advise or assist the disputing Party in connection with the panel proceeding;

“assistant” means a person who is retained by a panellist pursuant to Rule 7 (Operation of the Panel) to conduct research or provide support to the panellist;

“Code of Conduct” means the Code of Conduct for Panellists established pursuant to Article 19.11 (Rules of Procedure and Code of Conduct) in Annex 19B (Code of Conduct for Dispute Settlement);

“panellist” means a member of a panel established under Article 19.8 (Composition of Panels);

“proceeding”, unless otherwise specified, means the proceeding of a panel under Chapter 19 (Dispute Settlement); and

“representative” means an employee of a government department or agency or of any other government entity of a Party, or any person appointed or retained by a government department or agency, or any other government entity of a Party, who represents, advises, or assists that Party for the purposes of a dispute under this Chapter.

Unless the Parties agree otherwise, these Rules of Procedure shall apply to proceedings of a panel established under Chapter 19 (Dispute Settlement).

In the event of an inconsistency between these Rules of Procedure and Chapter 19 (Dispute Settlement), the provisions of that Chapter shall prevail to the extent of the inconsistency.

Except as provided otherwise, any reference made in these Rules of Procedure to an Article is a reference to the appropriate Article in Chapter 19 (Dispute Settlement) of the Agreement.

Rule 3 Notifications

Any request, notice, written submission, or other document in a proceeding transmitted by:

the panel shall be sent to both Parties at the same time;

a Party to the panel shall be copied to the other Party at the same time; and

a Party to the other Party shall be copied to the panel at the same time, where appropriate.

The notification to a Party of any document under Chapter 19 (Dispute Settlement), these Rules of Procedure, or the Code of Conduct shall be addressed to that Party’s contact point designated pursuant to Article 19.23 (Contact Point).

The Parties or panel shall deliver any request, notice, written submission, or other document by email or, where appropriate, other electronic means (where possible in a searchable format) that provides a record of the sending thereof. Unless proven otherwise, any request, notice, written submission, or other document shall be deemed to be received on the date of its sending. The date of sending shall be determined according to the time zone in the capital city of the sending Party.

If it is not possible to deliver a document or any part thereof, including an exhibit or exhibits, in electronic form, the Party submitting the document shall inform the panel and the other Party of its inability to do so. That Party shall also deliver, by the most expeditious means practicable, a copy of the document or any part thereof, including an exhibit or exhibits, to each of the panellists and to the other Party.

If the last day for delivery of a document falls on a non-business day of a Party or on any other day on which the offices of the Government of a Party are closed, the document may be delivered on the next business day.

Minor errors of a clerical nature in any request, notice, written submission, or other document related to the proceeding

may be corrected by delivering a new document clearly indicating the changes. Any such correction shall not affect the timetable for the proceeding. Any disagreement regarding whether or not the correction is of a clerical nature shall be resolved by the panel after consulting the Parties.

If a panellist is to be selected by lot pursuant to Article 19.8 (Composition of Panels), the complaining Party shall promptly notify the responding Party in writing of the date, time, and venue of the selection by lot. The selection by lot shall take place no earlier than 7 days after the date of delivery of the notification. The responding Party shall have a reasonable opportunity to be present when the lot is drawn.

The Parties shall notify, in writing, each individual who has been selected to serve as a panellist pursuant to Article 19.8 (Composition of Panels) of their selection. Each individual shall confirm their availability to both Parties no later than 5 days after the date of delivery of the notification.

If an individual who has been selected to serve as a panellist does not confirm their availability within the time period provided for in paragraph 2, or notifies that they are unavailable, a new individual shall be selected. To that end, the procedure provided for in Article 19.8 (Composition of Panels) shall be repeated, starting with the selection method that led to the selection of the unavailable individual.

The panellists shall accept their appointment by signing the appointment contracts and returning a signed copy to the Parties. The Parties shall endeavour to ensure that, at the latest by the time all the selected panellists have confirmed their availability, they have agreed on the remuneration and the reimbursement of expenses of the panellists and assistants, and have prepared the necessary appointment contracts, with a view to having them signed promptly.

Unless the Parties agree otherwise, the Parties shall meet with the panel within 7 days of the date of establishment of the panel in order:

for the Parties to agree the remuneration and expenses to be paid to the panellists and their assistants, in accordance with Rule 16 (Remuneration and Expenses);

for the panel to consult the Parties on the timetable for the proceedings including precise dates for the filing of submissions and the date of the oral hearing; and

to discuss any other matter that the Parties or the panel deem appropriate.

The meeting referred to in paragraph 1 may be conducted by any means as agreed by the Parties including telephone, video conference or other electronic means of communication.

After consulting the Parties pursuant to Rule 5 (Organisational Meeting), a panel shall, as soon as practicable and whenever possible within 15 days of the date of establishment of the panel, fix the timetable for the panel process. The timetable shall provide sufficient time for the Parties to prepare their respective submissions and shall set precise deadlines for written submissions by the Parties.

If the panel considers there is a need to modify or adjust the timetable, the panel shall consult the Parties in writing of the proposed modification and the reason for it. The Panel may modify the timetable for the proceeding or make any adjustments as may be required.

The chair of the panel shall preside at all of its meetings. The panel may delegate to the chair the authority to make administrative and procedural decisions.

Panel deliberations shall be confidential. Only panellists may take part in the deliberations of the panel, but the panel may permit assistants or designated note-takers to be present during such deliberations.

The panel shall, where possible, take its decisions by consensus. If a panel is unable to reach consensus, it may take its decisions by majority vote.

Except as otherwise provided in this Annex, the panel may conduct its business by any means, including by email, telephone, facsimile

transmission, videoconference, or any other means of electronic communication.

The reports of the panel shall be drafted and presented in accordance with Article 19.12 (Reports of the Panel). The panellists shall not delegate their responsibility for the drafting of the reports as provided for in paragraph 1 of Article 19.12 (Reports of the Panel).

If a procedural question arises that is not covered by Chapter 19 (Dispute Settlement) or its Annexes, the panel, after

consulting the Parties, or on the joint request of the Parties, shall adopt an appropriate rule of procedure that is not inconsistent with the Agreement or these Rules of Procedure.

Subject to Rule 6 (Timetable), the complaining Party shall deliver its first written submission to the panel no later than 14 days after the date of establishment of the panel. The responding Party shall deliver its first written submission to the panel no later than 30 days after the date of delivery of the complaining Party's first written submission. Copies shall be provided for each panellist.

The complaining Party shall deliver a rebuttal submission no later than 15 days after the date of delivery of the first written submission of the responding Party. In that case, the responding Party may submit its response no later than 15 days after the date of delivery of the rebuttal submission of the complaining Party.

No later 12 days after the last day of the hearing, each Party may deliver to the panel a supplementary written submission responding to any matter that arose during the hearing, if requested by the panel. Each Party may provide written comments on the other Party's supplementary written submission no later than 10 days after receipt of the other Party's supplementary written submission.

The timetable established pursuant to Rule 6 (Timetable) shall provide for at least one hearing for the Parties to present their case to the panel. Based on the timetable determined pursuant to Rule 6 (Timetable), the chair of the panel shall fix the time of the hearing. The chair shall notify in writing to the Parties the time and location of the hearing. The panel shall seek to hold the hearing at least 14 days after the date of delivery of the written rebuttal submissions.

Unless the Parties agree otherwise, the hearing shall be held in the capital of the responding Party.

On request of a Party, or on its own initiative, a panel may convene additional hearings if the Parties so agree. Any additional hearings shall alternate between the capital cities of the Parties.

Unless the Parties agree otherwise, the Party in whose capital city the hearing is held shall be responsible for the logistical arrangements for the hearing, in particular the organisation of the venue.

All presentations and statements made at hearings shall be made in the presence of the Parties to the dispute.

All panellists shall be present during the entirety of each hearing. If a replacement panellist has been appointed after a hearing has occurred but before the panel's report is published, the panel may hold a new hearing if a Party requests, or if the panel considers a new hearing to be appropriate.

The following persons may also be present at hearings:

representatives of the Parties;

administrative personnel, translators, and designated note-takers of the panel; and

panellists' assistants.

Any such arrangements established by the panel may be modified with the agreement of the Parties.

Unless the Parties agree otherwise, all hearings of the panel shall be open for the public to observe,1 except that the panel shall close the hearing for any discussion of confidential information.2 Attendance in the hearing room shall be limited to the persons referred to in paragraphs 6 and 7.

The Parties to the dispute shall make available to the panel written versions of their oral statements before the panel no later than 7 days after the last day of the relevant hearing. For greater certainty, this does not include responses to any questions asked orally during the hearing.

No later than five days before the date of a hearing, each Party shall deliver to the panel and to the other Party a list of names of the persons

1 For greater certainty, the expression "open for the public to observe" does not include physical presence at the hearing. To facilitate public observation of a hearing, that hearing may be transmitted electronically to the public at the time of the hearing at a different venue or at a later date or time, or through any other procedure as both Parties consider appropriate.

2 For greater certainty, hearings held in closed session shall be confidential.

who shall make oral arguments or presentations in the hearing on behalf of that Party, and of other representatives and advisers who shall be attending the hearing.

The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the responding Party are afforded equal time to present their case.

As a general rule, the panel shall conduct the hearing in the following manner:

Argument

argument of the complaining Party;

argument of the responding Party;

Rebuttal Argument

the reply of the complaining Party;

the counter-reply of the responding Party;

Closing Argument

closing statement of the complaining Party; and

closing statement of the responding Party.

The panel may direct questions to a Party at any time during the hearing.

The panel may decide, after consulting the Parties, to hold a virtual or hybrid hearing and make appropriate arrangements, taking into account the rights of due process.

The panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the panel may consider those comments and, if required, address any inaccuracies in the transcript.

Written Questions from the Panel

The panel may direct questions in writing to either Party at any time during the proceedings. The Parties shall respond promptly and fully in writing to any request by the panel for such information. Any question directed by the panel to one Party shall be copied to the other Party.

Each Party shall also provide a copy of its response to such questions to the other Party at the same time as it is delivered to the panel. Each Party shall be given a reasonable opportunity to provide written comments on the response of the other Party.

No Ex Parte Communications

The panel shall not meet or contact a Party in the absence of the other Party.

Neither Party shall meet or contact any panellists in relation to the dispute in the absence of the other Party. Any contact between a Party and a person who is under consideration for selection as a panellist shall be limited to issues relating to that person’s availability and the appointment contract.

No panellist shall discuss any aspect of the subject matter of the proceeding with a Party in the absence of the other Party or the other panellists.

On request of a Party, or on its own initiative, the panel may, subject to consultations with the Parties, seek information or technical advice from any individual or body that it deems appropriate. If the Parties agree that the panel should not seek information or technical advice, the panel shall resume without the information or technical advice.

Any information or technical advice received by the panel pursuant to paragraph 1 shall be provided to the Parties for comment. Where the panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

Each Party shall treat as confidential any information submitted by the other Party which that Party has designated as confidential.

If a Party designates information as confidential, it shall on the request of the other Party, provide the panel and the other Party with a non-

confidential summary of that information no later than 10 days after the date of request.

Public Release of Documents

Subject to the protection of confidential information, each Party may release a copy of the request for consultations and the request for establishment of a panel to the public. The timetable for hearings may be released to the public if both Parties agree.

Subject to the protection of confidential information, a Party may disclose statements of its own positions to the public, including releasing to the public its own written submissions, written versions of oral statements, and written responses to requests or questions from the panel.3

Rule 15 Replacement of Panellists

If a Party considers that a panellist has violated the requirement to comply with the Code of Conduct, that Party shall notify the other Party no later than 5 days after the date on which it obtained sufficient evidence of the panellist's alleged failure to comply with the Code of Conduct.

The Parties shall consult no later 15 days after the date of the notification referred to in paragraph 1. They shall inform the panellist of the alleged non-compliance and may request the panellist to take steps to remedy it. If the Parties agree, the Parties may remove the panellist and select a new panellist in accordance with Article 19.8 (Composition of Panels).

Any period of time applicable to the panel proceedings shall be suspended for a period beginning on the date a panellist resigns, is removed, or is authorised to seek to remedy the non-compliance, and ending on the date a replacement panellist is appointed or the non-compliance has ceased after amelioration.

3 A Party releasing such written submissions, written versions of oral statements, and written responses to requests or questions from the panel, shall pay due regard to withhold information contained in them that pertains specifically to the other Party's position.

If the Parties fail to agree on the need to replace a panellist other than the chair of the panel, either Party may refer this matter to the chair of the panel, whose decision shall be final.

If the chair of the panel finds that the panellist does not comply with the requirements of Code of Conduct, the panellist shall be removed and a new panellist shall be selected in accordance with Article 19.8 (Composition of Panels).

If the Parties fail to agree on the need to replace the chair, they will consult with each other and determine a mutually agreeable pathway to resolve the matter.

Unless the Parties agree otherwise, the costs of the panellists and other expenses associated with the conduct of the panel proceedings shall be borne by each Party in accordance with Article 19.22 (Expenses).

Each panellist shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the proceeding, as well as the time and expenses of their assistants. The panel shall keep a record and render a final account to the Parties of its administrative expenses.

Unless the Parties agree otherwise, remuneration for panellists shall be paid based on the rate for non-governmental panellists used by the World Trade Organization on the date a Party makes a written request for the establishment of a panel under Article 19.7 (Request for Establishment of a Panel).

Unless the Parties agree otherwise, expenses shall be paid at the Daily Subsistence Allowance rate for the location of the hearing established by the United Nations International Civil Service Commission on the date a Party makes a written request for the establishment of a panel under Article 19.7 (Request for Establishment of a Panel).

Each panellist may hire one assistant to provide research, translation, or interpretation support, unless a panellist requires an additional assistant and the disputing Parties agree that, due to exceptional circumstances, the panellist should be permitted to hire an additional assistant. Unless the Parties agree otherwise, the total remuneration of an assistant or all assistants of a panellist shall not exceed 50% of the remuneration of that panellist.

If the panel seeks information or technical advice pursuant to Rule 12 (Technical Advice), the amount and details of the remuneration and expenses an expert is to receive shall be determined by the Parties and

shall be borne by the Parties in equal share. Experts shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the proceeding.

In case of resignation or removal of a panellist, assistant, expert, or if the Parties reach a mutually agreed solution, the Parties will make payment of the remuneration and expenses owed, using resources provided equally by the Parties, on submission of a final account, following the procedures in paragraphs 2 and 6, as applicable.

A Party may at any time in the proceedings make reasonable request to the panel to furnish a statement of its costs to date in the proceedings and to provide an estimate of the additional work that is required.

ANNEX 19B. CODE OF CONDUCT FOR DISPUTE SETTLEMENT

Rule 1 Definitions and Scope

For the purposes of this Annex:

“ADR provider” means a provider of alternative dispute resolution (“ADR”) services, namely a provider of good offices, a conciliator, or a mediator who provides their services pursuant to Article 19.6 (Good Offices, Conciliation, or Mediation);

“assistant” means a person who is retained by a panellist pursuant to Rule 7 (Operation of the Panel) in Annex 19A (Rules of Procedure for Dispute Settlement) to conduct research or provide support to the panellist;

“candidate” means an individual who is under consideration for selection as a panellist under Article 19.8 (Composition of Panels);

“covered person” means a person serving as a panellist, a former panellist, an ADR provider, an expert, a panellist’s assistant, or staff involved in a proceeding;

“expert” means an individual or body providing information or technical advice in accordance with subparagraph (1)(f) of Article 19.11 (Rules of Procedure and Code of Conduct);

“family member” means the spouse, parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece, or nephew of a panellist or candidate, including whole and half blood relatives and step relatives; or the spouse of such an individual. A family member also includes any resident of a panellist’s or candidate’s household whom the panellist or candidate treats as a member of their family;

“panellist” means a member of a panel established under Article 19.8 (Composition of Panels);

“proceeding”, unless otherwise specified, means the proceeding of a panel under Chapter 19 (Dispute Settlement); and

“staff”, in respect of a panellist, means persons under the direction and control of the panellist, other than assistants.

This Code of Conduct shall apply to any person serving as a panellist in a proceeding. This Code of Conduct shall also apply, as appropriate, to other covered persons.

Provision of Code of Conduct

The Parties shall provide this Code of Conduct and the Initial Disclosure Statement to a candidate prior to confirmation of their appointment to serve as a panellist under Article 19.8 (Composition of Panels).

The Panel shall provide this Code of Conduct and the Initial Disclosure Statement to an expert when they are requested to provide information or technical advice under subparagraph (1)(f) of Article 19.11 (Rules of Procedure and Code of Conduct).

The Parties shall provide this Code of Conduct and the Initial Disclosure Statement to an ADR provider when they are requested to provide their services under Article 19.6 (Good Offices, Conciliation, or Mediation).

A panellist shall provide this Code of Conduct and the Initial Disclosure Statement to their assistants and staff.

In order to preserve the integrity and impartiality of the dispute settlement procedures, every candidate and panellist shall:

get acquainted with this Code of Conduct;

avoid impropriety and the appearance of impropriety or bias;

be independent and impartial;

avoid direct and indirect conflicts of interest;

maintain the confidentiality of proceedings and deliberations; and

observe high standards of conduct.

Prior to confirmation of their appointment as a panellist under this Agreement, a candidate shall disclose any interest, relationship, or

matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to identify any such interests, relationships, and matters.

Without limiting paragraph 1, candidates shall disclose, at a minimum, the following interests, relationships, and matters:

any financial interest of the candidate in:

the proceeding or in its outcome; and

an administrative proceeding, a domestic judicial or quasi-judicial proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

any financial interest of the candidate's employer, business partner, business associate, or family member in:

the proceeding or in its outcome; and

an administrative proceeding, a domestic judicial or quasi-judicial proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

any past or existing financial, business, professional, family, or social relationship with any interested parties in the proceeding, or their counsel or any such relationship involving a candidate's employer, business partner, business associate, or family member; and

any public advocacy or legal or other representation (including publications or public statements of personal opinion) concerning an issue in dispute in the proceeding or concerning a dispute involving the same matters that are the subject of the dispute in the proceeding.

Prior to confirmation of their appointment, a candidate shall communicate matters concerning actual or potential violations of this Code of Conduct for consideration by the Parties by submitting the Initial Disclosure Statement to the Parties no later than 7 days after they have been contacted to serve as a panellist.

Once appointed, a panellist shall continue to make all reasonable efforts to identify any interests, relationships, and matters referred to in Rule 3 (Responsibilities to the Process) and shall disclose them promptly, in writing, to the Parties. The obligation to disclose is a continuing duty, which requires a panellist to disclose any such

the communication is to both Parties or is necessary to ascertain whether that panellist has violated or may violate this Annex.

A panellist or former panellist shall avoid actions that may create the appearance that the panellist was biased in carrying out the panellist’s duties or would benefit from the decision or report of the panel.

A panellist shall ensure that they can be contacted, at all reasonable times, for the purpose of conducting the work of the panel.

Independence and Impartiality of Panellists

A panellist shall be independent and impartial. A panellist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

A panellist shall not be influenced by self-interest, outside pressure, political considerations, and loyalty to a Party or fear of criticism.

A panellist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the panellist’s duties.

A panellist shall not use their position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence the panellist. A panellist shall make every effort to prevent or discourage others from representing themselves as being in such a position.

A panellist shall not allow past or existing financial, business, professional, family or social relationships, affiliations, or

responsibilities to influence the panellist's conduct or judgment.

A panellist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panellist's impartiality or that might reasonably create an appearance of impropriety or bias.

A panellist shall not take instructions from any organisation or government or be affiliated to a government, including governmental organisation, of either Party.

Duties in Certain Situations

A panellist or former panellist shall avoid actions that may create the appearance that the panellist was biased in carrying out the panellist's duties or would benefit from the decision or report of the panel.

In any proceeding under Chapter 19 (Dispute Settlement), a panellist shall refrain, for the duration of the proceeding, from acting as counsel or party-appointed expert witness in any new or pending dispute, under the Agreement or another international agreement, that directly addresses the same measure in dispute in, or arises out of the facts giving rise to, the proceeding under Chapter 19 (Dispute Settlement).

A covered person shall not at any time disclose or use any confidential or non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others, or to affect adversely the interest of others. A covered person shall not make any public statement regarding the merits of a pending panel proceeding.

A covered person shall not disclose a panel report, or parts thereof, issued under Chapter 19 (Dispute Settlement) prior to its publication or a panel report, or parts thereof, not disclosed to the public.

A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view, except as required by law.

APPENDIX 19B-1. INITIAL DISCLOSURE STATEMENT

1. I have received a copy of the Code of Conduct for dispute settlement under Chapter 19 (Dispute Settlement) of the Free Trade Agreement between India and New Zealand ("the Agreement").

2. I acknowledge having read and understood the Code of Conduct and hereby undertake to fully comply with my obligations under the Code of Conduct.

3. I understand that I have a continuing obligation, while participating in the proceeding, to disclose interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process. As a part of this continuing obligation, I am making the following initial disclosures:

(a) my financial interest in the proceeding for which I am under consideration or in its outcome is as follows:

(b) my financial interest in any administrative proceeding, a domestic judicial or quasi-judicial proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding is as follows:

(c) the financial interest that any employer, business partner, business associate, or family member of mine may have in the proceeding or in its outcome are as follows:

(d) the financial interest that any employer, business partner, business associate, or family member of mine may have in any administrative proceeding, a domestic judicial or quasi-judicial proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding are as follows:

(e) my past or current financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, are as follows:

(f) the past or current financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, involving any employer, business partner, business associate, or family member of mine are as follows:

(g) my public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same matters is as follows:

(h) my other interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process and that are not disclosed in subparagraphs (a) to (g) above are as follows:

Signed on this _____day of _____, 20_____ .

By:

Signature _____

Name _____