# FREE TRADE AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND NEW ZEALAND

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## PREAMBLE

The United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") and New Zealand, hereinafter each individually referred to as a "Party" or collectively as the "Parties",

**CONSCIOUS** of their longstanding and strong partnership based on common principles and values, and of their important economic, trade, and investment relationship;

**RESOLVING** to strengthen their economic relations, further liberalise and expand bilateral trade and investment;

**SEEKING** to establish clear and mutually advantageous rules governing their trade and investment, to promote a predictable business environment and open and fair competition, and eliminate barriers between them;

**RECOGNISING** the unique relationship that exists between Māori and the United Kingdom, noting that representatives of the British Crown and Māori were the original signatories to Te Tiriti o Waitangi/The Treaty of Waitangi whilst acknowledging that the New Zealand Crown has now succeeded the British Crown and assumed all rights and obligations under that Treaty;

**ACKNOWLEDGING** that Te Tiriti o Waitangi/The Treaty of Waitangi is a foundational document of constitutional importance to New Zealand;

**DETERMINED** to build on their rights and obligations under the WTO Agreement and other international agreements relating to matters covered by this Agreement to which both Parties are party;

**RESOLVING** to promote transparency, good governance, and the rule of law, and prevent and combat bribery and corruption in international trade and investment;

**RECOGNISING** the Parties' respective autonomy and right to regulate within their territories in order to achieve legitimate public policy objectives such as the protection and promotion of public health, public morals, animal welfare, labour standards, safety, the environment including climate change, and in the case of New Zealand meeting its Te Tiriti o Waitangi/The Treaty of Waitangi obligations;

**RECOGNISING** the importance of mutually supportive trade and environmental policies and of taking urgent action to protect the environment, reaffirming each Party's commitments under multilateral environment agreements including the *United Nations Framework Convention on Climate Change* (UNFCCC) and the *Paris Agreement*;

**SEEKING** to increase women's access to and ability to fully benefit from the opportunities created by this Agreement and to support the conditions for women to participate equitably in global, regional, and domestic economies;

**RECOGNISING** the value of Māori leadership and economy, and the challenges that exist for Māori in accessing international trade and economic opportunities, including in digital trade;

**RECOGNISING** that small and medium-sized enterprises contribute significantly to economic growth but often face barriers to trading internationally and require support to participate in and benefit from the opportunities created by this Agreement;

**AFFIRMING** the importance of coherent and mutually supportive trade and labour policies, including the promotion of adherence to internationally recognised labour rights, and of full and productive employment and decent work for all;

**SEEKING** to emphasise the importance of sustainable development in promoting inclusive economic growth;

**RECOGNISING** the importance of promoting consumer protection to enhance consumer trust and participation in trade, including online, as well as encouraging cooperation between relevant authorities;

**NOTING** the importance of facilitating new opportunities, addressing unjustified barriers, promoting trust and certainty for businesses and consumers in digital trade, including by cooperating on digital innovation and emerging technologies to ensure this can be achieved;

**RECOGNISING** the importance of ensuring certainty for service suppliers, including by enabling the temporary entry of business persons to supply services in each of the Parties' territories; and

**SEEKING** to ensure emerging and future trade and investment challenges and opportunities are addressed, and the Parties' priorities are further advanced over time,

**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 this Agreement.

## Article 1.2
## Relation to Other Agreements

1. Each Party affirms its existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.

2. Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and other agreements to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

3. For as long as the Protocol on Ireland/Northern Ireland to the *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, signed in London and Brussels on 24 January 2020 ("Protocol") is in force,[1] nothing in this Agreement shall preclude the United Kingdom from adopting or maintaining measures, or refraining from doing so, further to the Protocol, and amendments thereto and subsequent agreements replacing parts thereof, provided that such measures, or the absence of such measures, are not used as a means of arbitrary or unjustified discrimination against the other Party or as a disguised restriction on trade.

4. On request of either Party, the Parties shall hold consultations, in relation to the effects of a measure described in paragraph 3 the United Kingdom has adopted, or absence thereof,[2] on this Agreement and seek a mutually acceptable solution.[3]

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[1] The Parties note in particular that arrangements for democratic consent specified at Article 18 of the Protocol may result in Articles 5 to 10, and other provisions of the Protocol dependent on the same Articles for their application, ceasing to apply to the United Kingdom in accordance with the arrangements specified at Article 18.

[2] For greater certainty, this refers to a measure described in paragraph 3 which is adopted after entry into force of this Agreement or the absence of such measure.

[3] This paragraph is without prejudice to Article 29.5 (Provision of Information – Transparency).

## Article 1.3
## General Definitions

For the purposes of this Agreement, unless otherwise provided in this Agreement:

**"AD Agreement"** means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement;

**"Agreement"** means the *Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand*;

**"central level of government"** means:

(a) for New Zealand, the national level of government;

(b) for the United Kingdom, her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland;

**"covered investment"** means, with respect to a Party, an investment in its territory of an investor of the other Party, made in accordance with the applicable law at the time the investment is made,[4] in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

**"customs authority"** means:

(a) with respect to New Zealand, the New Zealand Customs Service or its successor;

(b) with respect to the United Kingdom, Her Majesty's Revenue and Customs or its successor or, where relevant, any other authority responsible for customs matters within its territory. For greater certainty, with respect to the provisions of this Agreement which apply to the Bailiwick of Guernsey, the Bailiwick of Jersey, or the Isle of Man, "customs authority" shall also mean:

(i) with respect to the Bailiwick of Jersey, the Jersey Customs & Immigration Service or its successor;

(ii) with respect to the Bailiwick of Guernsey, Guernsey Customs & Excise or its successor; and

(iii) with respect to the Isle of Man, the Customs and Excise Division of the Isle of Man Treasury or its successor;

[4] For greater certainty, minor or technical breaches of law shall not deprive investors and covered investments of treaty protection.

**"customs duty"** includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any form of surtax or surcharge imposed in connection with such importation, but does not include any:

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

(b) antidumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the AD Agreement, and the SCM Agreement; or

(c) fee or other charge in connection with the importation commensurate with the cost of services rendered;

**"Customs Valuation Agreement"** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement;

**"days"** means calendar days, including weekends and holidays;

**"enterprise"** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation;

**"existing"** means in effect on the date of entry into force of this Agreement;

**"GATS"** means the *General Agreement on Trade in Services* in Annex 1B to the WTO Agreement;

**"GATT 1994"** means the *General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement. For greater certainty, references in this Agreement to articles in GATT 1994 include the interpretative notes;

**"good"** means any merchandise, product, article, or material;

**"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;

**"government procurement"** means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

**"Harmonized System"** or **"HS"** means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes, and Subheading Notes;

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

**"Joint Committee"** means the New Zealand – United Kingdom Joint Committee established under Article 30.1 (Establishment of the Joint Committee – Institutional Provisions);

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

**"national"** means:

(a) for New Zealand, a citizen of New Zealand under its laws or a natural person who has the right of permanent residence in New Zealand;

(b) for the United Kingdom, a British Citizen in accordance with its applicable laws and regulations, or a permanent resident;

**"OECD"** means the Organisation for Economic Co-operation and Development;

**"originating good"** or **"originating material"** means a good that qualifies as originating under the rules of origin in Chapter 3 (Rules of Origin and Origin Procedures);

**"person"** means a natural person or an enterprise;

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

**"recovered material"** means a material comprising one or more individual parts that results from:

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

(b) the cleaning, testing, or other processing of those individual parts as necessary for improvement to sound working condition;

**"regional level of government"** means:

(a) for New Zealand: the term regional level of government is not applicable;

(b) for the United Kingdom:

(i) England, Northern Ireland, Scotland, or Wales; or

(ii) Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland in respect of England,

Northern Ireland, Scotland, or Wales, but not the United Kingdom as a whole;

**"remanufactured goods"** means a good that:

(a) is entirely or partially comprised of recovered materials;

(b) has similar life expectancy and performance compared to the equivalent good when new; and

(c) has a warranty similar to that applicable to such a good when new;

**"Safeguards Agreement"** means the *Agreement on Safeguards* in Annex 1A to the WTO Agreement;

**"sanitary or phytosanitary measure"** means any measure referred to in paragraph 1 of Annex A to the *Sanitary and Phytosanitary Agreement* in Annex 1A to the WTO Agreement;

**"Sanitary Agreement"** means the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand on Sanitary Measures Applicable to Trade in Live Animals and Animal Products* done at London on 21 January 2019;

**"SCM Agreement"** means the *Agreement on Subsidies and Countervailing Measures* in Annex 1A to the WTO Agreement;

**"SME"** means a small and medium-sized enterprise, including a micro-sized enterprise;

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

**"subheading"** means the first six digits in the tariff classification number under the Harmonized System;

**"territory"** means:

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

(b) in respect of the United Kingdom:

(i) the territory of the United Kingdom of Great Britain and Northern Ireland including its territorial sea and airspace;

(ii) all the areas beyond the territorial sea of the United Kingdom, including the seabed and subsoil of those areas, over which the United Kingdom may exercise sovereign rights or jurisdiction in accordance with international law;

(iii) the Bailiwick of Guernsey, the Bailiwick of Jersey, and the Isle of Man (including their airspace and the territorial sea adjacent to them), territories for whose international relations the United Kingdom is responsible, as regards the following provisions in their entirety, unless otherwise provided in this Agreement:

(A) Chapter 2 (National Treatment and Market Access for Goods), including Annex 2A (Schedule of Tariff Commitments for Goods);

(B) Chapter 3 (Rules of Origin and Origin Procedures);

(C) Chapter 4 (Customs Procedures and Trade Facilitation);

(D) Chapter 5 (Sanitary and Phytosanitary Measures); and

(E) Chapter 6 (Animal Welfare); and

(iv) any territory for whose international relations the United Kingdom is responsible and to which this Agreement is extended or further extended in accordance with Article 33.6 (Territorial Extension – Final Provisions);

**"TRIPS Agreement"** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights* in Annex 1C to the WTO Agreement;[5]

**"WTO"** means the World Trade Organization; and

**"WTO Agreement"** means the *Marrakesh Agreement Establishing the World Trade Organization* done at Marrakesh on 15 April 1994.

[5] For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO members in accordance with the WTO Agreement.

# CHAPTER 2

# NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

## Article 2.1
## Definitions

For the purposes of this Chapter:

**"advertising films and recordings"** means recorded visual media or audio materials, consisting essentially of images or sound, showing the nature or operation of goods or services offered for sale or lease by a person of a Party, provided that those materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

**"commercial samples of negligible value"** means commercial samples 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;

**"consular transactions"** means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a non-party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration, or any other customs documentation in connection with the importation of the good;

**"customs duty"** includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any form of surtax or surcharge imposed in connection with such importation, but does not include any:

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

(b) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the AD Agreement, and the SCM Agreement; or

(c) fee or other charge in connection with the importation commensurate with the cost of services rendered;

**"duty-free"** means free of customs duty;

**"export licensing procedures"** means administrative procedures, 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

exporting Party as a prior condition for exportation from the territory of the exporting Party;

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

**"goods temporarily admitted for sports purposes"** means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory those goods are admitted;

**"Import Licensing Agreement"** means the *Agreement on Import Licensing Procedures* in Annex 1A to the WTO Agreement;

**"import licensing procedures"** 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;

**"performance requirement"** means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting an import licence be substituted for imported goods;

(c) a person benefiting from a requirement for an import licence purchase other goods or services in the territory of the Party that grants the import licence or accord a preference to domestically produced goods;

(d) a person benefiting from a requirement for an import licence produce goods or supply services in the territory of the Party that grants the import licence, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows,

but does not include a requirement that an imported good be:

(f) subsequently exported;

(g) used as a material in the production of another good that is subsequently exported;

(h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(i) substituted by an identical or similar good that is subsequently exported; and

**"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 between the Parties.

**Article 2.3**
**National Treatment**

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

**Article 2.4**
**Classification of Goods**

For the purposes of this Agreement, the classification of goods in trade between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonized System.

**Article 2.5**
**Elimination of Customs Duties**

1. Unless otherwise provided in this Agreement, neither Party shall increase any existing customs duty on any good above the applicable rate for such good as set out in Annex 2A (Schedule of Tariff Commitments for Goods), or adopt any new customs duty on an originating good of the other Party. For greater certainty, the applicable rate refers to the base rate under this Agreement and the applicable tariff reductions to a level below the base rate in subsequent years of the Agreement being in force, as set out in Annex 2A (Schedule of Tariff Commitments for Goods).

2. Unless otherwise provided in this Agreement, each Party shall eliminate customs duties on originating goods of the other Party in accordance with the tariff elimination Schedules and the staging categories in Annex 2A (Schedule of Tariff Commitments for Goods).

3. For each good, the base rate of customs duty to which successive reductions under paragraph 1 are to be applied shall be specified in Annex 2A (Schedule of Tariff Commitments for Goods).

4. Where and for so long as a Party's applied most-favoured-nation customs duty is lower than the rate calculated pursuant to paragraph 1, the customs duty rate to be applied pursuant to this Agreement to originating goods of the other Party shall be calculated as equal to the importing Party's applied most-favoured-nation customs duty.

**Article 2.6**
**Accelerated Tariff Elimination**

1. At the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in their Tariff Schedules in Annex 2A (Schedule of Tariff Commitments for Goods).

2. An agreement by the Parties following consultation under paragraph 1 to accelerate the elimination of customs duties on originating goods shall supersede any duty rate determined pursuant to their Schedules for such goods, and shall enter into force on such date or dates as may be agreed between them after the Parties have exchanged written notifications advising that they have completed the necessary internal legal procedures to give effect to that agreement.

3. A Party may, at any time, unilaterally accelerate the elimination of customs duties on originating goods of the other Party set out in its Tariff Schedule in Annex 2A (Schedule of Tariff Commitments for Goods). A Party shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

4. For greater certainty, a Party may raise a customs duty to the level for a specific year as set out in Annex 2A (Schedule of Tariff Commitments for Goods) following a unilateral reduction as set out in paragraph 3.

**Article 2.7**
**Goods Re-Entered After Repair or Alteration**

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from

its territory to the territory of the other Party for repair or alteration, regardless of whether the repair or alteration:

(a) could be performed in the territory of the Party from which the good was exported for repair or alteration; or

(b) has increased the value of the good.

2. Paragraph 1 does not apply to:

(a) a good that has not entered into free circulation[1] in a Party prior to being exported for repair or alteration; or

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

3. Neither Party shall apply a customs duty to a good, regardless of origin, imported temporarily from the customs territory of the other Party for repair or alteration.

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

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

(b) transforms an unfinished good into a finished good; or

(c) substantially changes the technical performance or function of a good.

## Article 2.8
## Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value and printed advertising material imported from the territory of the other Party, regardless of their origin, but may require that:

(a) commercial samples of negligible value be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-party; or

[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.

(b) printed advertising material be imported in packets that each contain no more than one copy of the material and that neither that material nor those packets form part of a larger consignment.

**Article 2.9**
**Temporary Admission of Goods**

1. Each Party shall grant temporary admission with total conditional relief from import duties, in its laws and regulations, for the following goods, regardless of their origin:

(a) goods intended for display or use including their component parts, ancillary apparatus, and accessories at exhibitions, fairs, meetings, demonstrations, or similar events;

(b) professional equipment, including equipment for the press or for sound or television broadcasting, software, cinematographic equipment, and any ancillary apparatus or accessories for the equipment mentioned above that is necessary for carrying out the business activity, trade, or profession of a person visiting the territory of the Party to perform a specified task;

(c) containers,[2] commercial samples, advertising films, and recordings;

(d) goods imported for sports purposes;

(e) goods imported for humanitarian purposes, that being medical, surgical and laboratory equipment, and relief consignments, such as vehicles and other means of transport, blankets, tents, or other goods of prime necessity, forwarded as aid to those affected by natural disaster and similar catastrophes; and

(f) animals imported for specific purposes (dressage, training, breeding, shoeing or weighing, veterinary treatment, testing (for example, with a view to purchase), participation in shows, exhibitions, contests, competitions or demonstrations, entertainment (circus animals, etc.), touring (including pet animals of travellers), exercise of function (police dogs or horses, detector dogs, dogs for the blind, etc.), rescue operations, performance of work or transport, and medical purposes (delivery of snake poison, etc.)).

2. Each Party shall, at the request of the person concerned and for reasons its customs administration considers valid, extend the time limit for duty-free temporary admission beyond the period initially fixed.

[2] As defined in Annex B.3, Chapter 1, Article 1, paragraph (c) of the *Convention on Temporary Admission* done at Istanbul on 26 June 1990.

3. Neither Party shall condition the duty-free temporary admission of goods referred to in paragraph 1, other than to require that those goods:

(a) are intended for re-exportation without having undergone any change except normal depreciation due to the use made of them;

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

(c) are not sold or leased while in its territory;

(d) are accompanied by a security, if requested by the importing Party, in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the goods;

(e) be exported on or before the departure of the person referenced in subparagraph (b), or within such other period reasonably related to the purpose of the temporary admission as the Party may establish, or within the maximum timeframe set by a Party for temporary admission of a good, unless extended;

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

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

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

5. Each Party, through its customs administration, shall adopt procedures providing for the expeditious release of goods admitted under this Article.

6. Each Party shall permit goods temporarily admitted under this Article to be re-exported through a customs authorised point of departure other than through which they were admitted.

7. Each Party shall provide that the importer or other person responsible for goods admitted in accordance with this Article shall not be liable for failure to export the goods within the period fixed for temporary admission, including any lawful extension, on presentation of satisfactory proof to the importing Party that the goods were totally destroyed.

## Article 2.10
## Import and Export Restrictions

1. 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, including its interpretative notes. To this end, Article XI of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*. For greater certainty, the scope of this Article shall include trade in remanufactured goods.

2. Neither Party shall adopt or maintain:

   (a) export and import price requirements, except as permitted in enforcement of countervailing and anti-dumping duty orders and undertakings;

   (b) import licensing conditioned on the fulfilment of a performance requirement; or

   (c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

## Article 2.11
## Remanufactured Goods

1. Unless otherwise provided for in this Agreement, neither Party shall accord to a remanufactured good of the other Party a treatment that is less favourable than that it accords to a like good in new condition, provided such remanufactured good enjoys a similar warranty to a like good in new condition. Each Party may require that a remanufactured good is identified as such for distribution or sale.

2. If a Party adopts or maintains import and export prohibitions or restrictions on used goods on the basis that they are used goods, it shall not apply those measures to remanufactured goods.

## Article 2.12
## Import Licensing Procedures

1. Each Party shall ensure that its automatic and non-automatic import licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the Import Licensing Agreement.

2. Each Party shall notify the other Party of any new import licensing procedures and any modification to its import licensing procedures. A Party shall do so 60 days before the new procedure or modification takes effect, whenever practicable. In no case shall a Party provide the notification later than 60 days after the date of its publication.

3. 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 to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement, including the information specified in Article 5.2 of the Import Licensing Agreement.

4. 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 paragraph (a) of Article 1.4 of the Import Licensing Agreement. To the extent possible, the Party shall do so at least 21 days before the new procedure or modification takes effect.

5. At the request of a Party, the other Party shall promptly provide any relevant information, including the information specified in Article 5.2 of the Import Licensing Agreement, with regard to any import licensing procedures that it has adopted or maintains, or changes to existing licensing procedures.

6. Each Party shall respond within 60 days to enquiries from the other Party or traders regarding the criteria employed by its respective licensing authorities in granting or denying import licenses.

## Article 2.13
## Export Licensing Procedures

1. Each Party shall consider the application of other appropriate measures to achieve an administrative purpose when seeking to adopt or review an export licensing procedure.

2. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure. Whenever practicable that publication shall take place 45 days before the procedure or modification takes effect.

3. Within 30 days of the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. Each Party shall notify to the other Party any new export licensing procedures and any modifications to existing export licensing procedures, within 60 days of its publication. These notifications shall include references to the source or sources where the information required in accordance with paragraph 4 is published.

4. Each Party shall ensure that it includes in the publications it has notified under paragraph 2:

(a) the texts of its export licensing procedures, including any modifications it makes to those procedures;

(b) the goods subject to each export licensing procedure;

(c) for each export licensing procedure, a description of:

(i) the process for applying for a licence; and

(ii) any criteria an applicant must meet to be eligible to apply for a licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export licence;

(e) the administrative body or bodies to which an application for a licence or other relevant documentation must be submitted;

(f) a description of or a citation to a publication reproducing in full any measure or measures that the export licensing procedure is designed to implement;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use an export licensing procedure to administer an export quota, the overall quantity and, if practicable, value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions that replace the requirement to obtain an export licence, how to request or use those exemptions or exceptions, and the criteria for granting them.

5. For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from adopting, maintaining, or implementing a domestic export control regime and sanctions regime, or from implementing its obligations or commitments under United Nations Security Council Resolutions, as well as multilateral non-proliferation and export control agreements and arrangements, including but not limited to the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies* done at Wassenaar on 12 July 1996; the Australia Group; the Nuclear Suppliers Group; the Missile Technology Control

Regime; the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction* done at Paris on 13 January 1993; the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction* done at Washington, London, and Moscow on 10 April 1972; and the *Treaty on the Non-Proliferation of Nuclear Weapons* done at London, Moscow, and Washington on 1 July 1968.

**Article 2.14**
**Administrative Fees and Formalities**

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes, that fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and anti-dumping and countervailing duties) 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 on imports or exports for fiscal purposes.

2. Each Party shall promptly make publicly available online 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 reason for the fees and charges, the responsible authority, and when and how payment is to be made, has been published.

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

4. Neither Party shall levy fees and charges on or in connection with importation or exportation on an *ad valorem* basis.

**Article 2.15**
**Export Duties, Taxes, and Other Charges**

Neither Party shall adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless the duty, tax, or other charge is adopted or maintained on that good destined for domestic consumption. For greater certainty, this Article shall not apply to any duty, tax, or other charge on the exportation of goods imposed in accordance with Article 2.14 (Administrative Fees and Formalities).

## Article 2.16
## Data Sharing on Preference Utilisation

1. For the purpose of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually exchange import data of trade between the Parties for a 15 year-long period starting in the year following the date of entry into force of this Agreement. Unless the Trade in Goods Sub-Committee agrees otherwise, this period shall be automatically extended for five years and thereafter the Trade in Goods Sub-Committee may decide to extend it further.

2. The exchange of import data of trade between the Parties shall cover data pertaining to the most recent calendar year available (including for a partial calendar year after the date of entry into force of this Agreement), including value and, where possible, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and for those that receive non-preferential treatment, including under suspension regimes used by the Parties upon importation, in order to allow for an assessment of preference utilisation under this Agreement.

## Article 2.17
## Trade in Goods Sub-Committee

1. The Trade in Goods Sub-Committee established under Article 30.9 (Sub-Committees – Institutional Provisions) is composed of government representatives of each Party.

2. The Trade in Goods Sub-Committee shall meet at the request of either Party or at the request of the Joint Committee and in any event within one year of the date of entry into force of this Agreement. The Trade in Goods Sub-Committee shall be co-chaired by representatives of each Party and hosted alternatively. Meetings may occur in person or by any other means as mutually determined by the Parties.

3. The Trade in Goods Sub-Committee may consider any matter arising under this Chapter, Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 7 (Technical Barriers to Trade), or Chapter 8 (Trade Remedies).

4. The Trade in Goods Sub-Committee's functions shall include:

   (a) promoting trade in goods between the Parties, including through consultation on accelerating tariff elimination under this Agreement and other issues as appropriate;

   (b) reviewing and monitoring the implementation of this Chapter, Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4

(Customs Procedures and Trade Facilitation), Chapter 7 (Technical Barriers to Trade), and Chapter 8 (Trade Remedies);

(c) promptly addressing tariff and non-tariff barriers to trade in goods between the Parties, including those relating to Chapter 7 (Technical Barriers to Trade);

(d) reviewing the future amendments to the Harmonized System to ensure that the obligations of the Parties are not altered, including by establishing, as needed, guidelines for the transposition of Parties' Schedules to Annex 2A (Schedule of Tariff Commitments for Goods) and consulting to resolve any conflicts between:

(i) amendments to the Harmonized System and Annex 2A (Schedule of Tariff Commitments for Goods); or

(ii) Annex 2A (Schedule of Tariff Commitments for Goods) and national nomenclatures;

(e) consulting on and endeavouring to resolve any differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System and Annex 2A (Schedule of Tariff Commitments for Goods);

(f) monitoring preference utilisation rates and statistics, the data of which may be presented for an exchange of views by the Trade in Goods Sub-Committee to the Joint Committee;

(g) working with any Sub-Committee or other subsidiary body established under this Agreement on those issues that may be relevant to that body, as appropriate;

(h) where appropriate, referring matters considered by the Trade in Goods Sub-Committee to the Joint Committee;

(i) consideration of issues discussed and referred from the Rules of Origin and Customs and Trade Facilitation Working Group and the Wine and Distilled Spirits Working Group; and

(j) undertaking any other work that the Joint Committee may assign to it.

5. All decisions and reports of the Trade in Goods Sub-Committee shall be made by mutual agreement.

6. The Trade in Goods Sub-Committee shall report to the Joint Committee with respect to its activities.

## Article 2.18
## Consultations

1. Where a Party considers that a non-tariff measure on the importation of goods of the other Party or on the exportation of any good destined for the territory of the other Party adversely affects trade in goods between the Parties, that Party may request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure. The other Party shall respond promptly to such requests for information and consultations.

2. Where a non-tariff measure of the type described in paragraph 1 is covered by another Chapter which provides for a consultation mechanism with the other Party, that consultation mechanism shall be used, unless otherwise agreed between the Parties. For the avoidance of doubt, paragraph 4 of Article 5.17 (Technical Consultations – Sanitary and Phytosanitary Measures) shall not apply with respect to this Article.

3. Within 30 days of receipt of a request under paragraph 1, the responding Party shall provide a written reply to the requesting Party.

4. Unless the Parties mutually determine otherwise, within 30 days of the requesting Party's receipt of the reply, the Parties shall enter into consultations with a view to reaching a mutually satisfactory solution.

5. If the requesting Party considers that the subject of the request under paragraph 1 is urgent or involves perishable goods, the responding Party shall give prompt and reasonable consideration to any request to hold consultations within a shorter timeframe than that provided for under paragraph 4.

6. Any consultations undertaken pursuant to this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 31 (Dispute Settlement) or under the *Understanding on Rules and Procedures Governing the Settlement of Disputes* in Annex 2 to the WTO Agreement.

# CHAPTER 3

# RULES OF ORIGIN AND ORIGIN PROCEDURES

## Section A
## Definitions and General Provisions

### Article 3.1
### Definitions

For the purposes of this Chapter:

**"aquaculture"** means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates, and aquatic plants, from seed stock, including seed stock imported from non-parties, such as eggs, fry, fingerlings and larvae, parr, smolts, or other immature fish at a post-larval stage, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

**"exporter"** means a person who exports an originating good;

**"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;

**"good"** means any merchandise, product, article, or material;

**"material"** means a good used in the production of another good, including a part or ingredient;

**"non-originating good"** or **"non-originating material"** means a good or material that does not qualify as originating in accordance with this Chapter;

**"origin declaration"** means a statement as to the origin of the goods made by the exporter or producer of the goods in accordance with Article 3.19 (Origin Declaration);

**"originating good"** or **"originating material"** means a good or material that qualifies as originating in accordance with this Chapter;

**"producer"** means a person who engages in the production of a good in the territory of a Party;

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

**"value of the good"** means the price paid or payable to the producer of the good at the place where the last production was carried out, and must include the value of all materials used in production. If there is no price paid or payable, or if the price paid or payable does not include the value of all materials, the value of the good:

(a) must include the value of all materials and the cost of production employed in producing the good, calculated in accordance with accounting principles which are generally accepted in the Party of the producer, and may also include amounts for general expenses and profit to the producer that can be reasonably allocated to the good; or

(b) must be determined in accordance with the Customs Valuation Agreement.

Any internal taxes which are, or may be, repaid when the good obtained is exported are excluded. If the value of the good includes costs incurred subsequent to the good leaving the place of production, such as freight, insurance, packing, and all other costs incurred to transport the good, those costs are to be excluded.

## Article 3.2
## Origin Criteria

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating if it is:

(a) wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article 3.3 (Wholly Obtained Goods);

(b) produced entirely in the territory of one or both of the Parties, exclusively from originating materials; or

(c) produced entirely in the territory of one or both of the Parties using non-originating materials, provided the good satisfies all applicable requirements of Annex 3A (Product Specific Rules of Origin),

in each case, provided the good satisfies all other applicable requirements of this Chapter.

## Article 3.3
## Wholly Obtained Goods

Each Party shall provide that for the purposes of Article 3.2 (Origin Criteria) the following goods shall be considered as wholly obtained or produced entirely in one or both of the Parties if they are:

(a) minerals, mineral products, and other non-living natural resources, not included in subparagraphs (a) to (e), extracted or taken from there;

(b) plants, plant goods, or fungi grown, cultivated, harvested, picked, or gathered there;

(c) live animals born and raised there;

(d) goods obtained from live animals there;

(e) an animal obtained by hunting, trapping, fishing, gathering, or capturing there, but not beyond the outer limits of the Parties' territorial sea;

(f) goods obtained from aquaculture there;

(g) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil, in accordance with international law, outside the territorial sea of the Parties and 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, and any good produced from these goods on a factory ship that is registered, listed, or recorded with a Party and entitled to fly the flag of that Party;

(h) minerals, mineral products, and other non-living natural resources, taken or extracted from the seabed, subsoil, or ocean floor of the Parties' exclusive economic zone or continental shelf, provided that that Party or person of the Party has rights to exploit that seabed, subsoil, or ocean floor;

(i) a good that is:

  (i) waste or scrap derived from production there; or

  (ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and

(j) a good produced there, exclusively from goods referred to in subparagraphs (a) to (i), or from their derivatives.

## Article 3.4
## Regional Value Content

Where Annex 3A (Product Specific Rules of Origin) specifies a regional value content test to determine whether a good is originating, each Party shall provide that the regional value content shall be calculated using one of the following methods:

Build-Down Method: based on the value of non-originating materials

$$RVC = \frac{value\ of\ the\ good - VNM}{value\ of\ the\ good} \times 100$$

Build-Up Method: based on the value of originating materials

$$RVC = \frac{VOM}{value\ of\ the\ good} \times 100$$

in each case where:

**"RVC"** is the regional value content of a good, expressed as a percentage;

**"VOM"** is the value of originating materials used in the production of the good in the territory of one or both of the Parties, as determined in accordance with Articles 3.5 (Materials Used in Production) to Article 3.7 (Further Adjustments to the Value of Materials); and

**"VNM"** is the value of non-originating materials including materials of undetermined origin, used in the production of the good in the territory of one or both of the Parties, as determined in accordance with Articles 3.5 (Materials Used in Production) to Article 3.7 (Further Adjustments to the Value of Materials).

## Article 3.5
## Materials Used in Production

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

2. Each Party shall provide that if non-originating material is used in the production of a good, the following may be counted as originating content for the purposes of determining whether the resulting good meets a regional value content requirement:

   (a) the value of processing of the non-originating material undertaken in

the territory of one or both of the Parties by one or more producers; and

(b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or both of the Parties by one or more producers.

**Article 3.6**
**Value of Materials Used in Production**

For the purposes of this Chapter, the value of a material is:

(a) for a material imported by the producer of the good, the price actually paid or payable for the material at the time of import or other value determined in accordance with the Customs Valuation Agreement, including the costs incurred in the international shipment of the good;

(b) for a material acquired in the territory where the good is produced:

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

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

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

(c) for a material that is self-produced:

(i) all the costs incurred in the production of the material, which includes general expenses; and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

**Article 3.7**
**Further Adjustments to the Value of Materials**

1. Each Party shall provide that for an originating material, the following expenses may be added to the value of the material, if not included under Article 3.6 (Value of Materials Used in Production):

(a) the costs of freight, insurance, packing, and all other costs incurred to transport the material to the location of the producer of the good;

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

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

2. Each Party shall provide that, for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer of the good;

(b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, which include credit against duty or tax paid or payable; and

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

3. For the purposes of this Article, if a cost, expense, or value is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost, expense, or value.

## Article 3.8
## Cumulation

1. Each Party shall provide that a good is originating if the good is produced in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements of Article 3.2 (Origin Criteria) and all other applicable requirements in this Chapter.

2. Each Party shall provide that an originating good or material of one Party is considered originating in the territory of the other Party when used as a material in the production of a good in the territory of the other Party.

3. Each Party shall provide that production undertaken on a non-originating material in the territory of one or both Parties by one or more producers may contribute toward the originating content of a good for the purpose of

determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

4. If each Party has a free trade agreement with the same non-party, the Rules of Origin and Customs and Trade Facilitation Working Group shall meet to consider possible amendments and modifications to this Chapter, including any conditions, for the purpose of applying cumulation with that non-party.

5. Subject to paragraph 6, the cumulation provided for in paragraph 2 may be applied to an originating good or material of an eligible developing country and the cumulation provided for in paragraph 3 may be applied to production undertaken on a non-originating material in the territory of an eligible developing country.

6. Paragraph 5 shall be of no effect until the Parties, through the Rules of Origin and Customs and Trade Facilitation Working Group, determine the list of countries and territories to be considered eligible developing countries for the purposes of this Article as well as the list of goods and materials to which paragraph 5 applies, together with any applicable conditions. The Parties may, through the Working Group, update the list of eligible developing countries, goods, materials, and applicable conditions, from time to time.

## Article 3.9
## Tolerance

Each Party shall provide that a good containing non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 3A (Product Specific Rules of Origin) for the good, the good is nonetheless an originating good if:

(a) the value of those non-originating materials does not exceed 15 per cent of the value of the good;

(b) in the case of goods classified under Chapters 1 to 24 and 50 to 63 of the Harmonized System, the total weight of all those materials does not exceed 15 per cent of the net weight of the good, net weight meaning the weight of the material or good not including the weight of any packaging; or

(c) in each case, the good meets all other applicable requirements of this Chapter, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement.

## Article 3.10
## Non-Alteration

1. An originating good shall retain its originating status if the good has been transported to the importing Party without passing through the territory of a non-party.

2. An originating good transported through the territory of one or more non-parties shall retain its originating status provided that the good:

   (a) does not undergo further production or any other operation outside the territories of the Parties, other than unloading, reloading, separation from a bulk shipment or splitting of a consignment, storing, repacking, labelling, bottling or marking required by the importing Party, or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party; and

   (b) is not released to free circulation in the territory of any non-party.

## Article 3.11
## Treatment of Indirect Materials

1. Each Party shall provide that an indirect material is considered to be originating without regard to where it is produced.

2. Indirect material 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:

   (a) fuel, energy, catalysts, and solvents;

   (b) equipment, devices, and supplies used to test or inspect the good;

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

   (d) tools, dies, and moulds;

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

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

   (g) any other 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.

## Article 3.12
## Accessories, Spare Parts, Information Materials, and Tools

1. Each Party shall provide that for the purpose of determining origin of a good, accessories, spare parts, information material, and tools are classified with, delivered with but not invoiced separately from a good shall be:

   (a) disregarded in determining whether a good is wholly obtained or satisfies a process or change in tariff classification requirement set out in Annex 3A (Product Specific Rules of Origin) for the good; and

   (b) taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good,

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

2. Each Party shall provide that accessories, spare parts, information material, and tools described in paragraph 1 may be deemed to have the same originating status as the good with which they are delivered.

## Article 3.13
## Sets of Goods

1. Each Party shall provide that, if goods are classified as a set, in accordance with the General Rules for the Interpretation of the Harmonized System, the set is originating only if:

   (a) each good in the set is originating; or

   (b) the set contains a non-originating component good; and

      (i) at least one of the component goods of the set is originating; and

      (ii) the value of all of the set's non originating component goods does not exceed 20 per cent of the value of the set.

2. For the purposes of paragraph 1, the value of the set shall be calculated in the same manner as the value of the good and the value of the set's non-originating component goods shall be calculated in the same manner as the value of non-originating materials.

## Article 3.14
## Treatment of Packaging Materials and Packing Materials

1. Each Party shall provide that for the purpose of determining whether a good is originating, packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be:

   (a) disregarded in determining whether a good is wholly obtained or produced, or satisfies a process or change in tariff classification requirement set out in Annex 3A (Product Specific Rules of Origin) for the good; and

   (b) taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

2. Each Party shall provide that packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

3. Packing materials and containers for shipment means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale.

## Article 3.15
## Recovered Materials and Remanufactured Goods

For the purposes of this Chapter:

(a) a recovered material which is recovered in the territory of one or more of the Parties shall be treated as originating when it is used in the production of, and incorporated into, a remanufactured good in a Party;

(b) a remanufactured good shall only be treated as originating if it meets the relevant rule of origin for an equivalent good when new; and

(c) a recovered material not incorporated into a remanufactured good in one of the Parties shall be treated as originating only if it meets the relevant rule of origin for an equivalent good when new.

## Article 3.16
## Fungible Goods and Materials

1. Fungible goods or materials means goods and materials of the same kind and commercial quality, possessing the same technical and physical characteristics and are interchangeable for commercial purposes.

2. Each Party shall provide that a fungible good or material is treated as originating based on the:

   (a) physical segregation of each fungible good or material; or

   (b) use of any inventory management method recognised in the Generally Accepted Accounting Principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year.

3. The inventory management system must ensure that no more goods receive originating status than would have been the case if the fungible goods or materials had been physically segregated.

## Article 3.17
## Rules of Origin and Customs and Trade Facilitation Working Group

1. For the purposes of the effective implementation and operation of this Chapter and Chapter 4 (Customs Procedures and Trade Facilitation), the Rules of Origin and Customs and Trade Facilitation Working Group established under Article 30.10 (Working Groups – Institutional Provisions) shall report to the Trade in Goods Sub-Committee.

2. The Rules of Origin and Customs and Trade Facilitation Working Group shall be composed of representatives of each Party, and may seek the advice of experts on any matter falling within the Working Group's functions.

3. The Rules of Origin and Customs and Trade Facilitation Working Group may:

   (a) provide a forum to consider measures to facilitate trade between the Parties, including the exchange of information, enhancement of customs cooperation, resolution of differences, and monitoring the operation and implementation of this Chapter and Chapter 4 (Customs Procedures and Trade Facilitation);

   (b) consider any other matters referred to it by the Joint Committee or the Trade in Goods Sub-Committee; and

   (c) provide periodic reports to the Trade in Goods Sub-Committee regarding its activities.

4. The Rules of Origin and Customs and Trade Facilitation Working Group may meet by agreement of the Parties and may meet physically or virtually as mutually agreed.

## Section B
## Origin Procedures

### Article 3.18
### Claims for Preferential Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a written or electronic origin declaration completed by the producer or exporter of the good, which meets the requirements of Article 3.19 (Origin Declaration).

2. In addition to the method provided for in paragraph 1, each Party shall provide that an importer may make a claim for preferential tariff treatment based on the importer's knowledge that a product is originating. Such claims shall be made by the importer of the good on the basis of:

   (a) the importer having documentation demonstrating that the good is originating; or

   (b) reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

3. The importing Party may deny that claim for preferential treatment if the importer, exporter, or producer of the good being imported fails to comply with any requirement of this Chapter. The importing Party may deny preference if the good does not qualify as an originating good.

4. Each Party shall require that an importer provides, on the request of that Party's customs authority, if the claim is based on an origin declaration, a copy of the origin declaration and, in any event, such other documentation relating to the importation of the good in accordance with the domestic laws and regulations of the importing Party.

### Article 3.19
### Origin Declaration

1. An origin declaration does not need to follow a prescribed format, provided it contains all minimum data elements identified in Annex 3B (Origin Declarations – Guidance).

2. An origin declaration may be provided on, or attached to, an invoice or other commercial document issued in the exporting Party that contains some of the required minimum data elements, provided all the minimum data elements are included on or with the origin declaration.

3. An origin declaration shall be valid for at least 12 months from the date it was completed or for a longer period as provided by the importing Party.

4. An origin declaration will be applicable to a single importation of one or more goods or multiple importations of identical goods that occur within a specified period not exceeding 12 months after the date of original declaration.

5. For any originating good imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept an origin declaration that has been completed and signed prior to the date of entry into force by the exporter or producer of that good.

6. If unassembled or disassembled products within the meaning of General Rule 2(a) of the Harmonized System falling within Sections XV to XXI of the Harmonized System are imported in instalments, a single origin declaration for those products may be used on request of the importer and in accordance with the requirements laid down by the customs authority of the importing Party.

**Article 3.20**
**Waiver of Origin Documentation**

1. Each Party shall waive the requirement to present an origin declaration as specified in Article 3.19 (Origin Declaration) in respect of:

   (a) an importation of a good whose customs value does not exceed 2,000 New Zealand dollars for goods imported in New Zealand, or 1,000 United Kingdom pounds for goods imported into the United Kingdom, or such higher amount as the importing Party may establish; or

   (b) an importation of a good into the territory of the importing Party for which the importing Party has waived the requirement for an origin declaration.

2. Each Party may exclude any importation from the provisions of paragraph 1 when the importation is part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of this Chapter related to origin declarations.

3. Each Party may set value limits for products referred to in paragraph 1 and shall exchange information regarding those limits.

## Article 3.21
## Delayed Claims for Preferential Treatment

1. Each Party shall provide that an importer may 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 the territory of the Party.

2. As a condition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer:

   (a) make a claim for preferential tariff treatment;

   (b) provide a statement that the good was originating at the time of importation;

   (c) if the claim is based on an origin declaration, provide a copy of an origin declaration; and

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

3. An application under this Article must be made within one year of the date of importation, or a longer period if specified in the importing Party's law.

## Article 3.22
## Incorrect Claims for Preferential Treatment

1. Each Party shall provide that:

   (a) an exporter or producer that has completed an origin declaration, and becomes aware or has reason to believe that it contains incorrect information, shall be obliged to immediately notify the importer in writing of any change affecting the originating status of each good to which the origin declaration applies;

   (b) if the claim is based on an origin declaration, an importer that becomes aware or has reason to believe that an origin declaration for a good which it has imported, and to which preferential treatment has been granted, contains incorrect information shall immediately notify the customs authority of the importing Party in writing of any change affecting the originating status of that good and pay any duties owing; and

   (c) if the claim is based on the importer's knowledge, an importer that becomes aware or has reason to believe that the importer's knowledge

and supporting documentation for a good which it has imported, and to which preferential treatment has been granted, contains incorrect information shall immediately notify the customs authority of the importing Party in writing of any change affecting the originating status of that good and pay any duties owing.

2. Each Party shall encourage its customs authority, when considering imposing a penalty in relation to an incorrect origin declaration, to consider as a significant mitigating factor a voluntary notification given in accordance with paragraph 1, provided in the case of a notification given by an importer, the importer corrects the error and repays any duties owing.

**Article 3.23**
**Minor Errors and Discrepancies**

1. A Party shall not reject an origin declaration due to minor discrepancies or errors, such as slight discrepancies between documents, omissions of information, or typing errors, provided these minor discrepancies or errors do not create doubt as to the originating status of the good.

2. Each Party shall provide that, if its customs authority determines that an origin declaration in respect of a good imported into its territory is illegible or defective on its face, the importer shall be granted a period of no less than 30 days after the date the customs authority of the importing Party advises the importer that the declaration is illegible or defective to provide the customs authority of the importing Party with a copy of corrected origin declaration.

**Article 3.24**
**Penalties**

Each Party shall adopt or maintain measures imposing criminal, civil, or administrative penalties for violations of its laws and regulations relating to this Chapter.

**Article 3.25**
**Record Keeping Requirements**

1. The exporting Party shall require an exporter or producer that has completed an origin declaration to keep, and to provide, upon request, a copy of the origin declaration and all supporting documentation including any written statements from a producer or supplier which are necessary to evidence that the good is originating for four years after the completion of the origin declaration, or for such longer period of time as the exporting Party may specify.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain:

   (a) the documentation related to the importation, including the origin declaration if that served as the basis for the claim; and

   (b) if the claim was based on the importer's knowledge, all records necessary to demonstrate that the good satisfies the requirements to obtain originating status, for four years after the completion of the origin declaration, or for such longer period of time as that Party may specify.

3. Each Party shall permit, in accordance with that Party's laws and regulations, importers, exporters, and producers in its territory to maintain documentation or records in any medium, provided that the documentation or records can be retrieved and printed.

4. A Party may deny preferential treatment to a good that is the subject of a verification of origin when the importer, exporter, and producer of the good that is required to maintain records or documentation under this Article:

   (a) fails to maintain records or documentation in accordance with this Chapter; or

   (b) denies access to those records or documentation.

## Article 3.26
## Verification of Origin

*Initiating a verification process*

1. The customs authority of the importing Party may conduct a verification process to determine whether a good imported into its territory is originating, or whether other requirements provided in this Chapter have been met.

2. A verification process may commence at the time the customs import declaration is lodged, before the release of the goods by the importing customs authority, or after the release of the goods. The verification processes shall be undertaken based on risk assessment procedures, including random selection of imports.

3. The customs authority of the importing Party may undertake a verification process by means of a written request for:

   (a) information from the importer of the good;

(b) information from the producer or exporter of the good where the information obtained under subparagraph (a) is not sufficient to make a determination; or

(c) the customs authority of the exporting Party to access information, which may include the customs authority of the exporting Party undertaking a visit to the premises of the producer or exporter of the good to review relevant information and the production process where the information obtained under subparagraphs (a) and (b) is not sufficient to make a determination.

4. If the customs authority of the importing Party decides to conduct a verification, it shall accept written information directly from the importer, exporter, or producer.

5. Where a claim for preferential treatment is based on importer's knowledge that the good is originating, the customs authority of the importing Party shall only request the information on which the importer based their knowledge that the good was originating.

6. Where a claim for preferential treatment is based on a declaration of origin completed by the producer or exporter, the customs authority of the importing Party requesting information pursuant to subparagraphs 3(a) or 3(b) from the importer, producer, or exporter of the good shall only request the following:

(a) where the origin criterion is based on:

(i) the good having been wholly obtained pursuant to Article 3.2 (Origin Criteria), the applicable subparagraph of Article 3.3 (Wholly Obtained Goods), and address of production;

(ii) the good having been produced entirely pursuant to Article 3.2 (Origin Criteria), information on the origin of the materials and the address of production;

(iii) a change in tariff classification, a list of all the non-originating materials including their tariff classification (in two, four, or six-digit format) depending on the relevant product specific rule of origin in Annex 3A (Product Specific Rules of Origin);

(iv) a value method, the value of the final product as well as the value of all non-originating materials used in the production where the build-down method is used or the value of all originating materials used in the production where the build-up method is used, as well as information on how such values are determined; or

(v) a production process, a specific description of that process:

(A) where the provisions of Article 3.9 (Tolerance) have been relied on based on weight, the net weight of the final product as well as the weight of the relevant non-originating materials used in the final product, which have not undergone the applicable change in tariff classification; or

(B) information relating to the compliance with the provisions on non-alteration referred to in Article 3.10 (Non-Alteration).

*Actions of the customs authority of the exporting Party*

7. Following a request under subparagraph 3(c), the customs authority of the exporting Party may, in accordance with the laws and regulations of the exporting Party:

(a) request information or records from the exporter or producer to verify the originating status of the goods; and

(b) visit the premises of the exporter, producer, or a supplier to review the records referred to in paragraph 1 of Article 3.25 (Record Keeping Requirements), observe the facilities used in the production of the good, or otherwise gather evidence to verify the originating status of the goods.

8. As soon as possible, and in any event within 10 months of receipt of the written request under subparagraph 3(c), the customs authority of the exporting Party will provide the customs authority of the importing Party with the following:

(a) the requested documentation, where available;

(b) the description of the good that is subject to examination, including its tariff classification in two, four, or six-digit format, depending on the origin criterion;

(c) where appropriate, a description of the production process;

(d) information on the manner in which the examination of the good was conducted; and

(e) supporting documentation, where appropriate.

9. When providing requested information, the customs authority of the exporting Party, importer, exporter, or producer may include any other information they consider relevant for the purpose of verification.

10. The customs authority of the exporting Party shall provide the customs authority of the importing Party with written acknowledgement of receipt of a request for information. The acknowledgement of receipt shall be provided as soon as possible, but no later than 45 days after the date of receipt of the request made under subparagraph 3(c).

11. The customs authority of the importing Party shall:

    (a) make a determination following a verification as expeditiously as possible and no later than 90 days after it receives the information necessary to make the determination, and no later than 365 days after the first request for information or other action under paragraph 1;

    (b) notwithstanding subparagraph (a), if permitted by its laws and regulations, a Party may extend the 365 day period in exceptional cases, such as where the technical information concerned is very complex;

    (c) provide the importer with a written determination of whether the good is originating that includes an explanation for the determination and, where appropriate, supporting documentation;

    (d) provide the importer, exporter, or producer that provided information during the verification or certified that the good was originating, with the results of the verification and the reasons for that result; and

    (e) advise of the review and appeal rights associated with the decision.

12. During verification, the importing Party shall allow the release of the goods concerned, subject to payment of any duties or provision of a guarantee in the form of a surety, deposit, or other appropriate instrument as provided for in its laws and regulations.

13. If, as a result of the verification, the importing Party determines that the good is an originating good, it shall grant preferential treatment to the good and refund any excess duties paid or release any guarantee provided, unless the guarantee also covers other obligations which have not been discharged. If, as a result of the verification, the importing Party determines that the good is not an originating good, it may deny preferential treatment to the good.

14. If, pursuant to a verification under this Article, the customs authority of the importing Party has not received sufficient information to determine that a good qualifies as originating, or that the importer, exporter, or producer has otherwise failed to comply with a requirement of this Chapter, it may deny preferential treatment to the good.

## Article 3.27
## Confidentiality

The provisions contained in Article 4.21 (Confidentiality – Customs Procedures and Trade Facilitation) also apply to this Chapter.

## Article 3.28
## Documentation Issued in a Non-Party

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment for the sole reason that any supporting documents which are required pursuant to paragraph 4 of Article 3.19 (Origin Declaration) were issued in a non-party.

## Article 3.29
## Transitional Provisions for Goods in Transit

A Party shall grant preferential tariff treatment to an originating good, if on the date of entry into force of this Agreement, the good:

(a) was being transported to that Party in accordance with Article 3.10 (Non-Alteration); or

(b) had not been imported into that Party,

and if a valid claim under Article 3.18 (Claims for Preferential Tariff Treatment) for preferential tariff treatment is made within 180 days of the date of entry into force of this Agreement for that Party.

# CHAPTER 4

# CUSTOMS PROCEDURES AND TRADE FACILITATION

## Article 4.1
## Definitions

For the purposes of this Chapter:

**"arrival"** means:

(a) with respect to New Zealand, arrival at a Customs port, Customs airport, or at an alternative place of arrival authorised by Customs;

(b) for the United Kingdom, arrival at the point at which the goods are presented to customs;

**"customs law"** means any law administered, applied, or enforced by the customs authority of a Party governing the import, export, and transit of goods as well as other customs procedures, including measures of prohibition, restriction, and control of a Party in their respective territories;

**"customs procedure"** means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to customs laws;

**"expedited shipments"** means goods imported by or through an operator of a consignment service for the expeditious cross-border movement of goods which assumes liability to the customs authority for those goods or goods imported by traders and operators fulfilling other criteria specified in the Parties' laws and regulations; and

**"WCO"** means the World Customs Organization.

## Article 4.2
## Scope

1. This Chapter shall apply to customs laws and procedures applied to goods traded between the Parties.

2. Each Party shall use its available resources in an appropriate way to implement this Chapter.

## Article 4.3
## Customs Procedures and Trade Facilitation

1. Each Party shall ensure that its customs procedures and customs laws are applied in a manner that is predictable, consistent, transparent, and non-discriminatory.

2. The Parties affirm their rights and obligations under the *Agreement on Trade Facilitation* done at Geneva on 27 November 2014.

3. The customs procedures of each Party shall conform, where possible, to international standards and recommended practices established by the WCO and under other relevant international agreements to which the Parties are party.

4. Each Party shall adopt and maintain simplified customs procedures to ensure the efficient and expeditious clearance of goods.

5. Each Party shall review their customs procedures with a view to their simplification in order to facilitate trade including through the rapid release and clearance of goods. Each Party shall work towards further simplification of data and documentation required by their customs authority.

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

## Article 4.4
## Customs Cooperation

1. Without prejudice to other forms of cooperation provided for in this Agreement, the customs authorities of the Parties shall cooperate, including by exchanging information, and provide mutual administrative assistance in the matters referred to in this Chapter in accordance with the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand on Cooperation and Mutual Administrative Assistance in Customs Matters* done at London on 1 August 2019.

2. The customs authorities of the Parties shall enhance cooperation on the matters referred to in this Chapter with a view to further developing trade facilitation while ensuring compliance with their respective customs laws, regulations, and procedural requirements, and improving supply chain security, in the following areas:

   (a) the operation of the provisions of this Chapter governing importations or exportations;

(b) the harmonisation of data requirements for customs purposes, in line with applicable international standards such as the WCO standards;

(c) further development of the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the SAFE Framework;

(d) the application and operation of the Customs Valuation Agreement;

(e) improvement of their risk management techniques, including sharing best practices and, if appropriate, risk information and control results;

(f) cooperation in international organisations, such as the WTO and the WCO, on matters of common interest, including tariff classification, customs valuation and origin, with a view to establishing, if possible, common positions; and

(g) other matters as the Parties may decide.

3. The customs authorities of the Parties shall ensure the exchange of information necessary for the purposes of paragraph 2.

**Article 4.5**
**Transparency and Publication**

1. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner including online, its laws, regulations, and general administrative procedures and guidelines, related to customs. This includes:

(a) importation, exportation, and transit procedures (including port, airport, and other entry point procedures), and required forms and documents;

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

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

(d) rules for the classification or valuation of products for customs purposes;

(e) laws, regulations, and administrative rulings of general application relating to rules of origin;

(f) import, export, or transit restrictions or prohibitions;

(g) penalty provisions against breaches of import, export, or transit formalities;

(h) appeal procedures;

(i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit;

(j) procedures relating to the administration of tariff quotas; and

(k) hours of operation and general operating procedures for customs offices at ports and border crossing points.

2. Each Party shall ensure that new or amended laws and regulations of general application related to customs matters are published, or information on them is otherwise made publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

3. 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 paragraphs 1 and 2, measures applied in urgent circumstances, or minor changes to domestic law and legal systems are each excluded from paragraphs 1 and 2.

4. Each Party shall establish or maintain one or more enquiry points to address enquiries of interested parties or persons concerning customs matters and shall make information concerning the procedures for making such enquiries publicly available online. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request.

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

## Article 4.6
## Data and Documentation

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

(a) are adopted or applied with a view to a rapid release of goods, in order to facilitate trade; and

(b) are adopted or applied in a manner that aims to reduce the time and cost of compliance for traders and operators.

2. Each Party shall:

(a) make electronic systems accessible to customs users;

(b) allow a customs declaration to be submitted in electronic format;

(c) employ electronic or automated risk management systems; and

(d) permit the electronic payment of duties, taxes, fees, and charges collected by customs and incurred upon importation and exportation.

3. The Parties shall endeavour to cooperate on the development of interoperable electronic systems, in order to facilitate trade between the Parties.

**Article 4.7**
**Simplified Customs Procedures**

1. Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures.

2. Each Party shall endeavour to ensure that these simplified procedures include:

(a) customs declarations containing a reduced set of data or supporting documents, including for the movement of low-value consignments;

(b) deferred payment of customs duties and taxes until after the release of those imported goods;

(c) aggregated customs declarations for the payment of customs duties and taxes that may cover multiple imports and enable payment at monthly or quarterly intervals; and

(d) use of a guarantee with a reduced amount or a waiver from use of a guarantee.

3. The Parties agree to cooperate on and consider further measures to reduce the administrative burdens for economic operators in relation to import and export.

## Article 4.8
## Expedited Shipments

1. Each Party shall adopt or maintain expedited customs procedures for expedited shipments while maintaining appropriate customs control and selection. These procedures shall:

   (a) provide for the submission and processing of information in advance of the arrival of a shipment to expedite its release;

   (b) allow for a single submission of information covering all goods contained in a shipment through, if possible, electronic means;[1]

   (c) to the extent possible, provide for the release of certain goods with a minimum of documentation or a reduced set of data;

   (d) provide, in normal circumstances, for an expedited shipment to be released within six hours of arrival, provided:[2]

      (i) all information and documentation necessary to release the goods have been submitted on or prior to arrival; and

      (ii) the goods are not subject to physical examination or inspection;

   (e) apply to shipments of any weight or value recognising that a Party may require additional entry procedures as a condition for release, including declarations and supporting documentation and payment of customs duties; and

   (f) provide that, under normal circumstances, no customs duties will be assessed on expedited shipments valued at or below a fixed amount set under a Party's law.

2. If a Party does not provide the treatment in subparagraphs 1(a) to 1(f) to all shipments, that Party shall provide a separate and expedited customs procedure that provides that treatment for expedited shipments.

## Article 4.9
## Release of Goods

1. Each Party shall adopt or maintain customs procedures that:

[1] For greater certainty, additional documents may be required as a condition for release.
[2] Nothing in this subparagraph requires a Party to release a good if other regulatory requirements for release have not been met.

(a) provide for the prompt release of goods within a period no longer than that required to ensure compliance with all applicable requirements and procedures, as soon as possible on or following arrival but in any case within 48 hours of arrival, provided that in all cases:

(i) all information and documentation necessary to release the goods have been submitted on or prior to arrival; and

(ii) the goods are not to be subject to physical examination or inspection;

(b) provide for advance electronic submission and processing of information before the physical arrival of the goods to enable release of the goods on arrival;

(c) allow goods to be released without temporary transfer to warehouses or other facilities; and

(d) allow for the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if that determination is not done prior to, or promptly upon arrival and provided that all other regulatory requirements have been met. Before releasing the goods, a Party may require that an importer provides sufficient security in the form of a surety, a deposit, or some other appropriate instrument.

2. If a Party allows for the release of goods conditional on a security in accordance with subparagraph 1(d), it shall adopt or maintain procedures that:

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

(b) ensure that any security is discharged as soon as possible after its customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) allow importers to provide security using an appropriate instrument, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

3. Nothing in this Article requires a Party to release a good if other regulatory requirements for release have not been met.

## Article 4.10
## Perishable Goods

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

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

   (a) provide, in normal circumstances, for perishable goods to be released within six hours of arrival, provided:[3]

      (i) all information and documentation necessary to release the goods have been submitted on or prior to arrival; and

      (ii) the goods are not to be subject to physical examination or inspection; and

   (b) release perishable goods outside the business hours of its customs authority in exceptional circumstances, if it would be appropriate to do so.

3. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

4. 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 be approved or designated by its relevant authorities. Each Party shall, if practicable and consistent with its laws and regulations, on request of the importer, provide for the release to take place at those storage facilities.

## Article 4.11
## Risk Management

1. Each Party shall adopt or maintain a risk management system which shall include the use of electronic data processing techniques for customs control that enables its customs authority to focus its inspection activities on high-risk consignments and expedite the release of low-risk consignments.

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

[3] Nothing in this subparagraph requires a Party to release a good if other regulatory requirements for release have not been met.

3. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

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

5. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

**Article 4.12**
**Advance Rulings**

1. Each Party shall issue through its customs authority an advance ruling to an applicant that has submitted a written request with respect to:

   (a) tariff classification;

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

   (c) such other matters as the Parties may decide.

2. On receipt of all necessary information, each Party shall issue an advance ruling referred to in subparagraphs 1(a) or 1(b) as soon as practicable and in any event within 90 days or in such shorter time as prescribed in each Party's customs law.

3. 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, which may include a sample of the good, necessary to evaluate the request.

4. 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 each Party's customs law. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

5. A Party may modify or revoke an advance ruling that it has issued if:

   (a) the ruling was made in error or based on an error of fact;

   (b) the information provided is false or inaccurate;

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

(d) a change is required to conform with a judicial decision or a change in its laws and regulations.

6. A Party may only revoke, modify, or invalidate an advance ruling with retroactive effect, if the ruling was based on incomplete, incorrect, inaccurate, false, or misleading information provided by the applicant.

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

8. Each Party shall publish online, at least:

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

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

(c) the length of time for which the advance ruling is valid.

9. 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.

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

11. Subject to any confidentiality requirements in its laws and regulations, a Party may publish its advance rulings, including online.

## Article 4.13
## Customs Valuation

For the purpose of determining the customs value of goods traded between the Parties, Part I of the Customs Valuation Agreement shall apply.

## Article 4.14
## Single Window[4]

1. Each Party shall adopt or maintain single window systems enabling traders to submit documentation or data requirements for the exportation,

[4] This Article shall not apply to the Isle of Man until such time it adopts a single window system in accordance with paragraphs 1 to 3.

importation, and transit of goods through a single entry point to the participating authorities or agencies.

2. 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 which are made public.

3. Each Party shall adopt or maintain procedures to determine duties and taxes upon the submission of the customs declaration through the single window and to allow collection of payment electronically upon approval of the customs declaration.

**Article 4.15**
**Authorised Economic Operator[5]**

1. 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.

2. The specified criteria to qualify as an AEO shall be published and relate to compliance, or the risk of non-compliance, with requirements specified in the Parties' laws, regulations, or procedures.

3. 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 and shall allow the participation of small and medium-sized enterprises.

**Article 4.16**
**Customs Brokers**

The Parties:

(a) agree that their respective customs provisions and procedures shall not require the mandatory use of customs brokers;

(b) shall publish any measures on the use of customs brokers; and

[5] This Article shall not apply to the Bailiwick of Jersey or the Bailiwick of Guernsey until such time Jersey or Guernsey adopt an Authorised Economic Operator programme consistent with the Agreement on Trade Facilitation.

(c) shall apply transparent, non-discriminatory, and proportionate rules if and when licensing customs brokers.

## Article 4.17
## Review and Appeal

1. Each Party shall provide effective, prompt, non-discriminatory, and easily accessible procedures to guarantee the right of appeal against a decision on a customs matter.

2. Each Party shall ensure that any person to whom it issues a decision on a customs matter has access to:

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

   (b) a judicial appeal or review of the decision.

3. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 2(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 judicial authority in accordance with that Party's laws and regulations.

4. Each Party shall provide a person to whom it issues an administrative decision with the reasons for the decision, in writing, so as to enable the person to have recourse to appeal procedures where necessary.

## Article 4.18
## Penalties

1. Each Party shall ensure that any penalties imposed for breaches of its customs law or customs procedures be proportionate and non-discriminatory. Any penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

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

3. Each Party shall ensure that, if a penalty is imposed for a breach of customs law or customs procedures, an explanation in writing is provided to the person upon whom the penalty is imposed, specifying the nature of the breach and the applicable customs law or customs procedures under which the amount or range of penalty for the breach has been prescribed.

4. Each Party shall provide in its laws, regulations, or customs procedures, or shall otherwise give effect to, a fixed and finite period within which its customs authority may initiate proceedings to impose a penalty relating to a breach of its customs law or customs procedures.

**Article 4.19**
**Transit and Transportation**

Each Party shall:

(a) ensure the facilitation and effective control of transhipment operations and transit movements within its respective territory;

(b) where appropriate, promote and implement regional transit arrangements with a view to facilitating trade;

(c) ensure cooperation and coordination between all concerned authorities and agencies in its respective territory to facilitate traffic in transit; and

(d) allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

**Article 4.20**
**Post Clearance Audit**

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

(a) adopt or maintain post-clearance audit to ensure compliance with customs law;

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

(c) 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

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

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

**Article 4.21**
**Confidentiality**

1. Each Party shall maintain, in conformity with its law, the confidentiality of information collected as part of its customs processes, including determination of origin, and shall protect that information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates. Where information is provided to one Party by the other Party, and the Party receiving the information is required by its law to disclose the information, the receiving Party shall notify the Party who provided that information wherever possible in advance of that disclosure.

2. Confidential information collected pursuant to this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) shall only be used or disclosed for the purpose of administration and enforcement of customs matters, including determination of origin, or as otherwise provided under the Party's law, except with the permission of the person or the Party who provided the confidential information. Where that permission is sought from, and has been granted by a Party, such use shall then be subject to any restrictions laid down by that Party.

3. Paragraph 2 shall not preclude the use of information collected as part of its customs processes as evidence in proceedings or charges subsequently instituted before the courts or tribunals for failure to comply with a Party's law. Where the information is received from the other Party, the Party shall notify the Party who provided the information in advance of such use.

4. If confidential information is used or disclosed other than in accordance with this Article, the Party shall address the incident, in accordance with its law or procedures, and review or update its processes and safeguards, as appropriate, to prevent a reoccurrence.

**Article 4.22**
**Rules of Origin and Customs and Trade Facilitation Working Group**

The Rules of Origin and Customs and Trade Facilitation Working Group established under Article 30.10 (Working Groups – Institutional Provisions) shall be responsible for the effective implementation and operation of this Chapter.

# CHAPTER 5

# SANITARY AND PHYTOSANITARY MEASURES

## Article 5.1
## Definitions

1. For the purposes of this Chapter, the following definitions apply:

   (a) the definitions in Annex A of the SPS Agreement;

   (b) the definitions adopted under the auspices of the Codex Alimentarius Commission ("Codex");

   (c) the definitions adopted under the auspices of the World Organisation for Animal Health ("OIE"); and

   (d) the definitions adopted under the auspices of the International Plant Protection Convention ("IPPC").

2. Further to paragraph 1, in the event of an inconsistency between the definitions set out in the SPS Agreement and the definitions adopted under the auspices of the Codex, the OIE, or the IPPC, the definitions set out in the SPS Agreement shall prevail.

3. For the purposes of this Chapter:

   (a) **"competent authority"** means a government body of a Party responsible for measures and matters referred to in this Chapter;

   (b) **"import check"** means an assessment, that may include consignment documentation and identity examination and testing, which is conducted by an importing Party or its delegated representative to determine if a consignment complies with the sanitary and phytosanitary requirements of the importing Party;

   (d) **"SPS Agreement"** means the *Agreement on the Application of Sanitary and Phytosanitary Measures* in Annex 1A to the WTO Agreement.

## Article 5.2
## Scope

1. Except as provided in paragraph 3, this Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

2. Notwithstanding paragraph 1, this Chapter shall not apply to a measure or good covered by the Sanitary Agreement.

3. This Chapter shall also apply to cooperation on antimicrobial resistance ("AMR").

**Article 5.3**
**Objectives**

The objectives of this Chapter are to:

(a) protect human, animal and plant life and health in the territory of the Parties while facilitating trade between them;

(b) ensure that the Parties' sanitary and phytosanitary measures do not create unjustified barriers to trade;

(c) further the implementation of the SPS Agreement;

(d) promote transparency and understanding on the application of each Party's sanitary and phytosanitary measures;

(e) maintain and enhance cooperation between the Parties in the Codex, the OIE, and the IPPC to develop international standards, guidelines, and recommendations on animal health, food safety, and plant health; and

(f) enhance cooperation between the Parties to reduce the development and spread of AMR.

**Article 5.4**
**Affirmation of the SPS Agreement**

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

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

**Article 5.5**
**Competent Authorities and Contact Points**

1. Each Party shall notify to the other Party a list of its competent authorities upon the date of entry into force of this Agreement. The notification shall include contact information of these authorities.

2. Each Party shall also designate and notify a contact point for matters arising under this Chapter including, if different, a contact point to coordinate the Sanitary and Phytosanitary Measures Sub-Committee ("SPS Sub-Committee") agenda on the date of entry into force of this Agreement.

3. Each Party shall promptly notify the other Party of any change in its competent authorities, the contact information of its competent authorities, or its contact point.

**Article 5.6**
**Equivalence**

1. The Parties acknowledge that recognition of the equivalence of sanitary and phytosanitary measures is an important means to facilitate trade. The determination of equivalence rests with the importing Party.

2. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures, or equivalence on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines, and recommendations.

3. At the request of the exporting Party, the importing Party shall, within a reasonable period of time, explain the objective and rationale of its sanitary or phytosanitary measure and clearly identify the risk the sanitary or phytosanitary measure is intended to address.

4. When determining the equivalence of phytosanitary measures, each Party shall apply the principles laid down in the International Standard for Phytosanitary Measures ("ISPM") No. 24 *Guidelines for the determination and recognition of equivalence of phytosanitary measures* adopted under the IPPC.

5. If the importing Party receives a request for an equivalence assessment, it shall initiate the equivalence assessment without unreasonable delay.

6. The importing Party shall recognise the equivalence of sanitary or phytosanitary measures, even if the measures differ from its own, if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measures achieve the importing Party's appropriate level of protection.

7. If an equivalence assessment does not result in an equivalence determination by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

## Article 5.7
## Recognition of Pest Freedom

1. Each Party shall recognise the concepts of Pest Free Areas, Pest Free Places of Production, and Pest Free Production Sites, as well as areas of low pest prevalence as specified in the ISPMs.

2. For the purposes of trade, each Party shall accept the other Party's determinations regarding Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites, and areas of low pest prevalence.

3. Without prejudice to Article 5.10 (Trade Conditions), where the importing Party's import requirements permit the use of Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites, or areas of low pest prevalence by the exporting Party in respect of a particular commodity and a specific pest, the importing Party shall take into account subparagraphs (a) to (g) and the relevant ISPMs:

   (a) for the purposes of trade, each Party will accept the other Party's official controls[1] in the establishment and maintenance of Pest Free Areas, Pest Free Places of Production, and Pest Free Production Sites;

   (b) the exporting Party shall communicate Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites, or areas of low pest prevalence to the other Party and, on request for additional information, shall provide an explanation and supporting data as provided for in the relevant ISPMs or as otherwise deemed appropriate;

   (c) if the importing Party is satisfied with the evidence provided under subparagraph (b), the importing Party shall undertake the approval process to allow trade from Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites, or areas of low pest prevalence without undue delay;

   (d) without prejudice to Article 5.11 (Emergency Measures), when establishing or maintaining phytosanitary measures, the importing Party shall take into account Pest Free Areas, Pest Free Places of Production, Pest Free Production sites, and areas of low pest prevalence established and maintained by the exporting Party;

   (e) the importing Party retains the right to request additional information as provided for under subparagraph (b) from Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites, or areas of low pest prevalence, and restrict or prohibit trade following an audit conducted

[1] For greater certainty, "official controls" includes plant health certification for any good that requires health certification.

in accordance with Article 5.9 (Audit) or in accordance with Article 5.11 (Emergency Measures);

(f) in the event that the importing Party does not approve or withdraws its approval for trade from Pest Free Areas, Pest Free Places of Production, Pest Free Production Sites, or areas of low pest prevalence, it shall notify its decision to the exporting Party as soon as possible, explaining the reasons for the rejection and, on request, hold consultations in accordance with Article 5.17 (Technical Consultations); and

(g) if verification activities are required by the importing Party, they shall be conducted in accordance with Article 5.9 (Audit) and take into account the biology of the pest and the commodity concerned.

4. The SPS Sub-Committee established under Article 30.9 (Sub-Committees – Institutional Provisions) may, while taking into account the SPS Agreement and IPPC guidelines, standards, and recommendations, define further details for the procedures set out in this Article.

**Article 5.8**
**Risk Analysis**

1. The Parties shall ensure that their sanitary and phytosanitary measures are based on the relevant international standards, guidelines, or recommendations, or if its sanitary and phytosanitary measures are not based on international standards, guidelines, or recommendations, that they are based on a risk analysis carried out in accordance with relevant provisions, including Article 5 of the SPS Agreement.

2. When conducting its risk analysis, each Party shall:

(a) take into account relevant guidance of the WTO SPS Committee and standards, guidelines, and recommendations of the IPPC and Codex; and

(b) ensure that a measure that is established is not more trade restrictive than necessary to achieve the appropriate level of protection, taking into account technical and economic feasibility.

3. If requested by the exporting Party, the importing Party shall provide its risk assessment within a reasonable period of time.

## Article 5.9
## Audit[2]

1. A Party may carry out audits to verify that all or part of the regulatory control programme of the exporting Party's competent authority is functioning as intended.[3]

2. Each Party shall assist the other to carry out audit procedures.

3. Prior to the commencement of an audit, the competent authorities of the Parties shall discuss the rationale and mutually agree the objectives and scope of the audit, the criteria or requirements against which the exporting Party will be assessed, and any other relevant matter.

4. The Parties shall carry out those audits in accordance with the SPS Agreement, taking into account the relevant guidance of the WTO SPS Committee, international standards, guidelines, and recommendations of the Codex or the IPPC.

5. Each Party shall endeavour to limit the frequency and number of audit visits. In case of a subsequent audit related to the same product, the importing Party shall carry out an audit only in duly justified circumstances and provide the exporting Party with an explanation as to the reason for the audit.

6. The importing Party shall provide the exporting Party with the opportunity to comment in writing on the findings of any audit. The importing Party shall take these comments into account before reaching its conclusions and taking any action thereon. The importing Party shall, within a reasonable period of time, provide the exporting Party with a written report setting out its conclusions.

7. The costs for an audit shall be borne by the importing Party unless the Parties agree otherwise.

8. A measure taken as a consequence of an audit shall:

   (a) be proportionate to the risk or risks identified;

   (b) be supported by objective evidence which shall be provided to the exporting Party on request;

   (c) take into account the importing Party's knowledge of, relevant experience with, and confidence in, the exporting Party; and

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[2] For greater certainty, for the purposes of this Chapter, the scope of audit activities shall be confined to the regulatory control programme of the exporting Party's competent authority insofar as it relates to sanitary and phytosanitary measures within the scope of this Chapter.

[3] For greater certainty, for the purposes of this Chapter, an audit may include desk assessments and virtual, remote, or physical audits.

(d) not be more trade restrictive than necessary to achieve the importing Party's appropriate level of protection.

9. The Parties shall:

(a) each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process; and

(b) jointly determine how and to whom any report is made available.

**Article 5.10**
**Trade Conditions**

1. Neither Party shall use sanitary and phytosanitary measures to disrupt existing trade in a commodity, except in accordance with Article 5.8 (Risk Analysis) or Article 5.11 (Emergency Measures).

2. The importing Party shall make available its general sanitary and phytosanitary import requirements for all commodities.

3. For the purposes of establishing the specific sanitary and phytosanitary import requirements, the exporting Party shall, at the request of the importing Party:

(a) provide all relevant available information required by the importing Party; and

(b) give reasonable access to the importing Party to conduct an audit of the approval procedures undertaken by the exporting Party, in accordance with Article 5.9 (Audit).

4. Where a risk assessment is required to enable the commencement of trade in a new commodity, the importing Party shall avoid unnecessary or unduly burdensome information requests. An information request shall be limited to what is necessary and shall take into account information that may already be available to the importing Party. The importing Party shall, within a reasonable period of time following the date of receipt of the required information for importing the product, make available the risk assessment it conducts as part of the approval procedure.

5. Without prejudice to Article 5.11 (Emergency Measures), Article 5.12 (Import Checks and Fees), and Article 5.9 (Audit), the importing Party shall:

(a) accept the inspection and official controls applied by the exporting Party for trade; and

(b) where it has sanitary and phytosanitary approval processes for establishments or facilities for commodities within the scope of this Chapter, accept without subsequent processes, those establishments or facilities that are approved by the exporting Party for trade.

6. Except as provided for in Article 5.7 (Recognition of Pest Freedom), each Party shall apply its phytosanitary import conditions to the entire territory of the other Party where the same pest status prevails.

7. With regard to import requirements for plants and plant products, each Party shall follow the principles set out in the relevant ISPMs developed under the IPPC.

8. Without prejudice to Article 5.11 (Emergency Measures), the importing Party shall not refuse or prevent the importation of a commodity of the exporting Party solely for the reason that it is undertaking a review of its sanitary or phytosanitary measure if the importing Party permitted the importation of that commodity of the other Party when the review was initiated.

## Article 5.11
## Emergency Measures

1. A Party shall notify the other Party of an emergency sanitary or phytosanitary measure as soon as possible after its decision to implement the measure and no later than 24 hours after the decision has been taken.

2. If a Party requests technical consultations pursuant to Article 5.17 (Technical Consultations) to address the emergency sanitary or phytosanitary measure, the technical consultations shall be held as soon as possible, and in any case within 14 days of the request. In addressing the emergency measure, the Parties shall consider any information provided through the technical consultations.

3. The importing Party shall provide its objective and rationale for its emergency sanitary or phytosanitary measure at the request of the other Party.

4. The importing Party shall consider the information, which was provided promptly by the exporting Party, when it makes its decision with respect to a consignment that, at the time of adoption of the emergency sanitary or phytosanitary measure, is being transported between the Parties.

5. If the importing Party applies an emergency measure, it shall commence a science-based review of the measure as soon as possible. The importing Party shall then review the need for the emergency measure as required and if it remains in place provide, on request, the justification for maintaining the emergency measure.

## Article 5.12
## Import Checks and Fees

1. The importing Party shall have the right to carry out import checks based on the sanitary and phytosanitary risks associated with imports. These checks shall be carried out without undue delay and with minimum trade disrupting effects.

2. If import checks reveal non-compliance with the relevant import requirements, the action taken by the importing Party shall be based on an assessment of the risk involved and not be more trade restrictive than required to achieve the importing Party's appropriate level of protection.

3. A Party may collect fees for the costs incurred to conduct import checks, which shall not exceed the recovery of the costs.

## Article 5.13
## Official Certification

1. In respect of phytosanitary certification for plants and plant products and other regulated articles,[4] each Party shall apply the principles laid down in ISPM No. 7 *Export Certification System* and ISPM No. 12 *Guidelines for Phytosanitary Certificates*.

2. The SPS Sub-Committee established under Article 30.9 (Sub-Committees – Institutional Provisions) may agree to specify further guidance, procedures, and requirements in relation to export certification.

3. The Parties shall promote the implementation of electronic certification to facilitate trade and deter fraud.

4. The Parties recognise:

   (a) their existing laws and regulations do not require certification for trade in low risk food commodities within the scope of this Chapter; and

   (b) the introduction of a new certification requirement for trade in these low risk foods would be based on a risk assessment.

5. Nothing in paragraph 4 shall preclude a Party from requiring phytosanitary certification for trade in food within the scope of this Chapter.

[4] "regulated articles" has the meaning adopted under the auspices of the IPPC.

**Article 5.14**
**Cooperation on Antimicrobial Resistance**

1. The Parties recognise that AMR is a serious threat to human and animal health and that the agricultural and aquaculture sectors are capable of contributing to this health threat.

2. The Parties recognise that the nature of the threat requires a transnational and multidisciplinary approach, acknowledging the interdependencies between animal health, human health, food safety, food security, and the environment.

3. The Parties shall explore initiatives to promote the reduction or prohibition of unnecessary use of antibiotic agents in the rearing of animals for food production.

4. For the purposes of this Article, "unnecessary use" means any use of antibiotic agents in animals other than use which is necessary for safeguarding animal health, when there is no effective alternative option such as:

   (a) availability of an effective vaccine;

   (b) availability of an effective alternative treatment;

   (c) improved animal management systems; or

   (d) improved infection prevention and control measures.

5. The Parties acknowledge that:

   (a) their respective strategies and policies are designed to deliver comparable outcomes in reducing the development and spread of AMR; and

   (b) protecting the efficacy of antibiotic agents that are critical to human and animal treatment and health are a core focus of their respective AMR strategies.

6. Consistent with the Parties' commitments in this Article and the serious threat presented by AMR, the Parties shall promote collaboration in all relevant multilateral fora, in particular in the OIE, the Food and Agriculture Organization of the United Nations, and the Codex.

7. The Parties shall facilitate the exchange of information, expertise, data on AMR surveillance, and experiences in the field of combatting of AMR, and identify common views, interests, priorities, and policies in this area with the aim of implementing this Article.

8. The exchange of information, experiences, and expertise under paragraph 7 may include exchanging information which would support the implementation of national action plans, such as:

   (a) guidelines for veterinarians and animal producers and experiences or expertise in the application of these guidelines;

   (b) experiences with quality assurance programmes for antimicrobial stewardship; and

   (c) where appropriate, information on their respective domestic approaches to harmonisation of surveillance and data collection.

9. The Parties shall cooperate in[5] and follow, where practical and economically feasible, existing and future guidelines, standards, recommendations, and actions developed in relevant international organisations, initiatives, and plans, aiming to promote the prudent and responsible use of antimicrobial agents.

10. The Parties shall support the implementation of agreed international action plans[6] and strategies on AMR.

11. Any working group established under paragraph 2 of Article 30.2 (Functions of the Joint Committee – Institutional Provisions) relating to AMR shall be composed of government representatives of each Party responsible for AMR matters and act as a forum for cooperation under this Article.

12. Any working group relating to AMR shall address matters referred to it by the SPS Sub-Committee and make recommendations to the SPS Sub-Committee on these matters. In cases where the working group is unable to agree on a recommendation, the working group shall report this fact to the SPS Sub-Committee.

**Article 5.15**
**Transparency, Notification, and Information Exchange**

1. Each Party shall promptly notify the other Party of a:

   (a) significant change to pest status; and

   (b) significant food safety issue related to a product traded between the Parties.

2. The Parties shall exchange information on other relevant issues including:

[5] Cooperation under this Article may include cooperation in areas of mutual interest relating to crop production and plant health.
[6] For the purposes of this Article, "agreed international action plans" includes the Global Action Plan.

(a) changes to a Party's sanitary and phytosanitary measures that may affect trade between the Parties;

(b) significant changes to the structure or organisation of a Party's competent authority;

(c) on reasonable request, information on matters related to the development and application of sanitary and phytosanitary measures, including the progress concerning newly available scientific evidence that affects, or may affect, trade between the Parties with a view to minimising their negative effects; and

(d) any other pertinent information for the adequate implementation of this Chapter.

3. Unless the SPS Sub-Committee decides otherwise, when the information referred to in paragraphs 1 and 2 has been made available via notification to the WTO or to the relevant international standard-setting body, in accordance with its relevant rules, or on publicly available websites of the Parties, the requirement in those paragraphs is deemed to be fulfilled.

4. In addition, and with regard to plant pests:

(a) the Parties shall exchange relevant information on the pest status in their territory in accordance with applicable standards agreed under the IPPC;

(b) the Parties shall, at the request of the other Party, provide the justification for pest categorisation and related phytosanitary measures;

(c) each Party shall establish and update a list of regulated pests for products for which a phytosanitary concern exists. The list shall contain:

(i) the quarantine pests that are not present within any part of its territory;

(ii) the quarantine pests present but not widely distributed and under official control; and

(iii) where applicable, the regulated non-quarantine pests.

## Article 5.16
## Technical Working Groups

1. A technical working group established under paragraph 2 of Article 30.2 (Functions of the Joint Committee – Institutional Provisions) shall function on an *ad hoc* basis.

2. Technical working groups shall be co-chaired by expert level representatives of the Parties and shall address matters referred to it by the SPS Sub-Committee and make recommendations to the SPS Sub-Committee on these issues. In cases where a technical working group is unable to agree a recommendation, the technical working group shall report this fact to the SPS Sub-Committee.

3. A technical working group, when addressing an issue agreed by the SPS Sub-Committee in accordance with paragraph 2, may:

   (a) engage, at the earliest appropriate stage, in technical exchange and cooperation regarding these issues;

   (b) consider any sanitary or phytosanitary measure or set of measures within the scope of this Chapter identified by a Party that is likely to affect, directly or indirectly, trade, and provide technical advice with a view to facilitating the resolution of specific trade concerns relating to that measure or set of measures;

   (c) serve as a forum to facilitate discussion and consideration of specific risk assessments and possible risk management options;

   (d) provide an opportunity for the Parties to discuss developments relevant to the work of the technical working group; and

   (e) report to the SPS Sub-Committee on progress of work.

4. A technical working group may recommend to the SPS Sub-Committee that it be continued or dissolved.

## Article 5.17
## Technical Consultations

1. In the event that a Party considers that a measure or draft measure within the scope of this Chapter, or its implementation, is inconsistent with this Chapter, it may, through its contact point, request that technical consultations be held.

2. Unless the Parties agree otherwise, the technical consultations shall be held as soon as possible and, in any case, within 30 days of the request.

Consultations may be conducted by electronic or any other means, as mutually determined by the Parties.

3. The purpose of technical consultations is to share information and increase mutual understanding, with a view to resolving any concerns about the specific measure that is the subject of the consultations within a reasonable period of time.

4. If the Parties have already established other mechanisms than those referred to in this Article to address the concerns, they shall make use of them to the extent practicable in order to avoid unnecessary duplication.

## Article 5.18
## Sanitary and Phytosanitary Measures Sub-Committee

1. The SPS Sub-Committee established under Article 30.9 (Sub-Committees – Institutional Provisions) shall be composed of the responsible competent authorities of each Party. Any SPS Sub-Committee decision shall be made by mutual agreement of the representatives of the Parties.

2. The functions of the SPS Sub-Committee within the scope of this Chapter include serving as a forum:

   (a) to monitor the implementation of this Chapter, to consider any matter related to this Chapter, and to examine all matters which may arise in relation to its implementation;

   (b) to provide direction for the identification, prioritisation, management, and resolution of issues;

   (c) to consider any request by a Party to modify the modalities of import checks;

   (d) to provide a regular forum to exchange information that relates to each Party's regulatory system; and

   (e) to maintain a written record of the discussions between the Parties on their work and decisions made by the SPS Sub-Committee.

3. The SPS Sub-Committee may, within the scope of this Chapter, among other matters:

   (a) identify opportunities for greater bilateral engagement, including the temporary exchange of competent authority officials;

   (b) discuss, at an early stage, a change or proposed change to a measure being considered;

(c) promote cooperation between the Parties on sanitary and phytosanitary issues under discussion in multilateral fora, including the WTO SPS Committee, the Codex, and the IPPC, as appropriate;

(d) identify and discuss, at an early stage, regulatory initiatives that would benefit from cooperation;

(e) refer any relevant matter to a working group or technical working group reporting to it under this Chapter;

(f) consider any recommendation or report from a working group under paragraph 12 of Article 5.14 (Cooperation on Antimicrobial Resistance);

(g) consider any recommendation or report from a technical working group under paragraph 2 of Article 5.16 (Technical Working Groups) in order to reach a resolution that is mutually acceptable to the Parties; and

(h) consider any recommendation from a technical working group under paragraph 4 of Article 5.16 (Technical Working Groups) and make a recommendation to the Joint Committee that a technical working group be continued or dissolved.

4. A Party may refer any matter within the scope of this Chapter or Chapter 6 (Animal Welfare) to the SPS Sub-Committee. The SPS Sub-Committee shall consider the issue as expeditiously as possible.

5. If the SPS Sub-Committee is unable to resolve an issue expeditiously, including an issue relating to any recommendation or report from a working group or technical working group reporting to it under this Chapter, it shall, at the request of a Party, report promptly to the Joint Committee.

6. Recognising that the Joint Management Committee established under Article 16 of the Sanitary Agreement (the "Joint Management Committee") may have relevant knowledge or experience in relation to matters which may arise between the Parties in relation to the implementation of this Chapter or Chapter 6 (Animal Welfare), the SPS Sub-Committee may:

(a) invite the participation of members of the Joint Management Committee in its meetings;

(b) exchange information with the Joint Management Committee which arises under this Chapter or Chapter 6 (Animal Welfare) and may be relevant to the implementation of the Sanitary Agreement; and

(c) receive reports from and consider information shared by the Joint Management Committee in relation to any matter that may arise under the auspices of the Sanitary Agreement which may affect the implementation of this Chapter or Chapter 6 (Animal Welfare).

7. The functions of the SPS Sub-Committee shall also include supervision of the working group reporting to it under Chapter 6 (Animal Welfare) and, in this regard, the SPS Sub-Committee may:

(a) refer any relevant matter to the working group reporting to it under Chapter 6 (Animal Welfare);

(b) consider any report, recommendation, or matter referred to it by the working group reporting to it under Chapter 6 (Animal Welfare);

(c) report any matter referred to it under subparagraph (b) to the Joint Committee; and

(d) consider any other implementation matter within the scope of Chapter 6 (Animal Welfare).

8. Unless the Parties agree otherwise, the SPS Sub-Committee shall meet and establish its terms of reference, work programme, and its rules of procedure no later than one year following the date of entry into force of this Agreement. The SPS Sub-Committee shall modify its own rules of procedure, if the SPS Committee deems it appropriate.

9. Following its initial meeting, the SPS Sub-Committee shall meet normally on an annual basis. Additional meetings may be held at the request of a Party or the Joint Committee. The SPS Sub-Committee may decide to meet by electronic means and it may also address issues out of session by correspondence.

10. The SPS Sub-Committee shall report as required on its activities and work programme to the Joint Committee.

**Article 5.19**
**Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

# CHAPTER 6

# ANIMAL WELFARE

## Article 6.1
## Objectives

The objective of this Chapter is to enhance cooperation between the Parties on animal welfare of farmed animals.

## Article 6.2
## General Provisions

1. The Parties recognise that animals are sentient beings.[1] They also recognise the connection between improved welfare of animals and benefits to food production systems.

2. The Parties recognise that the protection and improvement of animal welfare may, in accordance with their WTO commitments, be an interest in the context of a Party's trade objectives.

## Article 6.3
## Right to Regulate and Improvement of Farmed Animal Welfare

1. The Parties affirm the right of each Party to set its policies and priorities for the protection of animal welfare and to adopt or modify its laws, regulations, and policies in a manner consistent with each Party's international commitments, including this Agreement.

2. The Parties recognise that it is inappropriate to encourage bilateral trade or investment by weakening or reducing the protection afforded to farmed animal welfare in their respective animal welfare laws and regulations. Each Party reaffirms its commitment to improving and advancing the protection afforded to the welfare of farmed animals in its animal welfare laws and regulations.

3. Each Party shall use its best endeavours not to weaken or reduce the protection afforded to the welfare of farmed animals in its animal welfare laws and regulations, in a manner materially affecting trade or investment between the Parties.

[1] As defined in each Party's respective animal welfare laws and regulations.

4. Neither Party shall waive or derogate from its animal welfare laws and regulations in a manner materially affecting trade or investment between the Parties.

5. The Parties recognise that their farming practices are substantively different but that each Party affords a high priority to animal welfare in its farming practices and that in multiple areas their respective animal welfare laws, regulations, and policies provide comparable outcomes.

**Article 6.4**
**Cooperation**

1. The Parties shall exchange information, expertise, and experiences in the field of animal welfare with the aim of improving understanding of each other's regulatory systems, policies, and strategic approaches, and enhancing animal welfare standards.

2. The Parties shall cooperate in international fora to promote the development of scientifically based animal welfare standards. In particular, the Parties shall cooperate to reinforce and broaden the scope of the World Animal Health Organisation (OIE) animal welfare standards with a focus on farmed animals.

3. The Parties shall continue, strengthen, and build on their existing cooperation in the field of farmed animal welfare. To this end, the Parties shall:

   (a) encourage cooperation on research in the field of animal welfare; and

   (b) encourage non-governmental bodies of the Parties to exchange views, experiences, and information as part of wider collaboration in the field of animal welfare.

**Article 6.5**
**Animal Welfare Working Group**

1. The Animal Welfare Working Group established under Article 30.10 (Working Groups – Institutional Provisions) ("Working Group") shall be composed of government representatives of each Party responsible for animal welfare matters. The Working Group shall act as a forum for cooperation under this Chapter and report to the Sanitary and Phytosanitary Measures Sub-Committee established under Article 30.9 (Sub-Committees – Institutional Provisions) ("SPS Sub-Committee").

2. The Working Group shall have its first meeting within one year of the date of entry into force of this Agreement and thereafter shall meet at regular

intervals as agreed by the Parties. The Working Group may meet physically or virtually as agreed by the Parties.

3. Prior to the first meeting of the Working Group, the SPS Sub-Committee shall, unless the Parties agree otherwise, establish the Working Group's terms of reference and work programme.

4. The Working Group shall be co-chaired by government representatives of the Parties. Reports of the Working Group shall be mutually agreed by the representatives of the Parties.

5. The Working Group shall address matters agreed by the SPS Sub-Committee and make recommendations to the SPS Sub-Committee on these matters. In cases where the Working Group is unable to agree a recommendation, the Working Group shall report this fact to the SPS Sub-Committee.

**Article 6.6**
**Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

# CHAPTER 7

# TECHNICAL BARRIERS TO TRADE

## Section A
## General Provisions

### Article 7.1
### Definitions

For the purposes of this Chapter, the terms and definitions set out in Annex 1 to the TBT Agreement apply. In addition, for the purposes of this Chapter:

**"cosmetic product"** means:

(a) for New Zealand, a product or preparation intended to be placed in contact with the various external parts of the human body (epidermis, hair system, nails, lips, and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, or correcting body odours, or protecting them, or keeping them in good condition;

(b) for the United Kingdom, a substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips, and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition, or correcting body odour;

**"market surveillance"** means activities conducted and measures taken by market surveillance and enforcement authorities, including activities conducted and measures taken in cooperation with economic operators, on the basis of procedures of a Party to enable that Party to monitor or address the safety of products and their compliance with the requirements set out in its laws and regulations;

**"medicinal product"** means:

(a) for New Zealand:

(i) a product for human use defined as a "medicine" in section 3(1) of the *Medicines Act 1981*; and

(ii) a product for veterinary use defined as a "veterinary medicine" in section 2(1) of the *Agricultural Compounds and Veterinary Medicines Act 1997*;

(b) for the United Kingdom:

(i) a product for human use defined as a "medicinal product" in regulation 2 of the *Human Medicines Regulations 2012*, unless it is a "herbal medicinal product" or a "homeopathic medicinal product"; and

(ii) a product for veterinary use defined as a "veterinary medicinal product" in regulation 2(1) of the *Veterinary Medicines Regulations 2013*; and

**"TBT Agreement"** means *the Agreement on Technical Barriers to Trade* in Annex 1A to the WTO Agreement.

## Article 7.2
## Objectives

The objectives of this Chapter are to increase and facilitate trade in goods between the Parties by preventing, identifying, and eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting regulatory cooperation and good regulatory practice.

## Article 7.3
## Scope

1. Unless otherwise indicated, this Chapter shall apply to the preparation, adoption, and application of all technical regulations, standards, and conformity assessment procedures of central level of government bodies which may affect the trade in goods between the Parties.

2. All references in this Chapter to technical regulations, standards, and conformity assessment procedures shall be construed to include any amendments to them and any addition to the rules or the product coverage of those technical regulations, standards, and conformity assessment procedures, except amendments and additions of an insignificant nature.

3. This Chapter shall not apply to:

(a) technical specifications prepared by a governmental body for production or consumption requirements of a governmental body; or

(b) sanitary or phytosanitary measures which are covered by Chapter 5 (Sanitary and Phytosanitary Measures).

4. For greater certainty, nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards, or conformity assessment procedures in accordance with its rights and obligations under this Agreement, the TBT Agreement, and any other relevant international agreement.

5. Each Party shall take those reasonable measures as may be available to it to encourage observance of the provisions of Article 7.7 (Equivalency of Technical Regulation) and Article 7.8 (Conformity Assessment) by regional level of government bodies, which are responsible for the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures.

## Article 7.4
## Incorporation of Certain Provisions of the TBT Agreement

1. The Parties affirm their rights and obligations under the TBT Agreement.

2. The following provisions of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*:

(a) Article 2 (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies);

(b) Article 5 (Procedures for Assessment of Conformity by Central Government Bodies);

(c) Annex 1 (Terms and their Definitions for the Purpose of this Agreement) including its chapeau and explanatory notes; and

(d) paragraphs D to F of Annex 3 (Code of Good Practice for the Preparation, Adoption and Application of Standards).

## Article 7.5
## Cooperation

1. The Parties shall strengthen their cooperation and intensify their joint work in the fields of technical regulations, standards, and conformity assessment procedures with a view to facilitating access to each other's market.

2. In particular, the Parties shall seek to identify, develop, and promote trade facilitating initiatives of mutual interest. Those initiatives may include:

(a) promoting good regulatory practices through regulatory cooperation between the Parties, including the exchange of information, experience, and data;

(b) increasing the convergence of their respective technical regulations, standards, and conformity assessment procedures with relevant international standards, guides, or recommendations;

(c) cooperation through joint standards development in areas of shared interest; and

(d) promoting or enhancing cooperation between organisations in the Parties in charge of standardisation, conformity assessment procedures, metrology, market surveillance, or monitoring and enforcement activities.

3. At the request of the other Party, a Party shall give positive consideration to any sector-specific proposal that the requesting Party makes for further cooperation under this Chapter.

4. The Parties shall explore opportunities to promote cooperation and the exchange of information between themselves and between their respective standards development and conformance organisations,[1] public or private, on how those organisations may support the participation of developing countries in relevant international fora and in overcoming barriers to trade.

## Article 7.6
## International Standards, Guides, and Recommendations

1. The Parties recognise the important role that international standards, guides, and recommendations can play in supporting greater regulatory alignment, good regulatory practice, and reducing unnecessary barriers to trade.

2. To determine whether there is an international standard, guide, or recommendation within the meaning of Article 2, Article 5, and Annex 3 of the TBT Agreement, the Parties shall apply the relevant definitions as they are set out, and referred to, in Annex 1 to the TBT Agreement and follow the principles and procedures set out in the TBT Committee Decision on International Standards.[2]

[1] "conformance organisations" here refers to those bodies that develop conformity assessment procedures or perform conformity assessment.

[2] This refers to the *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 TBT Agreement*, adopted by the WTO Committee on Technical Barriers to Trade on 13 November 2000 (Annex 4 to G/TBT/9).

3. Where a Party does not use relevant international standards, guides, or recommendations, or the relevant parts thereof, as the basis for its technical regulations and conformity assessment procedures, that Party shall, on request from the other Party:

   (a) identify any substantial deviation from the relevant international standards, guides, or recommendations;

   (b) explain the reasons why those international standards, guides, or recommendations have been considered inappropriate or ineffective for the aim pursued; and

   (c) provide the evidence on which this assessment is based, where available.

4. With a view to encouraging that the development of international standards, guides, and recommendations, which are likely to become a basis for technical regulations and conformity assessment procedures, do not create unnecessary obstacles to international trade, the Parties shall encourage national standardising bodies within their territories to cooperate with each other in appropriate circumstances.

## Article 7.7
## Equivalency of Technical Regulation

1. A Party shall, at the written request of the other Party, give positive consideration to accepting technical regulations of the other Party as equivalent, even if they differ, provided that it is satisfied that the technical regulation of the other Party adequately fulfils the objectives of its own technical regulation. If the requested Party does not accept a technical regulation of the other Party as equivalent, it shall, at the request of the other Party, explain the reasons for its decision.

2. A Party shall also give positive consideration to a request by the other Party to develop general or further arrangements, or to negotiate and conclude agreements, for achieving the equivalence of technical regulations. Where a Party declines a request, it shall, at the request of the other Party, explain the reasons for its decision.

## Article 7.8
## Conformity Assessment

1. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results, which may include:

   (a) accepting suppliers' declarations of conformity;

(b) unilateral recognition by a Party of the results of conformity assessment procedures performed in the territory of the other Party;

(c) cooperative arrangements between conformity assessment bodies of the Parties;

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

(e) use of accreditation procedures for qualifying conformity assessment bodies;

(f) government designation of conformity assessment bodies; and

(g) cooperative arrangements between accreditation bodies of the Parties.

2. The Parties shall exchange information on the range of mechanisms relevant to conformity assessment procedures in their respective territories with a view to facilitating the acceptance of conformity assessment results.

3. The Parties acknowledge the trade facilitation role played by the *Agreement on Mutual Recognition in Relation to Conformity Assessment between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand* done at London on 21 January 2019 ("NZ-UK MRA"), and the importance of cooperating in the field of mutual recognition in relation to conformity assessment in accordance with that agreement. The Parties may agree, in accordance with the NZ-UK MRA, to extend the coverage of that agreement.

4. The Parties shall commence a review of this Article within 12 months of the date of entry into force of this Agreement, or such longer period as the Parties shall agree. The review shall be with a view to:

(a) amending this Agreement to include a requirement that each Party shall accord to conformity assessment bodies located in the territory of the other Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory if, by the date of the review, the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* done at Santiago on 8 March 2018 ("CPTPP") has entered into force in respect of the United Kingdom; or

(b) exploring amending this Agreement to include a requirement in line with subparagraph (a) if, by the date of the review, the CPTPP has not entered into force in respect of the United Kingdom.

5. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:

(a) select conformity assessment procedures that are proportionate to the risks involved, as determined on the basis of a risk assessment;

(b) consider as proof of compliance with technical regulations the use of a supplier's declaration of conformity, i.e. a declaration of conformity issued by the manufacturer on the sole responsibility of the manufacturer without a mandatory non-party assessment, as assurance of conformity among the options for showing compliance with technical regulations; and

(c) where requested by the other Party, provide information on the criteria used to select the conformity assessment procedures for specific products.

6. Where a Party requires a non-party conformity assessment as a positive assurance that a product conforms with a technical regulation and it has not reserved this task to a government authority in accordance with paragraph 7, it shall:

(a) use accreditation, as appropriate, as a means to demonstrate technical competence to qualify conformity assessment bodies. Without prejudice to its right to establish requirements for conformity assessment bodies, each Party recognises the valuable role that accreditation operated with authority derived from government and on a non-commercial basis can play in the qualification of conformity assessment bodies;

(b) use relevant international standards for accreditation and conformity assessment;

(c) encourage accreditation bodies and conformity assessment bodies located within its territory to join any relevant functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results, and where appropriate, consider using those agreements or arrangements in approving conformity assessment bodies;

(d) if two or more conformity assessment bodies are authorised by a Party to carry out conformity assessment procedures required for placing a product on the market, ensure that economic operators have a choice amongst the conformity assessment bodies designated by the authorities of a Party for a particular product or set of products;

(e) ensure that conformity assessment bodies carry out their activities in a manner that prevents conflicts of interests affecting the outcome of the assessment;

(f) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party, and may require subcontractors to meet the same requirements the conformity assessment body must meet to perform that testing or those inspections itself; and

(g) ensure the details, including the scope of the designation, of the bodies that have been designated to perform that conformity assessment are published by digital means.

7. Nothing in this Article shall preclude a Party from requiring that conformity assessment in relation to specific products is performed by its specified government authorities. If a Party requires that conformity assessment is performed by its specified government authorities, that Party shall:

(a) limit the conformity assessment fees to the approximate cost of the services rendered and, at the request of an applicant for conformity assessment, explain how any fees it imposes for that conformity assessment are limited to the approximate cost of services rendered; and

(b) make publicly available the conformity assessment fees.

**Article 7.9**
**Transparency**

1. In order to enhance the opportunity for persons to provide meaningful comments, a Party making a notification in accordance with Article 2.9.2 or Article 5.6.2 of the TBT Agreement shall:

(a) include in the notification a statement describing the objective of the proposal and the rationale for the approach the Party is proposing; and

(b) transmit the notification electronically to the other Party through the enquiry point established in accordance with Article 10 of the TBT Agreement at the same time as it notifies WTO members in accordance with the TBT Agreement.

2. Each Party shall endeavour to allow at least 60 days from the transmission under subparagraph 1(b) for the other Party or persons of the other Party to make comments in writing on the proposal. A Party shall give positive

consideration to a reasonable request from the other Party to extend the comment period.

3. When a Party makes a notification in accordance with Article 2.10 or Article 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party, electronically, through the enquiry point referred to in subparagraph 1(b).

4. Each Party shall provide information on the adoption and the entry into force of the technical regulation or conformity assessment procedure and the adopted final text through an addendum to the original notification.

5. Further to Article 2.12 and Article 5.9 of the TBT Agreement, the phrase "reasonable interval" shall be understood to mean normally a period of no less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued.

6. Each Party shall take those reasonable measures as may be available to it to ensure that all proposals for, and final, technical regulations and conformity assessment procedures of the regional level of government are published.

7. Each Party shall ensure that all final technical regulations and conformity assessment procedures, and, to the extent practicable, all proposals for technical regulations and conformity assessment procedures, of the regional level of government are accessible through official websites or journals.[3]

## Article 7.10
## Contact Points

1. Each Party shall designate and notify a contact point for matters arising under this Chapter. The contact points shall work jointly to facilitate the implementation of this Chapter and cooperation between the Parties on matters relating to this Chapter.

2. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials.

3. The responsibilities of each contact point shall include:

   (a) communicating with the other Party's contact point, including facilitating discussions, requests, and the timely exchange of information on matters arising under this Chapter;

[3] For greater certainty, the Parties confirm their understanding that paragraph 2 of Article 7.3 (Scope) shall apply to this paragraph and to paragraph 6.

(b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter; and

(c) consulting and, if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter.

**Article 7.11**
**Technical Discussions**

1. A Party may request technical discussions with the other Party with the aim of resolving any matter that arises under this Chapter to the mutual satisfaction of both Parties.

2. Unless the Parties agree otherwise, the Parties shall hold technical discussions within 60 days of the request for technical discussions, and by any agreed method. The Parties shall endeavour to resolve the matter as expeditiously as possible and if the requesting Party considers that the matter is urgent, it may request that any discussions commence within a shorter timeframe. In that case, the responding Party shall give positive consideration to this request.

3. For greater certainty, for technical regulations or conformity assessment procedures of the regional level of government that may have a significant effect on trade, a Party may request technical discussions under this Article with the other Party regarding those matters.

4. For greater certainty, information exchanged in the course of technical discussions is subject to Article 32.8 (Confidentiality – General Exceptions and General Provisions). Unless the Parties agree otherwise, those discussions shall be without prejudice to the rights and obligations of the Parties under this Agreement, the WTO Agreement, or any other agreement to which both Parties are party.

**Article 7.12**
**Annexes and Implementing Arrangements**

1. The Parties may conclude, in accordance with Article 33.3 (Amendments – Final Provisions), Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessment applicable to trade between them.

2. The Parties may develop arrangements setting out details for the implementation of this Chapter, including the Annexes. Those arrangements may include provisions for the implementation of cooperation in respect of particular sectors or areas of mutual interest.

3. The rights and obligations set out in each Annex to this Chapter shall apply only to the sector specified in that Annex and shall not affect a Party's rights or obligations under any other Annex.

4. An Annex to this Chapter may set out the scope which is to apply to that Annex.

## Article 7.13
## Market Surveillance

1. Each Party shall endeavour to:

   (a) exchange information with the other Party on market surveillance and enforcement activities, which may include information on the authorities responsible for market surveillance and enforcement, and on measures taken against dangerous products;

   (b) ensure the impartial functioning of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest;[4] and

   (c) ensure that there are no conflicts of interest between market surveillance authorities and the persons concerned, subject to control or supervision, including the manufacturer, the importer, and the distributor.

2. Further to Article 32.8 (Confidentiality – General Exceptions and General Provisions), any discussions or information exchanged under this Article shall be designated confidential, unless the Parties agree otherwise.

## Article 7.14
## Marking and Labelling

1. In accordance with Article 7.4 (Incorporation of Certain Provisions of the TBT Agreement), each Party shall ensure that its technical regulations concerning product marking and labels comply with Article 2.1 and Article 2.2 of the TBT Agreement.

2. In particular, if a Party ("the Importing Party") requires marking or labelling of a product in the form of a technical regulation:

[4] For greater certainty, this subparagraph does not apply to authorisation functions performed by a Party itself when it retains the final decision-making authority regarding the conformity of a product.

(a) the Importing Party shall accept that labelling and corrections to labelling take place within its territory but prior to offering the product for sale in the Importing Party's territory, subject to its relevant applicable laws, regulations, and customs procedures, as an alternative to labelling in the exporting Party, unless that labelling is required for reasons of public health or safety;

(b) the Importing Party shall, unless it considers that legitimate objectives under the TBT Agreement are compromised thereby, 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

(c) 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:

(i) information in other languages in addition to the language required in the Importing Party;

(ii) internationally accepted nomenclatures, pictograms, symbols, or graphics in addition to those required in the Importing Party; and

(iii) additional information to that required in the Importing Party.

## Section B
## Sector-Specific Provisions

### Article 7.15
### Cosmetic Products

1. Each Party shall maintain its prohibitions on animal testing in its cosmetic products laws and regulations. Neither Party shall require that a cosmetic product or ingredient be tested on animals for the purposes of determining safety, efficacy, or to comply with the respective laws and regulations governing the placing on the market of cosmetic products. Each Party shall support the research, development, validation, and regulatory acceptance of alternative methods to animal testing for cosmetic ingredients and products.

2. The Parties shall seek to collaborate, where appropriate, through relevant international initiatives, such as those aimed at harmonisation, to improve the alignment of their respective regulations and regulatory activities for cosmetic products.

3. The Parties shall seek to collaborate, where appropriate, on guidance addressing appropriate handling of the differing labelling requirements in each of their regulatory systems.

**Article 7.16**
**Medicinal Products**

1. The Parties shall seek to collaborate, where appropriate, on matters such as improving their respective regulations and regulatory activities for medicinal products and resolving issues relating to the medicines supply chain and its security, through relevant international initiatives such as:

   (a) for medicinal products for human use, the International Coalition of Medicines Regulatory Authorities (ICMRA) and the Pharmaceutical Inspection Convention and the Pharmaceutical Inspection Co-operation Scheme (PIC/S); and

   (b) for medicinal products for veterinary use, the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH).

2. The Parties shall endeavour to promote dialogue on scientific and regulatory matters and the exchange of information on regulatory activities between their agencies, in order to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade between the Parties. The exchange of information may include, for example, efforts to share expertise, work in broader initiatives with other regulatory authorities, collaboration on inspections of medicinal products, and cooperation on the interoperability of data standards for the traceability of medicinal products.

3. The Parties shall seek to collaborate, where appropriate, on the development of guidelines, recommendations, and initiatives on evolving areas, in particular to seek to improve the international response to global health threats, including epidemics, diseases of epidemic potential, and antimicrobial resistance.

**Article 7.17**
**Medical Devices**

The Parties shall seek to collaborate, where appropriate, through relevant international organisations and initiatives, such as the International Medical Devices Regulators Forum (IMDRF), to improve the alignment of their respective regulations and regulatory activities for medical devices.

# CHAPTER 8

# TRADE REMEDIES

## Section A
## General Provisions

### Article 8.1
### Definitions

For the purposes of this Chapter:

**"bilateral safeguard"** means a safeguard referred to in paragraph 2 of Article 8.9 (Adoption of Bilateral Safeguard) that may be, or has been, adopted by a Party in accordance with the rights and obligations set out in Section D;

**"customs duty elimination"** means any customs duty elimination to occur in accordance with Annex 2A (Schedule of Tariff Commitments for Goods);

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

**"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 date of entry into force of this Agreement until five years after the completion of the customs duty elimination in relation to the good.

### Article 8.2
### Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under Section B or C.

## Section B
## Anti-Dumping and Countervailing Duties

### Article 8.3
### General Provisions

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement.

2. Except as otherwise provided in this Chapter, nothing in this Agreement shall confer any additional rights or impose any additional obligations on the Parties with regard to proceedings or measures taken pursuant to Article VI of GATT 1994, the AD Agreement, or the SCM Agreement.

### Article 8.4
### Transparency

*Notification of anti-dumping or countervailing investigation*

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping investigation or a countervailing investigation with respect to imports of a good originating in the territory of the other Party, the Party shall provide written notice to the other Party of its receipt of the application at the earliest possible opportunity before initiating the investigation.

*Consultation before countervailing investigation*

2. Before initiating a countervailing investigation, the Party shall also afford the other Party a meeting to consult with its investigating authority regarding the application.

*Right of interested parties to be heard*

3. Upon request of one or more of the interested parties, [1] the Party's investigating authority shall grant them the possibility to be heard in order to express their views during an anti-dumping investigation or a countervailing investigation, provided that the granting of that request does not prevent the investigation from proceeding expeditiously.

*Deficient response to information request*

4. If a Party's investigating authority determines that a timely response to a request for information does not comply with the request, the investigating

[1] For the purposes of this Article, "interested parties" shall be defined as per Article 6.11 of the AD Agreement and Article 12.9 of the SCM Agreement.

authority shall inform the interested party that submitted the response of the nature of the deficiency and, to the extent practicable in light of the time limit established to complete the anti-dumping investigation or review, or the countervailing investigation or review, provide that interested party with an opportunity to remedy or explain the deficiency.

5. If, after being informed of a deficient response in accordance with paragraph 4, an interested party submits a further response and the investigating authority finds that the response is not satisfactory, or that the response is not submitted within the applicable time limit, and if the investigating authority disregards all or part of the original and subsequent responses, the investigating authority shall explain in the determination or other written document the reasons for disregarding the information.

*Written disclosure of essential facts*

6. Consistent with Article 6.9 of the AD Agreement and Article 12.8 of the SCM Agreement, a Party's investigating authority shall ensure, before a final determination is made, full and meaningful disclosure of the essential facts under consideration which form the basis for the decision as to whether to adopt a definitive anti-dumping duty or a definitive countervailing duty. That disclosure shall be made in writing.

7. The full disclosure of the essential facts referred to in paragraph 6 is without prejudice to the requirements on confidentiality referred to in Article 6.5 of the AD Agreement and Article 12.4 of the SCM Agreement. Interested parties shall have a reasonable opportunity to respond to the disclosure in order that their comments can be addressed in any final determination.

## Article 8.5
## Lesser Duty

Before a Party adopts an anti-dumping duty or a countervailing duty in relation to imports of a good originating in the territory of the other Party, the Party's investigating authority shall consider, in accordance with the Party's laws and regulations, whether the amount of the anti-dumping duty shall be the full margin of dumping or a lesser amount, or whether the amount of the countervailing duty shall be the full amount of subsidy or a lesser amount.

## Article 8.6
## Public Interest

To the extent provided for under each Party's laws and regulations, an anti-dumping duty or a countervailing duty shall not be adopted by a Party in relation to imports of a good originating in the territory of the other Party if, on the basis of the information made available during the anti-dumping investigation or the

countervailing investigation, it is concluded that it is not in the public interest to adopt the duty.

## Section C
## Global Safeguards

### Article 8.7
### General Provisions

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.

2. Except as otherwise provided in this Section, nothing in this Agreement shall confer any additional rights or impose any additional obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

### Article 8.8
### Transparency

A Party that initiates a safeguard investigation shall provide to the other Party an electronic copy of any notification given to the WTO Committee on Safeguards under Article 12.1 of the Safeguards Agreement.

## Section D
## Bilateral Safeguards

### Article 8.9
### Adoption of Bilateral Safeguard

1. If, as a result of customs duty elimination, a good originating in the territory of 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 serious injury or threat of serious injury to a domestic industry, the other Party may adopt a safeguard provided for in paragraph 2 to the extent necessary to prevent or remedy the serious injury and to facilitate the adjustment of the domestic industry.

2. In accordance with paragraph 1, the importing Party may adopt one of the following safeguards:

   (a) suspension of any further customs duty elimination in relation to the good; or

(b) increase in the customs duty on the good to a level that does not exceed the lesser of:

(i) the most-favoured-nation applied rate of customs duty in effect at the time the safeguard is taken; or

(ii) 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.

**Article 8.10**
**Duration and Scope**

1. Neither Party shall maintain a bilateral safeguard for more than the period necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry.

2. The period referred to in paragraph 1 shall not exceed two years (including any adoption of the bilateral safeguard on a provisional basis), except that the period may be extended by no more than two years if the competent authority of the Party that maintains the safeguard determines, in conformity with the procedures specified in this Section, the further period to be necessary to prevent or remedy the serious injury and to facilitate the adjustment of the domestic industry and that there is evidence that the industry is adjusting.

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

4. Neither Party shall adopt a bilateral safeguard measure (including any bilateral safeguard measure adopted on a provisional basis) to a good that has previously been subject to a bilateral safeguard measure or a bilateral safeguard measure adopted on a provisional basis ("the previous measure") until the longer of the following periods has passed since the previous measure ceased to apply:

(a) a year; or

(b) a period equivalent to the duration of the previous measure.

5. When a Party ceases to maintain a bilateral safeguard in relation to a good, the customs duty for the good shall be the customs duty that would have been in effect in accordance with Annex 2A (Schedule of Tariff Commitments for Goods) but for the safeguard.

6. Neither Party shall adopt or maintain a bilateral safeguard after the transition period.

**Article 8.11**
**Investigation Procedure**

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

2. An investigation shall not exceed one year, but a Party may, in exceptional circumstances, extend the investigation for no more than a further three months. A Party extending an investigation shall notify the other Party in writing of its intention to extend the investigation as soon as possible and, in any event, within one year of the date of initiation of the investigation.

**Article 8.12**
**Notification and Consultation**

1. A Party shall provide written notice to the other Party immediately after:

   (a) initiating an investigation referred to in Article 8.11 (Investigation Procedure) relating to serious injury or threat of serious injury;

   (b) making a finding of serious injury or threat of serious injury caused by increased imports of a good originating in the territory of the other Party as a result of customs duty elimination in relation to the good;

   (c) taking a decision to adopt or maintain a bilateral safeguard; and

   (d) taking a decision to modify a bilateral safeguard for progressive liberalisation.

2. The Party providing a written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

   (a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the good subject to the investigation (including its subheading in the Harmonized System), the importation period subject to the investigation, and the date of initiation of the investigation; and

(b) in the written notice referred to in subparagraphs 1(b) to subparagraph 1(d), the evidence of the serious injury or the threat of serious injury caused by the increased imports of the good as a result of customs duty elimination, a precise description of the good subject to the proposed bilateral safeguard (including its subheading in the Harmonized System), a precise description of the bilateral safeguard, and, if applicable, the proposed date of the adoption, extension, or modification of the bilateral safeguard, its expected duration, and the timetable for the progressive liberalisation of the safeguard.

3. On request of the Party whose good is subject to a bilateral safeguard proceeding under this Chapter, the Party that is conducting the proceeding shall provide adequate opportunity for prior consultations with the requesting Party, with a view to:

(a) reviewing a written notification provided under paragraph 1, including any public notice or report that the competent investigating authority has issued in connection with the proceeding;

(b) exchanging views on the proposed or bilateral safeguard measure; and

(c) reaching an understanding on compensation as set out in Article 8.14 (Compensation).

**Article 8.13**
**Provisional Adoption of Bilateral Safeguard**

1. In critical circumstances, a Party may adopt a bilateral safeguard on a provisional basis if:

(a) delay would cause damage to a domestic industry that would be difficult to repair; and

(b) the Party's competent authority makes a preliminary determination after finding clear evidence that imports of a good originating in the territory of the other Party have increased as the result of customs duty elimination under this Agreement in relation to the good, and that those imports constitute a cause of serious injury or threat of serious injury.

2. A Party taking a decision to adopt a bilateral safeguard on a provisional basis shall immediately provide written notice of its decision to the other Party before the provisional bilateral safeguard is applied. Consultation between the Parties on the adoption of the safeguard on a provisional basis shall be initiated immediately after the safeguard is adopted.

3. A bilateral safeguard adopted on a provisional basis shall not be maintained for more than 200 days, during which time the Party shall comply with Article 8.11 (Investigation Procedure).

4. The increase in customs duty paid as a result of the adoption of the bilateral safeguard on a provisional basis shall be promptly refunded if the Party's competent authority, in the investigation referred to in paragraph 1 of Article 8.11 (Investigation Procedure), does not determine that the increase in imports of the good subject to the safeguard has caused serious injury or threat of serious injury.

**Article 8.14**
**Compensation**

1. A Party adopting 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. The Party shall provide an opportunity for those consultations no later than 30 days after the adoption or the extension of the bilateral safeguard.

2. 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 other Party may suspend substantially equivalent concessions to the trade of the Party adopting the bilateral safeguard.

3. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall not apply after the cessation of the bilateral safeguard.

**Article 8.15**
**Non-Cumulation**

Neither Party shall adopt or maintain in relation to the same good at the same time:

(a) a bilateral safeguard (including any bilateral safeguard adopted on a provisional basis);

(b) a measure under Article XIX of GATT 1994, the Safeguards Agreement, or Article 5 of the *Agreement on Agriculture* in Annex 1A to the WTO Agreement; or

(c) a product specific safeguard measure set out in Annex 2A (Schedule of Tariff Commitments for Goods).

# CHAPTER 9

# CROSS-BORDER TRADE IN SERVICES

## Article 9.1
## Definitions

For the purposes of this Chapter:

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

**"airport operation services"** means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. For greater certainty, airport operation services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors. Airport operation services do not include air navigation services;

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

**"cross-border trade in services"** or **"cross-border supply of services"** means the supply of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

**"enterprise"** means an enterprise as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions), or a branch of that enterprise;

**"enterprise of a Party"** means:

(a) an enterprise constituted or organised under the law of that Party or a branch located in the territory of that Party, that carries out substantial business activities in the territory of that Party;[1] or

[1] An enterprise shall be deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether an enterprise has a genuine link

(b) an enterprise of a non-party owned or controlled by a person of a Party,[2] if any of its vessels are registered in accordance with the laws and regulations of that Party and flying the flag of that Party, when supplying services using those vessels;

**"ground handling services"** means the supply, on a fee or contract basis, of the following services: airline representation, administration, and supervision, ground administration and supervision, including load control and communications; passenger handling; baggage handling; ramp services; air cargo and mail handling; fuel and oil handling; flight operations, crew administration and flight planning; aircraft servicing and cleaning; surface transport; and catering services. Ground handling services do not include: self-handling; security; line maintenance; fixed intra-airport transport systems; aircraft repair and maintenance; or the operation or management of essential centralised airport infrastructure, such as baggage handling systems, de-icing facilities, or fuel distribution systems;

**"measures of a Party"** means measures adopted or maintained by:

(a) central, regional, or local governments or authorities; or

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

**"selling and marketing of air transport services"** means opportunities for the air carrier concerned to sell and market freely its air transport services, including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

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

**"service supplier of a Party"** means a person of a Party that supplies, or seeks to supply, a service; and

**"specialty air services"** means a specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire fighting, aerial advertising, flight training, sightseeing, spraying,

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to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the enterprise:

(a) has a continuous physical presence, including through ownership or rental of premises, in the territory of that Party;
(b) has its central administration in the territory of that Party;
(c) employs staff in the territory of that Party; and
(d) generates turnover and pays taxes in the territory of that Party.

[2] For the avoidance of doubt, "person of a Party" in this subparagraph means a national or an "enterprise of a Party" as defined in subparagraph (a).

surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

**Article 9.2**
**Objectives**

The objectives of this Chapter are to:

(a) facilitate the expansion of cross-border trade in services on a mutually advantageous basis;

(b) improve the efficiency and transparency of the Parties' respective services sectors and competitiveness of their export trade; and

(c) work toward progressive liberalisation,

while recognising the right of each Party to regulate and introduce new regulations, and to provide and fund public services, in a manner that gives due respect to government policy objectives.

**Article 9.3**
**Scope**

1. This Chapter shall apply to measures of a Party affecting cross-border trade in services by service suppliers of the other Party. Those measures include measures affecting:

   (a) the production, distribution, marketing, sale, or delivery of a service;

   (b) the purchase or use of, or payment for, a service;

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

   (d) the presence in a Party's territory of a service supplier of the other Party; and

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

2. In addition to paragraph 1:

(a) Annex 9A (Professional Services and Recognition of Professional Qualifications) shall also apply to measures of a Party affecting the supply of professional services, including by a covered investment;

(b) Annex 9B (Express Delivery Services) shall also apply to measures of a Party affecting the supply of express delivery services, including by a covered investment; and

(c) Annex 9C (International Maritime Transport Services) shall also apply to measures of a Party affecting the supply of international maritime transport services.

3. This Chapter shall not apply to:

(a) financial services as defined in Article 11.1 (Definitions – Financial Services);

(b) government procurement;

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

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, except as provided for in Article 9.10 (Subsidies); or

(e) audio-visual services.

4. This Chapter shall not impose any obligation on a Party with respect to a national 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 national with respect to that access or employment.[3]

5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

(a) aircraft repair and maintenance services;

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

(c) computer reservation system services;

(d) specialty air services;[4]

[3] For greater certainty, this Chapter shall not apply to measures regarding citizenship, nationality, or residence on a permanent basis.

[4] Subject to compliance with the Parties' respective laws and regulations governing the admission of aircraft to, departure from, and operation within, their territory.

(e) airport operation services; and

(f) ground handling services.

6. If the Annex on Air Transport Services of GATS is amended, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement, in accordance with Article 33.3 (Amendments – Final Provisions).

7. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

8. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

## Article 9.4
## Market Access

Neither Party shall adopt or maintain, either on the basis of a regional sub-division or on the basis of its entire territory, a measure that:

(a) imposes a limitation on:

(i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; or

(iii) 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;[5] or

(b) restricts or requires a specific type of legal entity or joint venture through which a service supplier may supply a service.

[5] Subparagraph (a)(iii) shall not cover measures of a Party which limit inputs for the supply of services.

## Article 9.5
## National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.[6]

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

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

## Article 9.6
## Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.[7]

## Article 9.7
## Local Presence

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

## Article 9.8
## Non-Conforming Measures

1. Articles 9.4 (Market Access) to Article 9.7 (Local Presence) shall not apply to:

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

[6] Obligations 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.

[7] For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to services and service suppliers of territories for whose international relations the United Kingdom is responsible.

(i) the central or regional level of government, as set out by that Party in its Schedule to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures); or

(ii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 9.4 (Market Access) to Article 9.7 (Local Presence).

2. Articles 9.4 (Market Access) to Article 9.7 (Local Presence) shall not apply to any measure of a Party with respect to sectors, sub-sectors, or activities, as set out by that Party in its Schedule to Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures).

## Article 9.9
## Payments and Transfers

1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its law that relates to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, public retirement, or compulsory savings schemes.

**Article 9.10**
**Subsidies**

Notwithstanding subparagraph 3(d) of Article 9.3 (Scope):

(a) the Parties shall review the issue of disciplines on subsidies related to cross-border trade in services in the light of any disciplines agreed under Article XV of GATS, with a view to the incorporation of those disciplines into this Agreement, in accordance with Article 33.3 (Amendments – Final Provisions); and

(b) a Party which considers that it is adversely affected by a subsidy of the other Party related to cross-border trade in services may request consultations on those matters. The Parties shall subsequently enter into such consultations.

**Article 9.11**
**Denial of Benefits**

A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of that Party and to services of that service supplier if:

(a) a non-party or a person of a non-party owns or controls the enterprise; and

(b) the denying Party adopts or maintains a measure with respect to the non-party or the person of the non-party which prohibits transactions with the enterprise or which would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to services of that enterprise.

**Article 9.12**
**Recognition**

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, the Party may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an

agreement or arrangement with the non-party concerned, or may be accorded autonomously.

2. 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 9.6 (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.

3. If a Party is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, the Party shall afford adequate opportunity to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition of the type referred to in paragraph 1 autonomously, the Party shall afford adequate opportunity to the other Party to demonstrate that education or experience obtained, requirements met, or licences or certifications granted in that other Party's territory should be recognised.

4. Neither Party shall accord recognition in a manner that would constitute a means of discrimination between the other Party and a non-party 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.

**Article 9.13**
**Development Cooperation**

1. Recognising the role that trade in services can play in economic development and poverty reduction, the Parties may engage in cooperative activities to support the participation of developing countries in trade in services.

2. Cooperative activities may include:

   (a) participating actively in international fora in order to support the participation of developing countries in trade in services;

   (b) sharing information and experiences and identifying best practices relevant to supporting that participation of developing countries in trade in services; and

   (c) any other form of cooperation or activities as may be agreed between the Parties.

## Article 9.14
## Services and Investment Sub-Committee

1. The Services and Investment Sub-Committee, established under Article 30.9 (Sub-Committees – Institutional Provisions), shall be composed of government representatives of each Party.

2. The Sub-Committee shall:

   (a) review and monitor the implementation and operation of this Chapter and Chapters 10 (Domestic Regulation) to Chapter 15 (Digital Trade);

   (b) consider ways to further enhance trade and investment between the Parties, including through discussing future amendments to each Party's Schedules to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures), Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures), Annex III (Financial Services Non-Conforming Measures), and Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons); and

   (c) facilitate the exchange of information between the Parties in relation to the Chapters referred to in subparagraph (a).

3. The Sub-Committee may:

   (a) make recommendations, or refer matters, to the Joint Committee;

   (b) refer matters to any working group or any other subsidiary body related to the Chapters referred to in subparagraph 2(a); and

   (c) consider any other matter related to the Chapters referred to in subparagraph 2(a), including matters referred to it by any working group or any other subsidiary body, or as directed by the Joint Committee.

4. The Sub-Committee shall meet one year after the date of entry into force of this Agreement, and thereafter as agreed by the Parties.

5. The Sub-Committee shall be co-chaired by representatives of each Party and hosted alternatively.

6. The Sub-committee shall report to the Joint Committee with respect to its activities.

7. All decisions and reports of the Sub-Committee shall be made by mutual agreement.

# CHAPTER 10

# DOMESTIC REGULATION

## Article 10.1
## Definitions

For the purposes of this Chapter:

**"authorisation"** means the permission to carry out any of the activities referred to in subparagraphs 1(a) and 1(b) of Article 10.2 (Scope), resulting from a procedure to which a person of a Party, as defined in Article 9.1 (Definitions – Cross-Border Trade in Services), must adhere in order to demonstrate compliance with licensing requirements, qualification requirements, or technical standards;

**"competent authority"** means a central, regional, or local government or authority, or non-governmental body in the exercise of powers delegated by central, regional, or local governments or authorities, which is entitled to take a decision concerning the authorisation; and

**"economic activity"** means any activity of an industrial, commercial, or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority as defined in Article 14.2 (Definitions – Investment).

## Article 10.2
## Scope

1. This Chapter shall apply to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting:

   (a) cross-border trade in services by service suppliers of the other Party as defined in Article 9.1 (Definitions – Cross-Border Trade in Services); and

   (b) the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of a covered investment in the form of an enterprise, as these terms are defined in Article 14.2 (Definitions – Investment), for the pursuit of the relevant economic activity.

   As far as measures relating to technical standards are concerned, this Chapter shall only apply to those measures affecting trade in services.

2. This Chapter shall not apply to services or measures of a Party that are excluded from the scope of:

   (a) Chapter 9 (Cross-Border Trade in Services) pursuant to paragraphs 3 to 5 of Article 9.3 (Scope – Cross-Border Trade in Services); or

   (b) Chapter 14 (Investment) pursuant to paragraphs 3 and 5 of Article 14.3 (Scope – Investment).

3. This Chapter shall not apply to licensing requirements and procedures, qualification requirements and procedures, and technical standards pursuant to a measure:

   (a) to the extent that the measure is not subject to Article 9.4 (Market Access – Cross-Border Trade in Services), Article 9.5 (National Treatment – Cross-Border Trade in Services), or Article 9.7 (Local Presence – Cross-Border Trade in Services) and is referred to in subparagraphs 1(a) to 1(c) of Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services); or to Article 14.5 (Market Access – Investment) or Article 14.6 (National Treatment – Investment) and is referred to in subparagraphs 1(a) to 1(c) of Article 14.10 (Non-Conforming Measures – Investment); or

   (b) is referred to in paragraph 2 of Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) or paragraph 2 of Article 14.10 (Non-Conforming Measures – Investment).

4. The Parties recognise their respective right to regulate and to introduce new regulation in order to meet government policy objectives.

## Article 10.3
## Administration of Measures of General Application

Each Party shall ensure that all measures of general application affecting trade in services or the pursuit of an economic activity are administered in a reasonable, objective, and impartial manner.

## Article 10.4
## Development of Measures

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that:

   (a) requirements which must be met in order to obtain, maintain, or renew an authorisation preclude a competent authority from exercising its power of assessment in an arbitrary manner and are:

(i) based on objective and transparent criteria;[1]

(ii) clear and unambiguous;

(iii) impartial;

(iv) made public in advance; and

(v) easily accessible;

(b) the procedures are impartial, accessible to all applicants, and adequate for applicants to demonstrate whether they meet the requirements, where those requirements exist;

(c) the procedures do not in themselves prevent the fulfilment of requirements; and

(d) those measures do not discriminate between men and women.[2]

**Article 10.5**
**Submission of Applications**

If a Party requires authorisation, it shall, to the extent practicable, ensure that its competent authorities avoid requiring an applicant to approach more than one competent authority for each application for authorisation, recognising that if an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

**Article 10.6**
**Application Timeframes**

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit submission of an application at any time throughout the year. 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.

[1] Such criteria may include competence and the ability to supply a service or pursue an economic activity, including to do so in a manner consistent with the Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

[2] Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by the Parties of temporary special measures aimed at accelerating *de facto* equality between men and women, shall not be considered discrimination for the purposes of this subparagraph.

## Article 10.7
## Electronic Applications and Acceptance of Copies

If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent practicable, provide for applications to be completed by electronic means, including from within the territory of the other Party; and

(b) accept copies of documents authenticated in accordance with the Party's domestic law in place of original documents unless the competent authorities require original documents to protect the integrity of the authorisation process.

## Article 10.8
## Processing of Applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent practicable, publish in advance an indicative timeframe for processing an application;

(b) confirm in writing[3] that an application has been received and, at the request of the applicant, provide without undue delay information concerning the status of the application;

(c) ascertain without undue delay the completeness of an application for processing under the Party's laws and regulations;

(d) if the competent authorities consider an application complete for processing under the Party's laws and regulations, within a reasonable period of time after the submission of the application, ensure that:

(i) the processing of the application is completed; and

(ii) the applicant is informed in writing of the decision concerning the application;[4]

(e) if the competent authorities consider an application incomplete for processing under the Party's laws and regulations, within a reasonable period of time:

[3] References in subparagraphs (b) and (d) to "in writing" includes in electronic format.
[4] Competent authorities may meet this requirement by informing an applicant in advance, in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application.

(i) inform the applicant that the application is incomplete;

(ii) at the request of the applicant, identify the additional information required to complete the application and provide guidance to the applicant to assist them in completing an application correctly; and

(iii) provide the applicant with the opportunity[5] to correct deficiencies,

however, if none of the above is practicable, and the application is rejected due to incompleteness, competent authorities shall ensure that they inform the applicant within a reasonable period of time; and

(f) if an application is rejected, to the extent possible, either upon their own initiative or upon request of the applicant, inform the applicant in writing and without delay of the reasons for rejection and the procedures for resubmission of an application. An applicant should not be prevented from submitting another application[6] solely on the basis of a previously rejected application.

2. Each Party shall ensure that:

(a) its competent authority grants an authorisation as soon as it determines that the conditions for authorisation have been met; and

(b) once granted by a competent authority, an authorisation enters into effect without undue delay, subject to the applicable terms and conditions.[7]

**Article 10.9**
**Fees**

Each Party shall ensure that the authorisation fees charged by its competent authorities are reasonable, transparent, based on authority set out in a measure, made public in advance, payable by electronic means, and do not in themselves restrict the supply of the relevant service or pursuit of the relevant economic activity.[8]

[5] This opportunity does not require a competent authority to provide extensions of deadlines.
[6] Competent authorities may require that the content of such an application has been revised.
[7] Competent authorities are not responsible for delays due to reasons outside their competence.
[8] Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

## Article 10.10
## Examinations

1. If a Party requires an examination for authorisation, it shall ensure that its competent authorities schedule the examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination.

2. To the extent practicable, if a Party requires an examination for authorisation, it shall accept a request in electronic format to take that examination and consider the use of electronic means in other aspects of the examination process.

## Article 10.11
## Objectivity, Impartiality, and Independence

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that the competent authority processes an application and reaches and administers its decisions:

(a) objectively and impartially; and

(b) in a manner independent from any service supplier or person pursuing an economic activity for which the authorisation is required.[9]

## Article 10.12
## Publication and Information Available

1. If a Party requires authorisation, the Party shall promptly publish the information necessary for persons pursuing or seeking to pursue the activities referred to in paragraph 1 of Article 10.2 (Scope) for which the authorisation is required to comply with the requirements, technical standards, and procedures for obtaining, maintaining, amending, and renewing that authorisation. Each Party shall ensure that this information is easily accessible through electronic means. Where it exists, that information shall include:

(a) contact information of relevant competent authorities;

(b) the requirements and procedures;

(c) fees;

(d) technical standards;

[9] This paragraph does not mandate a particular administrative structure.

(e) procedures for appeal or review of decisions concerning applications;

(f) procedures for monitoring or enforcing compliance with the licensing requirements or qualifications requirements;

(g) opportunities for public involvement, such as through hearings or comments; and

(h) indicative timeframes for the processing of an application.

2. To the extent practicable, each Party shall require its competent authorities to respond to any reasonable request for information or assistance.

**Article 10.13**
**Review Procedures for Administrative Decisions**

Each Party shall maintain judicial, arbitral, or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party or person of the other Party pursuing an economic activity, for the prompt review of and, where justified, appropriate remedies for, administrative decisions that affect the supply of a service or pursuit of an economic activity. Where those procedures are not independent of the competent authority of a Party entrusted with the administrative decision concerned, the Party shall ensure that the procedures provide for an objective and impartial review.

**Article 10.14**
**Technical Standards**

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organisations,[10] designated to develop technical standards to use open and transparent processes.

**Article 10.15**
**Limited Number of Licences**

If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a Party shall in accordance with its laws and regulations apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct, and

[10] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of each Party.

completion of the procedure. In establishing the rules for the selection procedure, a Party may take into account legitimate public policy objectives, including, but not limited to, considerations of health, safety, the protection of the environment, and the preservation of cultural heritage.

**Article 10.16**
**Opportunity to Comment Before Entry into Force**

To the extent practicable and in a manner consistent with its legal system for adopting laws and regulations, each Party shall consider any comment received in response to any consultation documentation published pursuant to paragraph 2 of Article 29.2 (Publication – Transparency) in relation to matters within the scope of this Chapter and make publicly available a summary of how relevant input received has informed the development of the proposed measure.[11]

**Article 10.17**
**Enquiry Points**

Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from service suppliers or persons pursuing an economic activity regarding the measures within the scope of this Chapter.

[11] This paragraph is without prejudice to the final decision of a Party that adopts or maintains any measure for authorisation for the supply of a service or pursuit of an economic activity.

# CHAPTER 11

# FINANCIAL SERVICES

## Article 11.1
## Definitions

For the purposes of this Chapter:

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

(a) the constitution, acquisition, or maintenance of an enterprise; or

(b) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service including, but not limited to, supplying a financial service;

**"cross-border financial service supplier of a Party"** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of that service;

**"cross-border trade in financial services"** or **"cross-border supply of financial services"** means the supply of a financial service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

**"enterprise of a Party"** means an enterprise as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions) constituted or organised under the law in force in any part of the territory of a Party and that carries out substantial business activities in the territory of that Party;[1]

[1] An enterprise shall be deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether an enterprise has a genuine link to the economy of a Party should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the enterprise:

(a) has a continuous physical presence, including though ownership or rental of premises, in the territory of that Party;

**"established financial service supplier"** means a financial service supplier that supplies a financial service through commercial presence;

**"established financial service supplier of the other Party"** means an established financial service supplier located in the territory of a Party that is controlled by a person of the other Party;

**"financial service"** means any service of a financial nature, including insurance and insurance related services, banking and other financial services (excluding insurance), and services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

(a) insurance and insurance related services:

(i) direct insurance (including co-insurance):

(A) life; and

(B) non-life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency; and

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

(b) banking and other financial services (excluding insurance):

(i) acceptance of deposits and other repayable funds from the public;

(ii) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;

(iii) financial leasing;

(iv) all payment and money transmission services, including credit, charge and debit cards, travellers' cheques, and bankers' drafts;

(v) guarantees and commitments;

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(b) has its central administration in the territory of that Party;
(c) employs staff in the territory of that Party; and
(d) generates turnover and pays taxes in the territory of that Party.

(vi) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, or certificates of deposits);

(B) foreign exchange;

(C) derivative products including futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;

(E) transferable securities; and

(F) other negotiable instruments and financial assets, including bullion;

(vii) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately), and provision of services related to such issues;

(viii) money broking;

(ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(x) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xi) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(xii) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (i) to (xi), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions, and on corporate restructuring and strategy;

**"financial service supplier"** means a person of a Party that supplies, or seeks to supply, a financial service, but does not include a public entity;

**"investment"** means "investment" as defined in Article 14.1 (Definitions – Investment),[2] except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by an established financial service supplier is an investment only if it is treated as regulatory capital by the Party in whose territory the established financial service supplier is located; and

(b) a loan granted by or debt instrument owned by an established financial service supplier, other than a loan to or debt instrument issued by an established financial service supplier referred to in subparagraph (a), is not an investment;

**"investor"** means a Party, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party;

**"new financial service"** means a financial service, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of one Party, but which is supplied in the territory of the other Party;

**"person of a Party"** means a national or an enterprise of a Party and, for greater certainty, does not include a branch of an enterprise of a non-party;

**"public entity"** means:

(a) a government, a central bank or a monetary authority of a Party or any entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(b) a private entity performing functions normally performed by a central bank or monetary authority when exercising those functions; and

**"self-regulatory organisation"** means a non-governmental body, including any securities or futures exchange or market clearing agency, or other organisation or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers.

[2] For greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by an established financial service supplier, is an investment for the purposes of Chapter 14 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 14.1 (Definitions – Investment).

## Article 11.2
## Scope

1. This Chapter shall apply to any measure adopted or maintained by a Party affecting trade in financial services with respect to:

   (a) an established financial service supplier of the other Party;

   (b) an investor of the other Party, and an investment of that investor, in an established financial service supplier in the Party's territory; and

   (c) cross-border trade in financial services.

2. Chapter 14 (Investment) and Chapter 9 (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter:

   (a) Articles 14.11 (Minimum Standard of Treatment – Investment) to Article 14.19 (Corporate Social Responsibility – Investment) and Article 9.11 (Denial of Benefits – Cross-Border Trade in Services) are incorporated into and made a part of this Chapter.

   (b) Article 9.9 (Payments and Transfers – Cross-Border Trade in Services) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to subparagraphs 1(c) and 1(d) of Article 11.5 (National Treatment) and subparagraph 1(c) of Article 11.6 (Market Access).

3. This Chapter shall not apply to a measure adopted or maintained by a Party relating to:

   (a) activities or services forming part of a public retirement plan or statutory system of social security; or

   (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

   except that this Chapter applies to the extent that a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.

4. This Chapter shall not apply to government procurement of financial services.

5. This Chapter shall not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees, and insurance.

6. This Chapter does not impose any obligation on a Party with respect to a national 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 national with respect to that access or employment.

**Article 11.3**
**Specific Exceptions**

1. This Agreement does not apply to measures taken or activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary policies and related credit policies, or exchange rate policies.

2. This Agreement does not require a Party to furnish or allow access to information relating to the affairs and accounts of individual consumers, financial service suppliers or to any confidential information which, if disclosed, would interfere with specific regulatory, supervisory, or law enforcement matters, or would otherwise be contrary to public interest or prejudice legitimate commercial interests of particular enterprises.

**Article 11.4**
**Prudential Exception**

1. This Agreement does not prevent a Party from adopting or maintaining measures for prudential reasons,[3] including:

   (a) the protection of investors, depositors, policyholders, or persons to whom a financial service supplier owes a fiduciary duty;

   (b) the maintenance of the safety, soundness, integrity, or financial responsibility of an established financial service supplier, cross-border financial service supplier, or a financial service supplier; or

   (c) ensuring the integrity and stability of a Party's financial system.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

[3] The Parties understand that this includes the maintenance of the safety, soundness, integrity, or financial responsibility of payment, settlement, and clearing systems.

## Article 11.5
## National Treatment

1. Each Party shall accord to:

   (a) established financial service suppliers of the other Party, treatment no less favourable than that it accords, in like situations, to its own established financial service suppliers;

   (b) investors and investments of investors of the other Party in established financial service suppliers, treatment no less favourable than that it accords, in like situations, to its own investors and to investments of its own investors in established financial service suppliers;

   (c) financial services as specified by the Party in Annex 11A (Cross-Border Trade in Financial Services) or cross-border financial service suppliers of the other Party seeking to supply or supplying such financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers; and

   (d) cross-border financial service suppliers of the other Party seeking to supply or supplying financial services as defined in subparagraph (b) or subparagraph (c) of the definition of "cross-border trade in financial services" or financial services supplied through such cross-border trade, treatment no less favourable than that it accords to its own like financial services and financial service suppliers.

2. A Party may meet the requirement of paragraph 1 by according to:

   (a) established financial service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords, in like situations, to its own established financial service suppliers;

   (b) investors and investments of investors of the other Party in established financial service suppliers, either formally identical treatment or formally different treatment to that it accords, in like situations, to its own investors and investments of its own investors in established financial service suppliers; or

   (c) financial services and cross-border financial service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like financial services and financial service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of:

(a) established financial service suppliers of the Party compared to established financial service suppliers of the other Party, in like situations;

(b) investors and investments of investors of the Party in established financial service suppliers compared to investors and investments of investors of the other Party in established financial service suppliers, in like situations; or

(c) financial services or financial service suppliers of the Party compared to like financial services or cross-border financial service suppliers of the other Party.

4. Nothing in this Article shall be construed to require a Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant financial services or financial service suppliers.

**Article 11.6**
**Market Access**

1. A Party shall not adopt or maintain, with respect to:

(a) an established financial service supplier of the other Party;

(b) an investor or an investment of an investor of the other Party in an established financial service supplier in the Party's territory; or

(c) a cross-border financial service supplier of the other Party:

(i) seeking to supply or supplying the financial services as specified by the Party in Annex 11A (Cross-Border Trade in Financial Services); or

(ii) engaged in the cross-border trade in financial services or seeking to supply such services as defined in subparagraph (b) or subparagraph (c) of the definition of "cross-border trade in financial services",

on the basis of its entire territory a measure that:

(d) imposes limitations on:

(i) the number of established financial service suppliers or cross-border financial service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding in established financial service suppliers or the total value of individual or aggregate foreign investment in established financial service suppliers; or

(v) the total number of natural persons that may be employed in a particular financial services sector or that an established financial service supplier or cross-border financial service supplier may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(e) restricts or requires specific types of legal entity or joint venture through which an established financial service supplier or cross-border financial service supplier may supply a financial service.

2. This Article does not prevent a Party imposing terms, conditions, and procedures for the authorisation of the establishment and expansion of a commercial presence provided that they do not circumvent the Party's obligation under paragraph 1 and are consistent with the other provisions of this Chapter.

## Article 11.7
## Financial Data and Information[4]

1. Neither Party shall restrict a financial service supplier of the other Party from transferring information, including transfers of data by electronic means, where such transfers are necessary for the conduct of the ordinary business of the financial service supplier.

[4] For New Zealand, this Article does not apply to:

(a) New Zealand's overseas investment approval framework, including decisions under it, as set out in the *Overseas Investment Act 2005*, *Overseas Investment Regulations 2005*, and *Fisheries Act 1996*; and

(b) New Zealand's disaster and compulsory insurance schemes, as set out in the *Accident Compensation Act 2001* and *Earthquake Commission Act 1993*.

2. Subject to paragraphs 3 and 4, it is prohibited for a Party to require, as a condition for conducting business in the Party's territory, a financial service supplier of the other Party to use, store, or process information in the Party's territory. This prohibition also applies to circumstances in which a financial service supplier of the other Party uses the services of an external business for such use, storage, or processing of information.

3. Each Party has the right to require that information of a financial service supplier of the other Party is used, stored, or processed in its territory, where it is not able to ensure access to information required for the purposes of financial regulation and supervision, provided that the following conditions are met:

   (a) to the extent practicable, the Party provides a financial service supplier of the other Party with a reasonable opportunity to remediate any lack of access to information; and

   (b) the Party or its regulatory authorities consult the other Party or its regulatory authorities before imposing any requirements to a financial service supplier of the other Party to use, store, or process information in its territory.

4. Nothing in this Article shall restrict the right of a Party to adopt or maintain measures inconsistent with paragraph 1 or paragraph 2 to achieve a legitimate public policy objective, such as the protection of personal data, personal privacy, and the confidentiality of individual records and accounts, provided that such measures:

   (a) are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

   (b) do not impose restrictions on transfers of information greater than are required to achieve the objective.

## Article 11.8
## Payment and Clearing

Under terms and conditions that accord national treatment, each Party shall grant to established financial service suppliers of the other Party in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article does not confer access to the Party's lender of last resort facilities.

## Article 11.9
## Self-Regulatory Organisations

If a Party requires a financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to supply a financial service in or into the territory of that Party, or grants a privilege or advantage when supplying a financial service through a self-regulatory organisation, then the requiring Party shall ensure that the self-regulatory organisation observes the obligations contained in Article 11.5 (National Treatment).

## Article 11.10
## Senior Management and Boards of Directors

1. Neither Party shall require established financial service suppliers of the other Party to engage natural persons of any particular nationality as members of the board of directors, senior managerial, or other essential personnel.

2. Neither Party shall require that more than a simple majority of the board of directors of established financial service suppliers of the other Party be composed of persons residing in the territory of the Party.

## Article 11.11
## Transparency

1. The Parties recognise that transparent measures of general application governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall:

   (a) ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner;

   (b) to the extent practicable and in a manner consistent with its legal system ensure that its laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies are promptly published or made available in such a manner as to enable an interested person and the other Party to become acquainted with them;

   (c) to the extent practicable, ensure advance publication of any laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies that it proposes to adopt and

provide an interested person and the other Party a reasonable opportunity to comment on these proposed measures;

(d) maintain or establish appropriate mechanisms to respond, within a reasonable period of time, to an inquiry or a request for information from an interested person regarding measures of general application to which this Chapter applies;

(e) allow, to the extent practicable, a reasonable period of time between the final publication of a law or regulation of general application to which this Chapter applies and the date when it enters into effect; and

(f) ensure that measures of general application adopted or maintained by a self-regulatory organisation of the Party, to which this Chapter applies, are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

3. If a Party adopts or maintains measures relating to authorisation for the supply of a service, the Party shall ensure that:

(a) the regulatory authority reaches and administers its decisions in a manner independent from any supplier of the services for which authorisation is required;[5]

(b) such measures are based on objective and transparent criteria;[6]

(c) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist;

(d) the procedures do not in themselves unjustifiably prevent fulfilment of requirements; and

(e) such measures do not discriminate between men and women.[7]

4. If a Party requires authorisation for the supply of a financial service, the regulatory authorities of the Party shall:

(a) make publicly available the information necessary for financial service suppliers to comply with the requirements and procedures for

[5] This provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

[6] Such criteria may include, amongst other things, competence and the ability to supply a service, including to do so in a manner consistent with a Party's regulatory requirements. Competent authorities may assess the weight to be given to each criterion.

[7] Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Parties of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this subparagraph.

obtaining, maintaining, amending, and renewing such authorisation. Such information shall include, amongst other things, as applicable:

(i) fees;

(ii) contact information of regulatory authorities;

(iii) procedures for appeal or review of decisions concerning applications;

(iv) procedures for monitoring or enforcing compliance with the terms and conditions of licences;

(v) opportunities for public involvement, such as through hearings or comments;

(vi) indicative timeframes for processing of an application;

(vii) any other relevant requirements and procedures; and

(viii) technical standards;

(b) avoid, to the extent practicable, 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;

(c) permit, to the extent practicable, submission of an application at any time throughout the year.[8] If a specific time period for applying exists, the Party shall ensure that the regulatory authorities allow a reasonable period for the submission of an application;

(d) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;

(e) accept copies of documents, that are authenticated in accordance with the Party's domestic law, in place of original documents, unless the regulatory authorities require original documents to protect the integrity of the authorisation process;

(f) ensure that the authorisation fees charged by regulatory authorities are reasonable, transparent, and do not in themselves constitute a restriction on the supply of the relevant service;

[8] Competent authorities are not required to start considering applications outside of their official working hours and working days.

(g) if they consider an application complete for processing under the Party's domestic laws and regulations,[9] within a reasonable period of time after the submission of the application ensure that:

(i) the processing of the application is completed; and

(ii) the applicant is informed of the decision concerning the application, to the extent possible in writing;[10]

(h) on request of an applicant, inform the applicant of the status of their application for authorisation within a reasonable period of time;

(i) if they consider an application incomplete for processing under the Party's domestic laws and regulations, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) at the request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is incomplete; and

(iii) provide the applicant with the opportunity[11] to provide the additional information required to complete the application, and ensure that any deadlines for the additional information required are made clear to the applicant,

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time;

(j) before rejecting an application for authorisation, notify the applicant with the relevant reasons and give the applicant the opportunity to make written or oral representations in support of the application;

(k) on request of an unsuccessful applicant, to the extent possible, inform the applicant of the reasons for rejection of the application and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another revised application solely on the basis that an application had been previously rejected; and

[9] Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".
[10] "in writing" may include electronic form.
[11] Such opportunity does not require a competent authority to provide extension of deadlines.

(l) ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.[12]

5. Before the regulatory authority of a Party adopts a final law or regulation of general application, it shall endeavour, to the extent practicable, to address in writing the substantive comments received from interested persons with respect to the proposed measure.[13]

6. Chapter 21 (Good Regulatory Practice and Regulatory Cooperation) and Chapter 29 (Transparency) do not apply to a measure covered by this Chapter.

**Article 11.12**
**Financial Services New to the Territory of a Party**

1. Each Party shall permit financial service suppliers of the other Party to supply a new financial service that the first Party would permit its own financial services suppliers to supply domestically, in like situations. For cross-border financial service suppliers, this Article only applies to the financial services specified in Annex 11A (Cross-Border Trade in Financial Services).

2. Notwithstanding subparagraph 1(e) of Article 11.6 (Market Access), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time, and the authorisation may only be refused for prudential reasons.

3. To support innovation in financial services, the Parties shall endeavour to collaborate, share knowledge, experiences and developments in financial services, to advance financial integrity, consumer wellbeing and protection, financial inclusion, competition, financial stability, and facilitate cross-border development of new financial services.

4. The Parties understand that nothing in this Article prevents a financial service supplier of a Party from applying to the other Party to request that it authorises the supply of a financial service that is not supplied in the territory of a Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

[12] Competent authorities are not responsible for delays due to reasons outside their competence.
[13] For greater certainty, a Party may address those comments collectively on an official website.

## Article 11.13
## Diversity in Finance

1. The Parties recognise the importance of building a diverse, including gender-balanced, financial services industry, and the positive impact such diversity has on balanced decision-making, consumers, workplace culture, investment, and competitive markets.

2. Each Party shall endeavour to share best practices to promote diversity in financial services. Diversity includes, but is not limited to, gender, ethnicity, and professional and educational background.

3. Each Party shall endeavour to promote diversity and inclusion in financial services by encouraging financial service suppliers to develop objectives and strategies that promote diversity and inclusion, including, but not limited to, remuneration policies on management bodies and governing bodies that implement the principle of equal pay for work of equal value.

## Article 11.14
## Sustainable Finance

1. The Parties recognise the importance of international cooperation to facilitate the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities, in order, thereby, to increase investment in sustainable activities.

2. The inclusion of environmental considerations in investment decision-making and other business activities involves, inter alia, the assessment and pricing of climate-related risks and opportunities, and the exploration of environmental and sustainable projects and infrastructure.

3. The Parties acknowledge the importance of encouraging financial services suppliers to develop an approach to managing climate-related financial risks. Specifically, the Parties recognise the importance of encouraging the uptake of climate-related financial disclosures for financial service suppliers, including forward-looking information, in line with initiatives in international fora, such as the Task Force on Climate-Related Financial Disclosures.

4. The Parties shall cooperate in relevant international fora, and where agreeable, in the development and adoption of internationally recognised standards for the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities.

## Article 11.15
## Financial Services Dispute Settlement

1. Chapter 31 (Dispute Settlement) applies, as modified by this Article, to the settlement of disputes arising under this Chapter.

2. The Parties shall ensure for disputes arising under this Chapter that in addition to the requirements set out in Article 31.8 (Qualifications of Arbitrators – Dispute Settlement):

   (a) the Panel shall have the necessary expertise[14] relevant to financial services, which may include the regulation of financial service suppliers; and

   (b) the appointed arbitrator acting as chair shall, where possible, have prior experience as counsel or arbitrator in dispute settlement proceedings.

3. If the Secretary-General of the Permanent Court of Arbitration is responsible for appointing an arbitrator pursuant to paragraph 5 of Article 31.7 (Composition of a Panel – Dispute Settlement), the Parties shall request that the Secretary-General appoint an arbitrator in accordance with the principles in subparagraphs 2(a) and 2(b).

4. Notwithstanding paragraph 4 of Article 31.15 (Temporary Remedies in Case of Non-Compliance – Dispute Settlement), in considering what concessions or other obligations to suspend where a panel has found that the measure 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 and the inconsistency affects:

   (a) the financial services sector and any other sector, the complaining Party may suspend obligations in the financial services sector that have an effect that does not exceed the level of nullification or impairment in the complaining Party's financial services sector; or

   (b) only a sector other than the financial services sector, the complaining Party may not suspend obligations in the financial services sector.

## Article 11.16
## Institutional

1. The Financial Services Working Group established under Article 30.10 (Working Groups – Institutional Provisions) ("the Working Group") shall include a principal representative of each Party who shall be an official of the

[14] For greater certainty, this requirement may be satisfied by a majority of arbitrators having the necessary expertise relevant to financial services.

Party's authority responsible for financial services. For the United Kingdom, the Working Group representative shall be an official from HM Treasury or its successor. For New Zealand, the Working Group representatives shall include an official from the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators.

2. The Working Group shall:

   (a) provide a forum to discuss and review the implementation of the Chapter;

   (b) consider financial services matters arising from the implementation of the Agreement; and

   (c) provide reports on the request of the Services and Investment Sub-Committee regarding implementation of this Chapter.

3. The Working Group may meet, by agreement of the Parties, and such meetings may be physical or virtual, as mutually agreed.

4. The Parties may invite, if they consider it appropriate, representatives of their domestic financial regulatory authorities to attend meetings of the Working Group.

**Article 11.17**
**Consultation**

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Working Group.

2. Each Party shall ensure that when there are consultations pursuant to paragraph 1, its delegation includes officials with the relevant expertise in the area covered by this Chapter. For the United Kingdom, this includes officials of HM Treasury or its successor. For New Zealand, this includes officials from the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators.

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between regulatory authorities, or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

## Article 11.18
## Recognition of Prudential Measures

1. A Party may recognise a prudential measure of a non-party in the application of a measure covered by this Chapter. That recognition may be:

   (a) accorded unilaterally;

   (b) achieved through harmonisation or other means; or

   (c) based upon an agreement or arrangement with the non-party.

2. A Party according recognition of a prudential measure under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.

3. If a Party recognises a prudential measure under subparagraph 1(c) and the circumstances described in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

## Article 11.19
## Non-Conforming Measures

1. Article 11.5 (National Treatment), Article 11.6 (Market Access), and Article 11.10 (Senior Management and Boards of Directors) shall not apply to:

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

      (i) the central level of government, as set out by that Party in Section A of its Schedule in Annex III (Financial Services Non-Conforming Measures);

      (ii) a regional level of government, as set out by that Party in Section A of its Schedule in Annex III (Financial Services Non-Conforming Measures); or

      (iii) a local level of government;

   (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure as it existed:

(i) immediately before the amendment, with subparagraphs 1(a) and 1(b) of Article 11.5 (National Treatment), subparagraphs 1(a) and 1(b) of Article 11.6 (Market Access), or Article 11.10 (Senior Management and Boards of Directors); or

(ii) on the date of entry into force of this Agreement for the Party applying the non-conforming measure, with subparagraph 1(c) of Article 11.5 (National Treatment) or subparagraph 1(c) of Article 11.6 (Market Access); or

(d) any non-conforming measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Section B of its Schedule in Annex III (Financial Services Non-Conforming Measures).

2. A non-conforming measure, set out in a Party's schedule to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures) or Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures) as not subject to Article 14.6 (National Treatment – Investment), Article 14.5 (Market Access – Investment), Article 14.9 (Senior Management and Boards of Directors – Investment), Article 9.5 (National Treatment – Cross-Border Trade in Services), or Article 9.4 (Market Access – Cross-Border Trade in Services), shall be treated as a non-conforming measure not subject to Article 11.5 (National Treatment), Article 11.6 (Market Access), or Article 11.10 (Senior Management and Boards of Directors), as the case may be, to the extent that the non-conforming measure is covered by this Chapter.

3. A Party shall not adopt any measure or series of measures after the date of entry into force of this Agreement that are covered by Annex III (Financial Services Non-Conforming Measures) of each Party and that require, directly or indirectly, an investor of the other Party, by reason of nationality, to sell or otherwise dispose of an investment existing at the time the measure or series of measures became effective.

4. Article 11.5 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(a) Article 17.7 (National Treatment – Intellectual Property); or

(b) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 17 (Intellectual Property).

## Article 11.20
## Provision of Back-Office Functions

1. Each Party recognises that the performance of the back-office functions of an established financial service supplier in its territory by the head office or an affiliate of the established financial service supplier, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that established financial service supplier.

2. While a Party may require established financial service suppliers to ensure compliance with its domestic law applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

3. Nothing in paragraph 1 prevents a Party from requiring an established financial service supplier in its territory to retain certain functions.

# CHAPTER 12

# TELECOMMUNICATIONS

## Article 12.1
## Definitions

For the purposes of this Chapter:

**"associated facilities"** means those services, physical infrastructures, and other facilities associated with, or necessary for, a telecommunications network or service that enable or support the provision of services via that network or service or have the potential to do so;

**"end-user"** means a final consumer of, or subscriber to, a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

**"essential facilities"** means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to supply a service;

**"interconnection"** means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;

**"international mobile roaming service"** means a commercial mobile service provided pursuant to an agreement between suppliers of public telecommunications services that enables an end-user whose mobile handset or other device normally accesses public telecommunication services in the territory of one Party to use their mobile handset or other device for voice, data, or messaging services in the territory of the other Party;

**"leased circuits"** means telecommunications services or facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user;

**"major supplier"** means a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation, having

regard to price and supply, in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

**"measures of a Party"** means measures adopted or maintained by:

(a) central, regional, or local governments or authorities; or

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

**"network element"** means a facility or equipment used in supplying a telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

**"non-discriminatory"** means treatment no less favourable than that accorded, in like situations, to other users of like public telecommunications networks or services;

**"number portability"** means the ability of end-users of public telecommunications services who so request to retain, at the same location in the case of a fixed line, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

**"public telecommunications network"** means telecommunications infrastructure used to provide public telecommunications services;

**"public telecommunications service"** means any telecommunications service that is offered to the public generally;

**"reference interconnection offer"** means an interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

**"telecommunications"** means the transmission and reception of signals by any electromagnetic means;

**"telecommunications network"** means transmission systems and, if applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;

**"telecommunications regulatory authority"** means the body or bodies responsible for the regulation of telecommunications networks and services covered by this Chapter;

**"telecommunications service"** means a service that consists wholly or mainly in the transmission and reception of signals over telecommunications networks,

including over networks used for broadcasting, but does not include a service providing, or exercising editorial control over, content transmitted using telecommunications networks and services;

**"universal service"** means the minimum set of services that must be made available to all users or a set of users in the territory of a Party or in a subdivision thereof, regardless of their geographical location; and

**"user"** means a service consumer or a service supplier using a public telecommunications network or service.

## Article 12.2
## Objectives

The Parties recognise the importance of the availability of high quality telecommunications services for enabling persons and businesses to access the benefits of trade, as well as the importance of ensuring competition in the telecommunication markets.

## Article 12.3
## Scope

1. This Chapter shall apply to measures of a Party affecting trade in telecommunications services.

2. This Chapter shall not apply to:

   (a) measures affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services;

   (b) audio-visual services; or

   (c) measures relating to broadcast or cable distribution of radio or television programming,

   except to ensure that a service supplier of audio-visual services or a service supplier operating a broadcast station or cable system has continued access to and use of public telecommunications networks and services.

3. Nothing in this Chapter shall be construed as requiring a Party:

   (a) to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications networks or services other than as provided for in this Agreement; or

(b) to establish, construct, acquire, lease, operate, or supply telecommunications networks or services not offered to the public generally, or to oblige a service supplier under its jurisdiction to do so.

## Article 12.4
## Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition or if a service is new to a market. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognise that a Party may:

   (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;

   (b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities; or

   (c) use any other appropriate means that benefit the long-term interest of end-users.

## Article 12.5
## Access and Use

1. Each Party shall ensure that any service supplier of the other Party has access to and use of public telecommunications networks or services, including leased circuits, offered in its territory on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, inter alia, to paragraphs 2 to 6.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

   (a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect private leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier;

(d) use operating protocols of the service supplier's choice; and

(e) perform switching, signalling, processing, and conversion functions.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intracorporate communications of those service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of a Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications and to protect the privacy of personal data of end-users of public telecommunications networks or services, subject to the requirement that those measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services other than as necessary:

(a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks and services available to the public generally; or

(b) to protect the technical integrity of public telecommunications networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:

(a) restrictions on resale or shared use of such services if a Party requires a major supplier to offer its service for resale;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;

(c) a requirement, if necessary, for the interoperability of such networks and services;

(d) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;

(e) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

(f) notification, registration, and licensing.

**Article 12.6**
**Access to Essential Facilities**

1. Each Party shall ensure that a major supplier in its territory provides access to its essential facilities to suppliers of public telecommunications networks or services on reasonable, transparent, and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of market conditions conducted by the telecommunications regulatory authority. The major supplier's essential facilities may include, inter alia, network elements, leased circuits services, and associated facilities.

2. Each Party shall determine those essential facilities required to be made available pursuant to paragraph 1, and to what extent those essential facilities are to be unbundled. That determination shall be based, inter alia, on the objective of achieving effective competition and the benefit of the long-term interest of end-users.

3. If a Party requires a major supplier to offer its public telecommunications services for resale, the Party shall ensure that that supplier does not impose unreasonable or discriminatory conditions on the resale of its public telecommunications services.

**Article 12.7**
**Interconnection**

1. The Parties recognise that interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers of public telecommunications networks or services concerned.

2. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory:

(a) provides interconnection with a supplier of public telecommunications networks or services of the other Party; or

(b) enters into negotiations for interconnection with a supplier of public telecommunications networks or services of the other Party, if requested to do so by that supplier.

**Article 12.8**
**Interconnection with Major Suppliers**

1. Each Party shall ensure that a major supplier of public telecommunications networks or services in its territory provides interconnection:

   (a) at any technically feasible point in the major supplier's network;

   (b) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities;

   (c) under non-discriminatory terms and conditions (including as regards rates, technical standards, and specifications, including quality and maintenance) and of a quality no less favourable than that provided for its own like services, or for like services of its subsidiaries or other affiliates; and

   (d) on a timely basis, and on terms and conditions (including rates, technical standards, and specifications) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers do not need to pay for network components or facilities that they do not require for the service to be provided.

2. Each Party shall ensure that major suppliers make publicly available, as appropriate:

   (a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

   (b) the terms and conditions of an interconnection agreement in effect.

3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

## Article 12.9
## Number Portability

Each Party shall ensure that suppliers of public telecommunications services provide number portability on a timely basis, without impairment of quality, reliability, or convenience, and on reasonable and non-discriminatory terms and conditions.

## Article 12.10
## Scarce Resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources related to telecommunications, including radio spectrum and frequencies, numbers, and rights of way, is carried out using procedures that are objective, timely, transparent, and non-discriminatory, and shall endeavour to take into account the public interest, including the promotion of competition.

2. Each Party shall make publicly available the current state of allocated frequency bands, but detailed identification of radio spectrum allocated for specific government uses is not required.

3. Each Party may rely on market-based approaches, such as bidding procedures, to assign radio spectrum and frequencies for commercial use.

4. A measure of a Party allocating and assigning radio spectrum and managing frequency is not per se inconsistent with Article 9.4 (Market Access – Cross-Border Trade in Services) and Article 14.5 (Market Access – Investment). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

## Article 12.11
## Competitive Safeguards on Major Suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services in its territory that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include, in particular:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

**Article 12.12**
**Treatment by Major Suppliers**

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications networks or services of the other Party treatment no less favourable than that major supplier accords in like circumstances to its subsidiaries or affiliates regarding:

(a) the availability, provisioning, rates, or quality of like telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

**Article 12.13**
**Regulatory Principles**

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct from, and functionally independent to, any supplier of public telecommunications networks, equipment, and services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role[1] in any supplier of public telecommunications services, networks, or equipment. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Each Party shall ensure that regulatory decisions and procedures of its telecommunications regulatory authority or other competent authority, related to this Chapter, are impartial with respect to all market participants.

[1] This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunication regulatory body from owning equity in a supplier of public telecommunications services.

3. Each Party shall ensure that its telecommunications regulatory authority acts independently by not seeking or taking instructions from any person outside the authority when exercising responsibilities assigned under national law which are relevant to the enforcement of obligations in this Chapter.[2]

4. Each Party shall ensure that the telecommunications regulatory authority is sufficiently empowered to carry out the responsibilities assigned to it relevant to the enforcement of obligations set out in this Chapter. Such power shall be exercised transparently and in a timely manner.

5. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly on request, with all the information, including financial information, that is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this Chapter. Information requested shall be treated in accordance with the requirements of confidentiality.

6. Each Party shall ensure that a supplier of telecommunications networks or services affected by a decision of the telecommunications regulatory authority has the right to appeal against that decision[3] to an appeal body that is independent of the telecommunications regulatory authority and of the affected supplier. Pending the outcome of the appeal, the decision of the telecommunications regulatory authority shall stand, unless interim measures are granted in accordance with national law.

7. Each Party shall ensure that its telecommunications regulatory authority reports regularly, inter alia, on the state of the electronic communications market, on its human and financial resources, and how those resources are attributed. Each Party shall ensure that these reports and any decisions it issues are made publicly available.

## Article 12.14
## Authorisation[4]

1. If a Party requires an authorisation for the provision of telecommunications networks or services, it shall make publicly available the types of services requiring authorisation, together with all authorisation criteria, applicable procedures, and terms and conditions generally associated with the authorisation.

[2] For greater certainty, this paragraph shall not apply in respect of a measure of a Party allocating and assigning radio spectrum and managing frequency referred to in paragraph 4 of Article 12.10 (Scarce Resources).
[3] For greater certainty, this right of appeal may be limited to points of law in accordance with the laws of a Party.
[4] For greater certainty, authorisation can include licensing.

2. Each Party shall endeavour to authorise the provision of telecommunications networks or services without a formal procedure and to permit the supplier to start providing its networks or services without having to wait for a decision by the telecommunications regulatory authority. If a Party requires a formal authorisation decision, it shall state a reasonable period of time normally required to obtain that decision and communicate this in a transparent manner. It shall endeavour to ensure that the decision is taken within the stated period of time.

3. Each Party shall ensure that any authorisation criteria or applicable procedure, as well as any obligation or condition imposed on or associated with an authorisation, is objective, transparent, non-discriminatory, and related to and not more burdensome than necessary for the kind of service provided.

4. Each Party shall ensure that an applicant receives in writing, which may include in electronic form, the reasons for the denial or the revocation of an authorisation, or the imposition of supplier-specific conditions or the refusal to renew any authorisation. In such cases, an applicant shall have a right of appeal before an appeal body.

5. Each Party shall ensure that administrative fees imposed on suppliers are objective, transparent, non-discriminatory, and commensurate with the administrative costs reasonably incurred in the management, control, and enforcement of the obligations set out in this Chapter. Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

## Article 12.15
## Transparency

To the extent not already provided for in this Agreement, each Party shall make publicly available:

(a) the responsibilities of its telecommunications regulatory authority in an easily accessible and clear form, in particular if those responsibilities are given to more than one body;

(b) its measures relating to public telecommunications networks or services, including:

(i) regulations implemented by its telecommunications regulatory authority, together with the basis for these regulations;

(ii) tariffs and other terms and conditions of services;

(iii) specifications of technical interfaces;

(iv) conditions for attaching terminal or other equipment to the public telecommunications networks;

(v) notification, permit, registration, or licensing requirements, if any; and

(c) information on bodies responsible for preparing, amending, and adopting standards-related measures.

**Article 12.16**
**Universal Service Obligation**

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.

2. Each Party shall administer any universal service obligation that it maintains in a manner that is transparent, non-discriminatory, and neutral with respect to competition. Each Party shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to these principles shall not be regarded per se as anti-competitive.

3. If a Party designates a universal service supplier, it shall do so in a manner that is efficient, transparent, non-discriminatory, and open to all suppliers of public telecommunication networks or services.

4. If a Party decides to compensate a universal service supplier, it shall ensure that such compensation is determined through a competitive process or a determination of net costs.

**Article 12.17**
**International Mobile Roaming Services**

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.

2. Each Party shall consider steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, including:

(a) ensuring that information regarding retail rates is easily accessible to consumers, such as making information on retail rates accessible to consumers through industry codes of practice; and

(b) minimising impediments to the use of mobile roaming and technological alternatives, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

3. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

**Article 12.18**
**Dispute Resolution**

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with the rights and obligations that arise from this Chapter, and at the request of a supplier involved in the dispute, the telecommunications regulatory authority issues a binding decision within a reasonable period of time to resolve the dispute.

2. Each Party shall ensure that, if its telecommunications regulatory authority declines to initiate any action on a request to resolve a dispute, the telecommunications regulatory authority shall, upon request, provide a written explanation for its decision within a reasonable period of time.

3. Each Party shall ensure that a decision issued by its telecommunications regulatory authority is made publicly available, having regard to the requirements of business confidentiality.

4. Each Party shall ensure that the suppliers involved in the dispute:

(a) are given a full statement of the reasons on which the decision is based; and

(b) may appeal the decision, in accordance with paragraph 6 of Article 12.13 (Regulatory Principles).

5. For greater certainty, the procedure referred to in paragraphs 1 and 2 shall not preclude a supplier of telecommunications networks or services involved in a dispute from bringing an action before the courts in accordance with the laws and regulations of the Party.

**Article 12.19**
**Confidentiality**

1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Articles 12.5 (Access and Use) to Article 12.8 (Interconnection with Major Suppliers) use that information solely for the purpose for which it was supplied and respect, at all times, the confidentiality of information transmitted or stored.[5]

2. Each Party shall adopt or maintain measures, in accordance with its laws and regulations, to protect the confidentiality of telecommunications and related traffic data of users over public telecommunications networks and services, without unduly restricting trade in telecommunications services.

**Article 12.20**
**Flexibility in the Choice of Technology**

1. Neither Party shall prevent a supplier of public telecommunications services from choosing the technologies it wishes to use to supply its services.

2. Notwithstanding paragraph 1, a Party may take measures to protect a legitimate public policy interest, provided that any measure is not applied in a manner that creates unnecessary obstacles to trade in services.

**Article 12.21**
**Cooperation**

1. The Parties recognise the transformational impact of telecommunications networks, infrastructure, and technologies (including those that are new and emerging), and the importance of these technologies to the Parties' respective economies and societies.

2. Accordingly, each Party shall adopt or maintain measures to:

   (a) encourage a diverse and competitive market for telecommunications services and networks in its territory; and

   (b) protect the security, resilience, and integrity of its telecommunications infrastructure.

3. The Parties shall endeavour to:

   (a) exchange information on the opportunities and challenges associated with telecommunications networks, infrastructure, and technologies; and

[5] For greater certainty, a Party can meet this obligation through the enforcement of non-disclosure agreements between the suppliers.

(b) work together in international forums to promote a shared approach to these opportunities and challenges.

## ANNEX 13A

## SCHEDULE OF COMMITMENTS FOR TEMPORARY ENTRY OF BUSINESS PERSONS

### Schedule of New Zealand

1. The following sets out New Zealand's commitments in accordance with Article 13.5 (Grant of Temporary Entry) in respect of the entry and temporary stay of business persons.

2. For the purposes of this Schedule, the term "CPC" means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

3. For the purposes of this Schedule, the term "enterprise of a party" means an enterprise of a party as defined in Article 9.1 (Definitions – Cross-Border Trade in Services).

### A. Business Visitors

| **Description of Category** | **Conditions and Limitations (including length of stay)** |
|---|---|
| Definition:<br><br>**Business Visitors** comprise a business person:<br><br>(a) who is seeking temporary entry to New Zealand for the purpose of:<br><br>(i) **meetings and consultations:** business persons attending meetings or conferences, or engaged in consultations with business associates;<br><br>(ii) **training seminars:** personnel of an enterprise who enter the territory of a Party to receive informal training in techniques and work practices which are relevant to the operation of the enterprise, | Entry for a period not exceeding in aggregate three months in any calendar year. |

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| | provided that the training received is confined to observation, familiarisation, and theoretical instruction only and does not lead to the award of a formal qualification;[1]<br><br>(iii) **trade fairs and exhibitions:** personnel attending a trade fair for the purpose of promoting their company or its products or services;<br><br>(iv) **sales:** representatives of a supplier of services or goods taking orders or negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier, but not delivering goods or supplying services themselves;<br><br>(v) **purchasing:** buyers purchasing goods or services for an enterprise, or management and supervisory personnel, engaging in a commercial transaction carried out in the territory of the Party of which the short-term business visitor is a natural person;<br><br>(vi) **commercial transactions:** management and supervisory personnel and financial services personnel (including insurers, bankers, and investment brokers) engaging in a commercial transaction for an enterprise of a Party of which the short-term business visitor is a natural person;<br><br>(vii) undertaking business consultations or negotiations | |

[1] "formal qualification" means a qualification under the New Zealand Qualifications Framework.

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| **concerning the establishment**, expansion, or winding up of a business enterprise or investment in New Zealand, or any related matter;<br><br>(b) who is not seeking to enter the labour market of New Zealand; and<br><br>(c) whose principal place of business, actual place of remuneration, and predominant place of accrual of profits remain outside New Zealand. | |

## B. Intra-Corporate Transferees

| **Description of Category** | **Conditions and Limitations (including length of stay)** |
|---|---|
| **The partner and dependent children accompanying the Intra-Corporate Transferee**<br><br>New Zealand shall allow the entry and temporary stay of the partner and any dependent children accompanying an Intra-Corporate Transferee of the United Kingdom that have been granted entry and temporary stay. The period of temporary stay for that partner and, where relevant, dependent children, shall be the same as that granted to the Intra-Corporate Transferee.<br><br>For the purposes of this commitment:<br><br>**"partner"** means any spouse or civil partner of an Intra-Corporate Transferee from the United Kingdom, including under a marriage, civil union, or equivalent union or partnership, recognised as such in accordance with the law of New Zealand. For greater certainty, this includes any unmarried or same sex partner of the Intra-Corporate Transferee; and<br><br>**"dependent children"** means children under the age of 20 who are dependent on the Intra-Corporate Transferee and who are recognised as dependent children in accordance with the law of New Zealand where:<br><br>(i) the Intra-Corporate Transferee has the legal right to remove them from their home country; or<br><br>(ii) both of the children's parents will be granted entry and temporary stay in accordance with this Agreement. | |

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| Definition:<br><br>**Intra-Corporate Transferees** comprise an **executive**, **manager**, or a **specialist**;<br><br>(a) who is an employee of a goods supplier, service supplier, or investor of a Party with a commercial presence in New Zealand; and<br><br>(b) whose salary and any related payments are paid entirely by the service supplier or enterprise that employs the Intra-Corporate Transferee.<br><br>For the purposes of this definition, **"executive"** means a business person who primarily directs the management of an enterprise, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the enterprise. An executive would not directly perform tasks related to the actual provision of the service or the operation of the enterprise.<br><br>Executives must have been employed by their employer for at least 12 months prior to their proposed transfer to New Zealand.<br><br>For the purposes of this definition, **"manager"** means a business person who will be responsible for or directs the entire or a substantial part of the operations of the enterprise in New Zealand, receiving general supervision or direction principally from higher level executives, the board of directors, or stockholders of the enterprise; supervising and controlling the work of other supervisory, professional, or managerial employees; | Executives and managers: Entry for a period of initial stay up to a maximum of three years.<br><br>Decision making timelines:<br><br>(i) To the extent practicable, the competent authorities of New Zealand shall adopt a decision on the immigration formality application, or a renewal of it, and shall notify the decision to the applicant in writing, in accordance with the notification procedures under the relevant law of New Zealand, as soon as possible but no later than 15 days from the date on which the complete application was submitted.<br><br>(ii) Where it is not practicable for a decision to be made within 15 days, the competent authorities of New Zealand shall endeavour to make a decision within a reasonable period of time thereafter.<br><br>(iii) Where the information or documentation for the application is incomplete, and additional information is required to process the application, the competent authorities shall endeavour to notify the applicant within a reasonable period of time of the additional information that is required and set a reasonable deadline for providing it. The 15 day period shall be suspended until the competent authorities have received the required additional information. |

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| and having the authority to establish goals and policies of the entire or a substantial part of the operations of the enterprise.<br><br>Managers must have been employed by their employer for at least 12 months prior to their proposed transfer to New Zealand.<br><br>For the purposes of this definition, **"specialist"** means a business person with advanced trade, technical, or professional skills within an organisation who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organisation's service, research equipment, techniques, or management. Such specialists are responsible for or employed in a particular aspect of an organisation's operations in New Zealand. Skills are assessed in terms of the applicant's employment experience, qualifications, and suitability for the position. | <u>Specialists:</u> Entry for a period of initial stay up to a maximum of three years. |

## C. Contractual Services Suppliers

| **Description of Category** | **Conditions and Limitations (including length of stay)** |
|---|---|
| <u>Definition</u>:<br><br>**"Contractual Services Supplier"** means a business person employed by an enterprise of the United Kingdom that:<br><br>(a) is not an agency for placement and supply services of personnel and is not acting through such an agency;<br><br>(b) has not established in the territory of New Zealand; and | Entry for a cumulative period of not more than six months in any 12 month period or for the duration of the contract, whichever is less. Subject to economic needs tests.<br><br>The Contractual Service Supplier entering New Zealand has been offering such services as an employee of the enterprise supplying the services for at least the year immediately preceding the date of submission of an |

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| (c) has concluded a *bona fide* contract to supply services to a final consumer in New Zealand, requiring the presence on a temporary basis of its employees in New Zealand in order to fulfil the contract to supply services.<br><br>A Contractual Services Supplier must have:<br><br>(a) a tertiary-level degree of at least three years in duration;[2] and<br><br>(b) at least six years of experience.<br><br>The six years of experience must be relevant to the field of the contract to supply services.<br><br>Only in respect of the service sectors or sub-sectors set out below:<br><br>(a) Legal advisory services in respect of public international law and foreign law (part of CPC 861);<br><br>(b) accounting, auditing, and bookkeeping services (CPC 862);<br><br>(c) taxation advisory services (part of CPC 863);<br><br>(d) urban planning and landscape architectural services (CPC 8674);<br><br>(e) medical and dental services (CPC 9312);<br><br>(f) midwives services (part of CPC 93191);<br><br>(g) services provided by nurses, physiotherapists, and paramedical personnel (part of CPC 93191); | application for entry into New Zealand.<br><br>The Contractual Services Supplier entering New Zealand must have a valid employment contract with that enterprise in the United Kingdom and receive pay, while in New Zealand, that is at least equivalent to that which a comparable New Zealand worker providing services in the same or similar field would be expected to receive. The contractual services supplier must be employed on conditions that are equivalent to New Zealand minimum employment standards.<br><br>The Contractual Services Supplier does not receive remuneration for the provision of services in the territory of New Zealand other than the remuneration paid by the enterprise employing the Contractual Services Supplier or from a source outside New Zealand.<br><br>The number of persons covered by the services contract shall not be larger than necessary to provide the services as stipulated in the contract.<br><br>The contract to supply services shall comply with the law of New Zealand. |

[2] For greater certainty, these qualifications must be recognised by the appropriate New Zealand authority where New Zealand law requires such recognition as a condition of the provision of that service in New Zealand.

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| (h) research and development services (CPC 851-853);<br><br>(i) advertising services (CPC 871);<br><br>(j) market research and opinion polling (CPC 864);<br><br>(k) management consulting services (CPC 865);<br><br>(l) services related to management consulting (CPC 866);<br><br>(m) technical testing and analysis services (CPC 8676);<br><br>(n) related scientific and technical consulting services (CPC 8675);<br><br>(o) mining (advisory and consulting only) (part of CPC 883 + 5115);<br><br>(p) translation and interpretation services (CPC 87905**);<br><br>(q) telecommunication services (CPC 752);<br><br>(r) postal and courier services (advisory and consulting only) (part of CPC 751);<br><br>(s) insurance and insurance related advisory and consulting services (part of CPC 812);<br><br>(t) other financial services advisory and consulting services (parts of CPC 8131**, 8133**);<br><br>(u) transport advisory and consulting services (parts of CPC 74490**, 74590**, 74690**); or | |

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| (v) manufacturing advisory and consulting services (part of CPC 884-885). | |

## D. Installers and Servicers

| Description of Category | Conditions and Limitations (including length of stay) |
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| **"Installers and Servicers"** comprise a business person who is an Installer or Servicer of machinery or equipment, in situations when such installation or servicing by the supplying company is a condition of purchase of the machinery or equipment. An Installer or Servicer cannot perform services that are not related to the service activity that is the subject of the contract. | Entry for periods not exceeding three months in any 12 month period. |

## E. Independent Professionals

| Description of Category | Conditions and Limitations (including length of stay) |
|---|---|
| Definition:<br><br>**"Independent Professionals"** means a self-employed business person with advanced technical or professional skills, without the requirement for a commercial presence, working under a valid contract in New Zealand.<br><br>An Independent Professional must have:<br><br>(a) a qualification resulting from at least three years of formal post-secondary school education leading to a degree or diploma recognised as comparable to the domestic standard in New Zealand;[3] and | Entry for a period of stay up to a maximum of 12 months and subject to economic needs tests. |

[3] For greater certainty, these qualifications must be recognised by the appropriate New Zealand authority where under New Zealand law such recognition is a condition of the provision of that service in New Zealand.

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| (b) at least six years of experience.<br><br>The six years of experience must be relevant to the field of the contract to supply services.<br><br>Only in respect of the service sectors set out in New Zealand's Schedule of Specific Commitments in the WTO (as currently set out in GATS/SC/62, GATS/SC/62/Suppl.1, and GATS/SC/62/Suppl.2) and the additional service sectors set out below.<br><br>1. BUSINESS SERVICES<br><br>A. Professional Services<br><br>(a) Legal services (international and foreign law) (part of CPC 861**)<br>(f) Integrated engineering services (CPC 8673)<br>(g) Consultancy related to urban planning and landscape architectural services (part of CPC 86711**)<br><br>B. Computer and Related Services<br><br>(e) Maintenance and repair of office machinery and equipment including computers (CPC 84500)<br>(f) Other computer services (CPC 84990)<br><br>F. Other Business Services<br><br>(c) Management consultancy services (CPC 8650)<br>(d) Services related to management consultancy (CPC 8660)<br>(f) Services incidental to animal husbandry (CPC 88120)<br>(k) Placement and supply services of Personnel (CPC 8720)<br>(p) Photographic services (CPC 8750)<br>(s) Convention services (part of CPC 64110**)<br>(t) Other (credit reporting, collection agency services, interior design, telephone | |

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| answering and duplicating services) (CPC 87901, 87902, 87907, 87903, 87904)<br><br>5. EDUCATIONAL SERVICES<br><br>E. Other Education Services (part of CPC 92900**)<br><br>- Language training provided in private specialist language institutions;<br>- Tuition in subjects taught at the primary and secondary levels, provided by private specialist institutions operating outside the New Zealand compulsory school system.<br><br>6. ENVIRONMENTAL SERVICES<br><br>A. Waste Water Management<br>B. Waste Management<br>C. Sanitation and similar services (CPC 94030)<br>D. Protection of ambient air and climate: consultancy only (Part of 94040)<br>E. Noise and vibration abatement: consultancy only (Part of CP 94050)<br>F. Protection of biodiversity and landscape: consultancy only (Part of 94090)<br>G. Other environmental and ancillary services: consultancy only (Part of 94090) | |

1. Notwithstanding the commitments set out above, New Zealand reserves the right to adopt or maintain any measure with respect to ships' crews.

2. With respect to audio-visual services, New Zealand immigration instructions stipulate a special procedure for the granting of visas to entertainers, performing artists, and associated support personnel for work purposes. To be eligible for a work visa or work permit, those applicants must come within the policy guidelines agreed to between the Minister of Immigration, independent promoters, agents, or producers, and the relevant performing artists' unions.

## Schedule of the United Kingdom

1. The following sets out the United Kingdom's commitments in accordance with Article 13.5 (Grant of Temporary Entry) in respect of the temporary entry of business persons.

2. For the purposes of this Schedule, the term "CPC" means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

3. For the purposes of this Schedule, the term "enterprise of a Party" means an enterprise that carries out substantial business activities in the territory of New Zealand.

| **Description of Category** | **Conditions and Limitations (including length of stay)** |
|---|---|
| **A. Business visitors**<br><br>Commitments under this category are made under the following headings:<br><br>• Business visitors for establishment purposes; and<br>• Short-term business visitors. | |
| <u>Definition:</u><br><br>**"Business visitors for establishment purposes"** means business persons working in a senior position within an enterprise of a Party who are responsible for setting up an enterprise in the United Kingdom, do not offer nor provide services, do not engage in any economic activity other than what is required for establishment purposes, and do not receive remuneration within the United Kingdom. | Business visitors for establishment purposes must be employed by an enterprise other than a non-profit organisation.<br><br>Temporary stay for a period not exceeding 90 days in any 12 month period.<br><br>The United Kingdom shall grant temporary entry of Business visitors for establishment purposes without the requirement of a work permit or other prior approval procedure of similar intent. |
| **"Short-term business visitors"** are permitted to engage in the following activities during their temporary stay: | The United Kingdom shall allow the temporary entry of Short-term business visitors subject to the following conditions: |

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| (i) meetings and consultations: business persons attending meetings or conferences, or engaged in consultations with business associates;<br><br>(ii) training seminars: personnel of an enterprise who enter the United Kingdom to receive training in techniques and work practices which are utilised by companies or organisations in the United Kingdom, provided that the training received is confined to observation, familiarisation, and classroom instruction only;<br><br>(iii) trade fairs and exhibitions: personnel attending a trade fair for the purpose of promoting their company or its products or services;<br><br>(iv) sales: representatives of a supplier of services or goods taking orders or negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier, but not delivering goods or supplying services themselves;<br><br>(v) purchasing: buyers purchasing goods or services for an enterprise, or management and supervisory personnel, engaging in a commercial transaction carried out in New Zealand; and<br><br>(vi) commercial transactions: management and supervisory personnel and financial services personnel (including insurers, bankers, and investment brokers) engaging in a commercial transaction for an enterprise of a Party. | (a) the Short-term business visitors are not engaged in selling their goods or supplying services to the general public;<br><br>(b) the Short-term business visitors do not, on their own behalf, receive remuneration from within the United Kingdom; and<br><br>(c) the Short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between an enterprise that has not established in the United Kingdom, and a consumer in the United Kingdom.<br><br>Temporary stay for a period not exceeding 90 days in any 12 month period.<br><br>The United Kingdom shall grant temporary entry of Short-term business visitors without the requirement of a work permit or other prior approval procedure of similar intent. |

| Description of Category | Conditions and Limitations (including length of stay) |
|---|---|
| **B. Intra-Corporate Transferees (Managers, Specialists)**<br><br>1. Commitments under this category are made under the following headings:<br><br>• managers; and<br>• specialists.<br><br>**The partner and dependent children accompanying the Intra-corporate transferee**<br><br>2. The United Kingdom shall allow the temporary entry of the partner and dependent children accompanying an intra-corporate transferee of New Zealand granted temporary entry for the same period as the period of temporary stay granted to the intra-corporate transferee. For the purposes of this commitment:<br><br>**"the partner"** means any spouse or civil partner of an intra-corporate transferee from New Zealand, including under a marriage, civil partnership, or equivalent union or partnership, recognised as such in accordance with the law of the United Kingdom. For greater certainty, this also includes any unmarried or same sex partner who, when accompanying an intra-corporate transferee from New Zealand, may be granted temporary entry under the relevant law of the United Kingdom; and<br><br>**"dependent children"** means children who are dependent on the intra-corporate transferee and who are recognised as dependent children in accordance with the law of the United Kingdom where:<br><br>(a) the intra-corporate transferee has sole responsibility for the children; or<br><br>(b) both of the children's parents are being granted temporary entry in accordance with this Agreement.<br><br>For greater certainty, with respect to the partner and dependent children of an intra-corporate transferee, temporary entry is without prejudice to the law of the United Kingdom applicable to temporary entry. | |
| Definition:<br><br>**"Intra-corporate transferees"** means business persons who: | |

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| (a) have been employed by an enterprise of a Party, or have been partners in it, for a period of not less than one year immediately preceding the date of their application for the temporary entry in the United Kingdom;<br><br>(b) are temporarily transferred to an enterprise, in the United Kingdom, which forms part of the same group of the originating enterprise including its representative office, subsidiary, branch, or head company; and<br><br>(c) belongs to one of the following categories:<br><br>(i) **managers:** business persons working in a senior position, who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:<br><br>(A) directing the enterprise or a department thereof;<br><br>(B) supervising and controlling the work of other supervisory, professional or managerial employees; or<br><br>(C) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions; or | Intra-corporate transferees must be employed by an enterprise other than a non-profit organisation.<br><br>Temporary stay for a period not exceeding three years.<br><br>Decision making timelines:<br><br>(a) To the extent practicable, the competent authorities of the United Kingdom shall adopt a decision on the immigration formality application, or a renewal of it, and shall notify the decision to the applicant in writing, in accordance with the notification procedures under the relevant law of the United Kingdom, as soon as possible but no later than 90 days after the date on which the complete application was submitted.<br><br>(b) Where it is not practicable for a decision to be made within 90 days, the competent authorities of the United Kingdom shall endeavour to make the decision within a reasonable period of time thereafter.<br><br>(c) Where the information or documentation for the application is incomplete, and additional information is required to process the application, the competent authorities shall endeavour to notify the applicant within a reasonable period of time of the additional information that is required and set a reasonable deadline for providing it. The 90 day period shall be suspended until the competent |

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| (ii) **specialists:** business persons who possess specialised knowledge essential to the enterprise's production, research equipment, techniques, processes, procedures, or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the business person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession. | authorities have received the required additional information. |

| **Description of Category** | **Conditions and Limitations (including length of stay)** |
|---|---|
| **C. Contractual Service Suppliers** | |
| Definition:<br><br>**"Contractual service suppliers"** means business persons employed by an enterprise of a Party which:<br><br>(a) is not an agency for placement and supply services of personnel and is not acting through such an agency;<br><br>(b) has not established in the territory of the United Kingdom; and<br><br>(c) has concluded a *bona fide* contract to supply services to a final consumer in the United Kingdom, requiring the presence on a temporary basis of its employees in the United Kingdom in order to | The business persons are engaged in the supply of a service on a temporary basis as employees of an enterprise which has obtained a service contract not exceeding 12 months.<br><br>Temporary stay for a cumulative period of not more than six months in any 12 month period or for the duration of the contract, whichever is less.<br><br>Entry for the following sub-sectors is subject to an economic needs test:<br><br>(i) engineering services and integrated engineering services (CPC 8672 and 8673);<br><br>(ii) management consulting services (CPC 865); |

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| fulfil the contract to supply services.<br><br>The United Kingdom makes commitments only in the service sectors or sub-sectors set out below:<br><br>(i) legal advisory services in respect of public international law and foreign law (part of CPC 861);<br><br>(ii) accounting and bookkeeping services (CPC 86212 other than "auditing services", 86213, 86219 and 86220);<br><br>(iii) taxation advisory services (CPC 863). Taxation advisory services does not include legal advisory and legal representational services on tax matters, which are under legal advisory services in respect of public international law and foreign law;<br><br>(iv) architectural services and urban planning and landscape architectural services (CPC 8671 and 8674);<br><br>(v) engineering services and integrated engineering services (CPC 8672 and 8673);<br><br>(vi) research and development services (CPC 851, 852 excluding psychologists services (part of CPC 85201, which is under medical and dental services), and 853);<br><br>(vii) advertising services (CPC 871);<br><br>(viii) market research and opinion polling services (CPC 864);<br><br>(ix) management consulting services (CPC 865);<br><br>(x) services related to management consulting (CPC 866); | (iii) services related to management consulting (CPC 866);<br><br>(iv) research and development services (CPC 851, 852 excluding psychologists services (part of CPC 85201, which is under medical and dental services), and 853); and<br><br>(v) postal and courier services (CPC 751, advisory and consulting services only).<br><br>The business persons entering the United Kingdom have been offering such services as employees of the enterprise supplying the services for at least the year immediately preceding the date of submission of an application for entry into the United Kingdom and possess, at the date of submission of an application for entry into the United Kingdom at least three years professional experience in the sector of activity which is the subject of the contract. Professional experience shall be obtained after having reached the age of majority.<br><br>The business persons entering the United Kingdom shall possess:<br><br>(a) a university degree or a qualification demonstrating knowledge of an equivalent level; and<br><br>(b) the professional qualifications legally required to exercise that activity in the United Kingdom.<br><br>Where the degree or qualification has not been obtained in the United Kingdom, the United Kingdom may evaluate whether this is equivalent |

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| (xi) technical testing and analysis services (CPC 8676);<br><br>(xii) maintenance and repair of metal products, of (non-office) machinery, of (non-transport and non-office) equipment, and of personal and household goods (CPC 633, 7545, 8861, 8862, 8864, 8865 and 8866);<br><br>(xiii) translation and interpretation services (CPC 87905, excluding official or certified activities);<br><br>(xiv) telecommunication services (CPC 7544, advisory and consulting services only);<br><br>(xv) postal and courier services (CPC 751, advisory and consulting services only);<br><br>(xvi) site investigation work (CPC 5111);<br><br>(xvii) insurance and insurance related services (advisory and consulting services only); and<br><br>(xviii) other financial services advisory and consulting services. | to a university degree required in its territory.<br><br>The business person does not receive remuneration for the provision of services in the territory of the United Kingdom other than the remuneration paid by the enterprise employing the business person or from a source outside the United Kingdom.<br><br>The access accorded relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the United Kingdom where the service is provided.<br><br>The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be requested by the laws, regulations or other legal requirements of the United Kingdom.<br><br>The contract to supply services shall comply with the requirements of the law that apply in the United Kingdom.<br><br>The United Kingdom may adopt or maintain a measure relating to qualification requirements, qualification procedures, technical standards, licensing requirements or licensing procedures that does not constitute a limitation within the meaning of Article 13.5 (Grant of Temporary Entry). Those measures, which include requirements to obtain a licence, to obtain recognition of qualifications in regulated sectors, or to pass specific examinations, such as language examinations, even if not listed in this Annex, apply in any case to contractual service suppliers of New Zealand. |

| Description of Category | Conditions and Limitations (including length of stay) |
|---|---|
| **D. Independent Professionals** | |
| Definition:<br><br>**"Independent professionals"** means business persons who:<br><br>(a) are engaged in the supply of a service and established as self-employed in the territory of New Zealand;<br><br>(b) have not established in the territory of the United Kingdom; and<br><br>(c) have concluded a *bona fide* contract (other than through an agency for placement and supply services of personnel) to supply services to a final consumer in the United Kingdom, requiring their presence on a temporary basis in the United Kingdom in order to fulfil the contract to supply services.<br><br>The United Kingdom makes commitments only in the service sectors or sub-sectors set out below:<br><br>(i) legal advisory services in respect of public international law and foreign law (part of CPC 861);<br><br>(ii) architectural services and urban planning and landscape architectural services (CPC 8671 and 8674);<br><br>(iii) research and development services (CPC 851, 852 excluding psychologists services (part of CPC 85201, which is under medical and dental services), and 853);<br><br>(iv) management consulting services (CPC 865); | The business persons are engaged in the supply of a service on a temporary basis as self-employed persons established in New Zealand and have obtained a service contract for a period not exceeding 12 months.<br><br>Temporary stay for a cumulative period of not more than six months in any 12 month period or for the duration of the contract, whichever is less.<br><br>Entry for the following sub-sectors is subject to an economic needs test:<br><br>(i) management consulting services (CPC 865);<br><br>(ii) services related to management consulting (CPC 866);<br><br>(iii) research and development services (CPC 851, 852 excluding psychologists services, and 853); and<br><br>(iv) postal and courier services (CPC 751, advisory and consulting services only).<br><br>The business persons entering the United Kingdom possess, at the date of submission of an application for entry into the United Kingdom, at least six years professional experience in the sector of activity which is the subject of the contract.<br><br>The business persons entering the United Kingdom shall possess: |

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| (v) services related to management consulting (CPC 866);<br><br>(vi) translation and interpretation services (CPC 87905, excluding official or certified activities);<br><br>(vii) telecommunication services (CPC 7544, advisory and consulting services only);<br><br>(viii) postal and courier services (CPC 751, advisory and consulting services only);<br><br>(ix) insurance and insurance related services (advisory and consulting services only); and<br><br>(x) other financial services (advisory and consulting services only). | (a) a university degree or a qualification demonstrating knowledge of an equivalent level; and<br><br>(b) the professional qualifications legally required to exercise that activity in the United Kingdom.<br><br>Where the degree or qualification has not been obtained in the United Kingdom, the United Kingdom may evaluate whether this is equivalent to a university degree required in its territory.<br><br>The access accorded relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the United Kingdom where the service is provided.<br><br>The contract to supply services shall comply with the requirements of the law that apply in the United Kingdom.<br><br>The United Kingdom may adopt or maintain a measure relating to qualification requirements, qualification procedures, technical standards, licensing requirements or licensing procedures that does not constitute a limitation within the meaning of Article 13.5 (Grant of Temporary Entry). Those measures, which include requirements to obtain a licence, to obtain recognition of qualifications in regulated sectors, or to pass specific examinations, such as language examinations, even if not listed in this Annex, apply in any case to independent professionals of New Zealand. |

# CHAPTER 13

# TEMPORARY ENTRY OF BUSINESS PERSONS

## Article 13.1
## Definitions

For the purposes of this Chapter:

**"business person"** means a national, who is engaged in trade in goods, the supply of services, or the conduct of investment activities;

**"immigration formality"** means a visa, permit, pass, or other document, or electronic authority, granting temporary entry;

**"immigration measure"** means any measure affecting the entry and stay of foreign nationals; and

**"temporary entry"** means entry into and temporary stay in the territory of a Party by a business person of the other Party who does not intend to establish permanent residence.

## Article 13.2
## Objectives

The objectives of this Chapter are to:

(a) facilitate temporary entry of natural persons for business purposes on a reciprocal basis; and

(b) ensure an expeditious and transparent process to facilitate the temporary entry of natural persons for business purposes,

while recognising the need of a Party to ensure its security and to protect its domestic labour force and employment.

## Article 13.3
## Scope

1. This Chapter shall apply to measures that affect the temporary entry of business persons of a Party into the territory of the other Party who fall into the scope of the categories set out in Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons).

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

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate temporary entry, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.

4. The sole fact that a Party requires business persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter.

5. For greater certainty, all requirements provided for in the law of each Party regarding employment and social security measures shall continue to apply, including laws and regulations concerning minimum wages as well as collective wage agreements.

6. Commitments on the temporary entry of business persons as set out in Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons) shall not apply in cases where the intent or effect of the temporary entry is to interfere with or otherwise affect the outcome of a labour or management dispute or negotiation, or the employment of a natural person who is involved in that dispute or negotiation.

## Article 13.4
## Application Procedures

1. As expeditiously as possible after receipt of a completed application for an immigration formality, each Party shall make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.

2. At the request of an applicant, a Party in receipt of a completed application for temporary entry shall endeavour to provide, without undue delay, information concerning the status of the application.

3. Each Party shall ensure that fees charged by its competent authority for the processing of an application for an immigration formality are reasonable, in that they do not unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

## Article 13.5
## Grant of Temporary Entry

1. Each Party shall set out in Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons) its commitments for the temporary entry of business persons in its territory. Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons) shall specify the conditions and limitations for temporary entry and stay, including length of stay, for each category of business persons specified by that Party.

2. A Party shall grant temporary entry or extension of temporary stay to business persons of the other Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business persons:

   (a) follow the granting Party's prescribed application procedures for the immigration formality sought; and

   (b) meet all relevant eligibility requirements for temporary entry into, or extension of temporary stay in, the granting Party.

3. The sole fact that a Party grants temporary entry or extension of temporary stay to a business person of the other Party pursuant to this Chapter shall not be construed to exempt that business person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

4. A Party shall not adopt or maintain limitations in the form of numerical quotas on the total number for each category of business persons of the other Party granted temporary entry in accordance with Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons). A Party shall not maintain or adopt the requirement of an economic needs test, except as provided for in Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons).

## Article 13.6
## Provision of Information

1. Further to Article 29.2 (Publication – Transparency) and Article 29.5 (Provision of Information – Transparency), each Party shall make publicly available information relating to the current requirements for temporary entry by business persons of the other Party, permitted in accordance with Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons).

2. The information referred to in paragraph 1 shall include, where applicable, the following information:

   (a) categories of immigration formality;

(b) documentation required and conditions to be met;

(c) method of filing an application and options on where to file, such as consular offices or online;

(d) application fees and an indicative timeframe of the processing of an application;

(e) the maximum length of stay under each category of immigration formality;

(f) conditions for any available extension or renewal;

(g) rules regarding accompanying dependents;

(h) available review or appeal procedures; and

(i) relevant measures of general application pertaining to the temporary entry of business persons of the other Party.

3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly inform the other Party, either through existing mechanisms or the Services and Investment Sub-Committee, of the introduction of any new requirements and procedures or of the changes in any requirements and procedures that affect the effective application for the grant of entry into, and where applicable, permission to work in, its territory.

## Article 13.7
## Institutional Arrangements

The Services and Investment Sub-Committee will review and monitor the implementation and operation of this Chapter and perform other functions in accordance with Article 9.14 (Services and Investment Sub-Committee – Cross Border Trade in Services).

## Article 13.8
## Relation to Other Chapters

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 30 (Institutional Provisions), Chapter 31 (Dispute Settlement), Chapter 33 (Final Provisions), Article 29.2 (Publication – Transparency), and Article 29.5 (Provision of Information – Transparency), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

**Article 13.9**
**Dispute Settlement**

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Chapter amicably through consultations or negotiations.[1]

2. Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

   (a) the matter involves a pattern of practice; and

   (b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

3. The remedies referred to in subparagraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of the institution of proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the business persons concerned.

**Article 13.10**
**Cooperation on Return and Readmissions**

The Parties acknowledge that the temporary entry of business persons requires the Parties' full cooperation to support the return and readmission of business persons staying in a Party in contravention of its law for temporary entry.

[1] For greater certainty, this includes by way of the mechanisms set out in Article 31.3 (Cooperation – Dispute Settlement).

## ANNEX 14A

## CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 14.11 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

## ANNEX 14B

## EXPROPRIATION

The Parties confirm their shared understanding that:

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

2. Article 14.14 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 14.14 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

   (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

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

      (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;[17] and

      (iii) the character of the government action.

   (b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations, except in rare circumstances.

[17] For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

# CHAPTER 14

# INVESTMENT

## Article 14.1
## Objectives

The objective of this Chapter is to encourage and promote the flow of investment between each Party on a mutually advantageous basis, under conditions of transparency within a stable framework of rules to ensure the protection and security of investments by investors of the other Party within each Party's territory, while recognising the right of each Party to regulate in order to achieve legitimate public policy objectives, such as the protection of public health, safety, and the environment.

## Article 14.2
## Definitions

For the purposes of this Chapter:

**"activities performed in the exercise of governmental authority"** means activities which are performed, including services which are supplied, neither on a commercial basis nor in competition with one or more economic operators;

**"covered investment"** means, with respect to a Party, an investment in its territory of an investor of the other Party, made in accordance with the applicable law at the time the investment is made,[1] in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

**"enterprise"** means an enterprise as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions), and a branch or a representative office of an enterprise;

**"enterprise of a Party"** means an enterprise constituted or organised under the law of that Party or a branch located in the territory of that Party, that carries out substantial business activities in the territory of that Party;[2, 3]

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[1] For greater certainty, minor or technical breaches of law shall not deprive investors and covered investments of treaty protection.

[2] For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

[3] An enterprise shall be deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether an enterprise has a genuine link to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the enterprise:

**"freely usable currency"** means a "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement and amendments thereto, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;

**"investment"** means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, including government issued bonds, debentures, other debt instruments, and loans;[4]

(d) futures, options, and other derivatives;

(e) rights under turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licences, authorisations, permits, concessions, and similar rights conferred pursuant to a Party's law; and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action.

Returns that are invested shall be treated as investments. Any alteration of the form in which assets are invested or reinvested does not affect their qualification as investments;

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(a) has a continuous physical presence, including through ownership or rental of premises, in the territory of that Party;
(b) has its central administration in the territory of that Party;
(c) employs staff in the territory of that Party; and
(d) generates turnover and pays taxes in the territory of that Party.

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

**"investor of a Party"** means:

(a) a Party;

(b) an enterprise of a Party; or

(c) a national,

that attempts to make, is making, or has made an investment in the territory of the other Party;

**"person of a Party"** means a national or an enterprise of a Party; and

**"returns"** means the amounts yielded by, or derived from, an investment, including profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees, and other fees.

## Article 14.3
## Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

   (a) investors of the other Party;

   (b) covered investments; and

   (c) with respect to Article 14.8 (Performance Requirements) and Article 14.18 (Investment and Environmental, Health, and Other Regulatory Objectives), all investments in the territory of that Party.

2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:[5]

   (a) the central, regional, or local governments or authorities of that Party; and

   (b) any person, including a state enterprise or any other body, when it exercises any government authority delegated to it by central, regional, or local governments or authorities of that Party.

[5] For greater certainty, a Party's obligations under this Chapter shall also apply to measures adopted or maintained by any other person or entity acting on the instructions of, or under the direction or control of, a person or body listed under subparagraphs (a) or (b), to the extent that those measures are attributable to a Party under international law.

3. With respect to the establishment of an investment, Articles 14.5 to Article 14.9 shall not apply to any measure relating to activities performed in the exercise of governmental authority.

4. For greater certainty, this Chapter shall not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

5. Articles 14.5 to Article 14.9 shall not apply to any measure with respect to audio-visual services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

7. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

## Article 14.4
## Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement of a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not in itself make this Chapter applicable to measures adopted or maintained by the Party relating to that cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by a Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 11 (Financial Services).

## Article 14.5
## Market Access

Neither Party shall adopt or maintain, with respect to the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-party in its territory, a measure that:

(a) imposes limitations on:

(i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers, or the requirement of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;[6]

(iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or

(v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test; or

(b) requires that an economic activity is carried out through a specific type of legal entity or by a joint venture.

**Article 14.6**
**National Treatment**

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

**Article 14.7**
**Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of the other Party and covered investments treatment no less favourable than the treatment it accords, in like situations, to investors of a non-party and to their investments with respect to

[6] Subparagraphs (a)(i), (a)(ii), and (a)(iii) do not cover measures adopted or maintained in order to limit the production of an agricultural or fisheries product.

the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.[7]

2. Paragraph 1 shall not be construed as obliging a Party to extend to investors of the other Party or to covered investments the benefit of any treatment resulting from measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.

3. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms other than those set out in this Agreement.

**Article 14.8**
**Performance Requirements**

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:[8]

   (a) to export a given level or percentage of goods or services;

   (b) to achieve a given level or percentage of domestic content;

   (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from a person in its territory;

   (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;

   (e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;

   (f) to restrict exportation or sale for export;

[7] For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to investors (and to their investments) of territories for whose international relations the United Kingdom is responsible.

[8] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

(g) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;

(h) to locate the regional or world headquarters of an enterprise in its territory;

(i) to hire a given number or percentage of its nationals;

(j) to achieve a given level or value of research and development in its territory;

(k) to supply exclusively from the territory of that Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;

(l) (i) to purchase, use, or accord a preference to, in its territory, technology of that Party or of a person of that Party;[9] or

(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology; or

(m) to adopt:

(i) a given rate or amount of royalty under a licence contract; or

(ii) a given duration of the term of a licence contract,

in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future licence contract[10] freely entered into between the investor or investment and a person in its territory, provided that the requirement is imposed or enforced or the commitment or undertaking is enforced in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, subparagraph (m) shall not apply when the licence contract is concluded between the investor or investment and a Party.

2. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-party in its territory, on compliance with any requirement:

[9] For the purposes of this Article, the term "technology of a Party or of a person of a Party" includes technology that is owned by a Party or a person of a Party, and technology for which a Party or a person of a Party holds an exclusive licence.

[10] A "licence contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from a person in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;

(d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings; or

(e) to restrict exportation or sale for export.

3. For greater certainty, nothing in paragraph 1 shall be construed as preventing the enforcement by a Party of an undertaking voluntarily given[11] by a person in relation to a takeover or merger.

4. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Subparagraphs 1(g), 1(l), and 1(m) shall not apply:

(a) if a Party authorises use of an intellectual property right in accordance with Article 31 or Article 31bis of the TRIPS Agreement, or to measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement; or

(b) if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a court or administrative tribunal, or by a competition authority to remedy a situation[12] determined after a judicial or administrative process to be anti-competitive under a Party's competition law.[13]

[11] An "undertaking voluntarily given" means that it is not required by a Party as a condition of the approval of the takeover or merger.

[12] For greater certainty, for the purposes of this subparagraph "situation" includes any feature of a market (whether behavioural or structural) which may be subject to investigation or study under New Zealand's competition studies laws or regulations or the United Kingdom's market investigation law.

[13] The Parties recognise that a patent does not necessarily confer market power.

6. Subparagraph 1(m) shall not apply if the requirement is imposed or enforced or the commitment or undertaking is enforced by a tribunal as equitable remuneration under the Party's copyright law.

7. Subparagraphs 1(a), 1(b), 1(c), 2(a), and 2(b), shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

8. Subparagraphs 1(l) and 1(m) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that those measures are not applied in an arbitrary or unjustified manner, or in a manner that constitutes a disguised restriction on international trade or investment.

9. Subparagraphs 2(a) and 2(b) shall not apply to requirements imposed or enforced by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

10. For greater certainty, paragraphs 1 and 2 shall not apply to any requirement other than the requirements set out in those paragraphs.

11. This Article is without prejudice to the obligations of a Party under the *Agreement on Trade-Related Investment Measures* in Annex 1A to the WTO Agreement.

12. This Article shall not preclude enforcement of any commitment, undertaking, or requirement between private parties, if a Party did not impose or require the commitment, undertaking, or requirement.

## Article 14.9
## Senior Management and Boards of Directors

A Party shall not require that an enterprise that is a covered investment appoint to senior management or board of director positions natural persons of a particular nationality or who are resident in the territory of that Party.

## Article 14.10
## Non-Conforming Measures

1. Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Boards of Directors) shall not apply to:

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

(i) the central or regional level of government, as set out by that Party in its Schedule to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures); or

(ii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Board of Directors).

2. Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in its Schedule to Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures).

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of a covered investment existing at the time the measure becomes effective.

4. (a) Article 14.6 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(i) Article 17.7 (National Treatment – Intellectual Property); or

(ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 17 (Intellectual Property).

(b) Article 14.7 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(i) Article 17.7 (National Treatment – Intellectual Property); or

(ii) Article 4 of the TRIPS Agreement.

5. Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Boards of Directors) shall not apply to any measure with respect to government procurement.

6. Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Boards of Directors) shall not apply to a subsidy or grant provided by a Party, including a government supported loan, guarantee, or insurance.

7. Each Party shall endeavour to progressively remove the non-conforming measures.

## Article 14.11
## Minimum Standard of Treatment[14]

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligations in paragraph 1 provide that:

   (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

   (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not

[14] Article 14.11 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 14A (Customary International Law).

constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

## Article 14.12
## Treatment in Case of Armed Conflict or Civil Strife

1. Notwithstanding Article 14.10 (Non-Conforming Measures), each Party shall accord to investors of the other Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

   (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

   (b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

   the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for that loss.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 14.6 (National Treatment) but for Article 14.10 (Non-Conforming Measures).

## Article 14.13
## Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Those transfers include:

   (a) contributions to capital, including the initial contribution;

   (b) returns;

   (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

   (d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 14.12 (Treatment in Case of Armed Conflict or Civil Strife) and Article 14.14 (Expropriation and Compensation);

(f) payments arising out of a dispute; and

(g) earnings and other remuneration of foreign personnel in connection with the covered investment.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Neither Party shall require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits, or other amounts derived from, or attributable to, investments in the territory of the other Party.

4. Notwithstandinlay a transfer through the equitable, non-discriminatory, and good faith application of its law relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, public retirement, or compulsory savings schemes.

5. For greater certainty, nothing in this Article shall be construed to prevent a Party from applying its law relating to the imposition of economic sanctions provided that doing so does not constitute a disguised restriction on transfers.

## Article 14.14
## Expropriation and Compensation[15]

1. Neither Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:

   (a) for a public purpose;

   (b) in a non-discriminatory manner;

   (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2, 3, and 4; and

   (d) in accordance with due process of law.

2. Compensation shall:

   (a) be paid without delay;

   (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

   (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

   (d) be fully realisable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

   (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

   (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

[15] This Article shall be interpreted in accordance with Annex 14B (Expropriation).

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that the issuance, revocation, limitation, or creation is consistent with Chapter 17 (Intellectual Property) and the TRIPS Agreement.[16]

6. For greater certainty, a Party's decision not to issue, renew, or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant:

   (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy or grant; or

   (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction, and maintenance of that subsidy or grant,

   standing alone, does not constitute an expropriation.

## Article 14.15
## Subrogation

If a Party, or any agency, institution, statutory body, or corporation designated by a Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance, or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

## Article 14.16
## Special Formalities and Disclosure of Information

1. Nothing in Article 14.6 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under the law of a Party, provided that those formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

[16] For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

2. Notwithstanding Article 14.6 (National Treatment) and Article 14.7 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or a covered investment, to provide information concerning an investment solely for informational or statistical purposes. Each Party shall protect that information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

**Article 14.17**
**Denial of Benefits**

Each Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to covered investments of that investor if:

(a) a non-party or a person of a non-party owns or controls the enterprise; and

(b) the denying Party adopts or maintains a measure with respect to the non-party or the person of the non-party which prohibits transactions with the enterprise or which would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to the investments of that enterprise.

**Article 14.18**
**Investment and Environmental, Health, and Other Regulatory Objectives**

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

2. The Parties recognise the importance of environmental protection, including with respect to climate change mitigation and adaptation, and recall each Party's rights and obligations relating to the protection of the environment provided for in this Agreement.

**Article 14.19**
**Corporate Social Responsibility**

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate

into their internal policies those internationally recognised standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party, such as the *OECD Guidelines for Multinational Enterprises* and the *United Nations Guiding Principles on Business and Human Rights*.

# CHAPTER 15

# DIGITAL TRADE

## Article 15.1
## Definitions

For the purposes of this Chapter:

**"cipher"** or **"cryptographic algorithm"** means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext;

**"ciphertext"** means data in a form that cannot be easily understood without subsequent decryption;

**"commercial information and communication technology product"** or **"commercial ICT product"** means a product that is designed for commercial applications and whose intended function is information processing and communication by electronic means, including transmission and display, or electronic processing applied to determine or record physical phenomena, or to control physical processes;

**"computing facilities"** means a computer server or storage device for processing or storing information for commercial use;

**"covered person"** means:

(a) a covered investment as defined in Article 14.2 (Definitions – Investment);

(b) an investor of a Party as defined in Article 14.2 (Definitions – Investment); or

(c) a service supplier of a Party as defined in Article 9.1 (Definitions – Cross-Border Trade in Services),

but does not include a financial service supplier as defined in Article 11.1 (Definitions – Financial Services);

**"cryptography"** means the principles, means, or methods for the transformation of data in order to conceal or disguise its content, prevent its undetected modification, or prevent its unauthorised use, and is limited to the transformation of information using one or more secret parameters, for example, crypto variables or associated key management;

**"digital innovation"** means the development, implementation, or adoption of new or improved digital technologies, digital processes, or digital organisational methods;

**"electronic authentication"** or **"e-authentication"** means an electronic process or act of verifying that enables the confirmation of:

(a) the electronic identification of a person; or

(b) the origin and integrity of data in electronic form;

**"electronic invoicing"** or **"e-invoicing"** means the automated creation, exchange, and processing of requests for payments between suppliers and buyers using a structured digital format;

**"electronic seal"** means data in electronic form used by an enterprise which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity;

**"electronic signature"** means data in electronic form which is attached to or logically associated with other data in electronic form that is:

(a) used to identify the signatory in relation to the data in electronic form; and

(b) used by a signatory to agree on the data in electronic form to which it relates;[1]

**"electronic transmission"** or **"transmitted electronically"** means a transmission made using an electromagnetic means, including by photonic means;

**"emerging technology"** means an enabling and innovative technology that has potentially significant application across a wide range of existing and future sectors, including artificial intelligence, distributed ledger technologies, quantum technologies, immersive technologies, sensing technologies, and the Internet of Things;

**"encryption"** means the conversion of data (plaintext) through the use of a cryptographic algorithm into a ciphertext using the appropriate key;

**"key"** means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that a person with knowledge of the key can reproduce or reverse the operation, but a person without knowledge of the key cannot;

[1] For greater certainty, nothing in this provision prevents a Party from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the electronic data message has not been altered or verifying the identity of the signatory.

**"personal information"** means information, including data, about an identified or identifiable natural person;

**"trade administration documents"** means the forms and documents that must be completed by or for an importer or exporter in connection with the import or export of goods; and

**"unsolicited commercial electronic message"** means an electronic message which is sent for commercial or marketing purposes, without the consent of the recipient or despite the explicit rejection of the recipient, directly to a natural person, or enterprise if provided for in a Party's laws and regulations, via a public telecommunications service. For the purposes of this Agreement, this covers electronic mail, text and multimedia messages (SMS and MMS), and other forms of electronic messages governed by a Party's laws and regulations.[2]

## Article 15.2
## Objectives

The Parties recognise the economic growth and opportunities provided by digital trade and the importance of:

(a) adopting frameworks that promote consumer confidence in digital trade;

(b) promoting interoperability of regulatory frameworks to facilitate digital trade;

(c) avoiding unnecessary barriers to the use and development of digital trade; and

(d) digital inclusion, including participation of Māori, women, persons with disabilities, rural populations, low socio-economic groups as well as enterprises, individuals, and other groups that disproportionately face barriers to digital trade.

## Article 15.3
## Scope and General Provisions

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade enabled by electronic means.

2. This Chapter shall not apply to:

(a) audio-visual services; or

[2] For greater certainty, an unsolicited commercial electronic message does not include a message sent by or on behalf of a Party.

(b) government procurement, except for Article 15.5 (Conclusion of Contracts by Electronic Means), Article 15.7 (Electronic Authentication), and Article 15.9 (Electronic Invoicing).

3. Article 15.12 (Commercial Information and Communication Technology Products that Use Cryptography), Article 15.14 (Cross-Border Transfer of Information by Electronic Means), and Article 15.15 (Location of Computing Facilities) shall not apply to information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

4. Article 15.14 (Cross-Border Transfer of Information by Electronic Means) and Article 15.15 (Location of Computing Facilities) shall not apply to aspects of a Party's measures that do not conform with an obligation in Chapter 9 (Cross-Border Trade in Services) or Chapter 14 (Investment), to the extent that such measures are adopted or maintained in accordance with:

(a) Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) or Article 14.10 (Non-Conforming Measures – Investment); or

(b) any exception that is applicable to the obligations in Chapter 9 (Cross-Border Trade in Services) and Chapter 14 (Investment).

## Article 15.4
## Customs Duties

1. Neither Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of the other Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees, or other charges on electronic transmissions, including content transmitted electronically, provided that those taxes, fees, or charges are imposed in a manner consistent with this Agreement.

3. The Parties shall cooperate in relevant international fora to promote the adoption of commitments by non-parties not to impose customs duties on electronic transmissions.

## Article 15.5
## Conclusion of Contracts by Electronic Means

1. Except in circumstances otherwise provided for in its law, a Party shall not adopt or maintain measures that:

(a) deprive an electronic contract of legal effect, enforceability, or validity, solely on the ground that the contract has been made by electronic means; or

(b) otherwise create obstacles for the use of electronic contracts.

2. Recognising the importance of increasing the use of electronic contracts, the Parties should review and reduce the circumstances referred to in paragraph 1.

**Article 15.6**
**Domestic Electronic Transactions Framework**

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce* done at New York on 12 June 1996 or the *United Nations Convention on the Use of Electronic Communications in International Contracts* done at New York on 23 November 2005.

2. Each Party shall endeavour to:

(a) avoid any unnecessary regulatory burden on electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

3. The Parties recognise the importance of facilitating the use of electronic transferable records. When developing measures relating to electronic transferable records, each Party shall take into account the *UNCITRAL Model Law on Electronic Transferable Records* done at New York on 13 July 2017.

**Article 15.7**
**Electronic Authentication**

1. Except in circumstances otherwise provided for under its laws and regulations, neither Party shall deny the legal effect or admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal, or the authenticating data resulting from electronic authentication, solely on the ground that it is in electronic form.

2. Neither Party shall adopt or maintain a measure that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication method for their transaction; or

(b) prevent parties to an electronic transaction from being able to prove to judicial and administrative authorities that the use of electronic authentication in that transaction complies with the applicable legal requirements.

3. Notwithstanding paragraph 2, a Party may require that for a particular category of transactions, the method of electronic authentication is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent, and non-discriminatory and shall only relate to the specific characteristics of the category of transactions concerned.

4. The Parties shall encourage the use of interoperable electronic authentication, and recognise the benefits of working towards mutual recognition of electronic authentication. To this end, the Parties shall endeavour to share information, where appropriate, on matters related to e-authentication.

5. To the extent provided for under its laws or regulations, a Party shall apply paragraphs 1 to 4 to electronic processes or means of facilitating or enabling electronic transactions, such as electronic time stamps and electronic registered delivery services.

**Article 15.8**
**Digital Identities**

1. The Parties recognise that:

(a) the cooperation of the Parties on digital identities will increase regional and global connectivity; and

(b) each Party may have different implementations of, and legal approaches to, digital identities.

2. The Parties shall strengthen cooperation and facilitate initiatives to promote compatibility and interoperability between their respective regimes for digital identities, including exploring:

(a) the development and maintenance of appropriate frameworks to increase technical and service interoperability between each Party's implementation of digital identities;

(b) supporting the development of international frameworks on digital identity regimes;

(c) identifying use cases for the mutual recognition of digital identities; and

(d) the exchange of knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, promotion, and user adoption.

3. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective.

**Article 15.9**
**Electronic Invoicing**

1. The Parties recognise the importance of e-invoicing to increase the efficiency, accuracy, and reliability of commercial transactions. Each Party also recognises the benefits of ensuring interoperability of e-invoicing systems to support digital trade and that these systems can be used for business-to-business and business-to-consumer digital transactions.

2. Each Party shall ensure that the implementation of measures related to e-invoicing in its jurisdiction is designed to support cross-border interoperability. When developing measures related to e-invoicing, each Party shall take into account international frameworks, guidelines, or recommendations, where these exist.

3. The Parties shall share best practices pertaining to e-invoicing.

**Article 15.10**
**Paperless Trading**

1. Each Party shall make trade administration documents that it issues or controls available to the public in electronic form.

2. Each Party shall endeavour to accept a trade administration document submitted electronically as the legal equivalent of the paper version of that document.

3. The Parties shall, where appropriate, cooperate bilaterally and in international fora on matters related to paperless trading, such as enhancing the standardisation and acceptance of electronic trade administration documents.

4. In developing initiatives concerning the use of paperless trading, each Party shall take into account the principles and guidelines agreed by relevant international bodies.

## Article 15.11
## Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

   (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or

   (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages,

   and otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall ensure that unsolicited commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable recipients to request cessation free of charge and at any time.

3. Each Party shall provide access to either redress or recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

4. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

## Article 15.12
## Commercial Information and Communication Technology Products that Use Cryptography

1. Neither Party shall impose or maintain a technical regulation or conformity assessment procedure that requires a manufacturer or supplier of a commercial ICT product that uses cryptography, as a condition of the manufacture, sale, distribution, import, or use of that commercial ICT product, to:

   (a) transfer or provide access to any proprietary information relating to cryptography, including by disclosing a particular technology or production process or other information, for example, a private key or other secret parameter, algorithm specification, or other design detail, to that Party or a person in the territory of that Party;

(b) partner or otherwise cooperate with a person in the territory of that Party in the development, manufacture, sale, distribution, import, or use of the commercial ICT product; or

(c) use or integrate a particular cipher or cryptographic algorithm.

2. Notwithstanding paragraph 1 of Article 15.3 (Scope and General Provisions), this Article shall apply to commercial ICT products that use cryptography.[3] This Article shall not apply to:

(a) a Party's law enforcement authorities requiring service suppliers using encryption to provide access to encrypted and unencrypted communications pursuant to that Party's legal procedures;

(b) the regulation of financial instruments;

(c) a requirement that a Party adopts or maintains relating to access to networks, including user devices, that are owned or controlled by that Party, including those of central banks;

(d) measures by a Party adopted or maintained pursuant to supervisory, investigatory, or examination authority relating to financial service suppliers or financial markets;

(e) the manufacture, sale, distribution, import, or use of a commercial ICT product by or for a Party; or

(f) a commercial ICT product other than a good.

**Article 15.13**
**Personal Information Protection**

1. The Parties emphasise the economic and social benefits of protecting the personal information of users of digital trade and the contribution that this makes to enhancing consumer confidence in digital trade.

2. Each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of digital trade. In the development of its legal framework for the protection of personal information, each Party shall take into account principles and guidelines of relevant international bodies.

3. The Parties recognise that the principles underpinning a robust personal information protection framework include:

[3] For greater certainty, for the purposes of this Article, a commercial ICT product does not include a financial instrument.

(a) collection limitation;

(b) data quality;

(c) purpose specification;

(d) use limitation;

(e) security safeguards;

(f) openness;

(g) individual participation; and

(h) accountability.

4. Each Party shall adopt non-discriminatory practices in protecting users of digital trade from personal information protection violations occurring within its jurisdiction.

5. Each Party shall publish information on the personal information protections it provides to users of digital trade, including how:

(a) an individual can pursue a remedy; and

(b) an enterprise can comply with any legal requirements.

6. Each Party shall pursue the development of mechanisms to promote compatibility and interoperability between these different regimes for protecting personal information. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall exchange information on any mechanisms applied in their respective jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility and interoperability between them.

## Article 15.14
## Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, if this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining a measure inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

   (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

   (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

**Article 15.15**
**Location of Computing Facilities**

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. Neither Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining a measure inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

   (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

   (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

**Article 15.16**
**Open Internet Access**

Subject to their applicable policies, laws, and regulations, each Party recognises the benefits of consumers[4] in their territory having the ability to:

   (a) access, distribute, and use services and applications of their choice available on the Internet, subject to reasonable network management which does not block or slow down traffic based on commercial reasons;

[4] For the purposes of this Article, "consumer" means a natural person or enterprise using the Internet for personal, trade, or business or professional purposes.

(b) connect devices of their choice to the Internet, provided that these devices do not harm the network; and

(c) access information on the network management practices of their Internet access service supplier.

**Article 15.17**
**Open Government Data**

1. For the purposes of this Article, government data and information means non-proprietary data and information held by the central level of government and, to the extent provided for under a Party's laws and regulations, by other levels of government.

2 The Parties recognise that facilitating public access to and use of government data and information fosters economic and social development, competitiveness, and innovation. To this end, each Party is encouraged to expand the coverage of government data and information digitally available for public access and use, through engagement and consultation with interested stakeholders, and Māori in the case of New Zealand.

3 To the extent that a Party makes government data and information available to the public, it shall endeavour to ensure that the data and information is in a machine-readable and open format and can be searched, retrieved, used, reused, and redistributed.

4. Each Party shall provide interested persons with the opportunity to request the disclosure of specific government data and information.

5. The Parties shall cooperate, as appropriate, to identify ways in which each Party can expand access to and the use of government data and information that the Party has made public, with a view to enhancing and generating business opportunities, especially for SMEs.

**Article 15.18**
**Cooperation on Cyber Security Matters**

1. The Parties recognise the importance of promoting secure digital trade to achieve global prosperity and recognise that threats to cyber security undermine confidence in digital trade.

2. The Parties further recognise the importance of:

(a) building the capabilities of their respective national entities responsible for cyber security incident response, taking into account the evolving nature of cyber security threats;

(b) using and strengthening existing collaboration mechanisms for cooperating to anticipate, identify, and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties, and using those mechanisms to swiftly address cyber security incidents;

(c) workforce development in the area of cyber security, including through possible initiatives relating to mutual recognition of qualifications, and promoting diversity and equality; and

(d) maintaining a dialogue on matters related to cyber security, including for the sharing of information and experiences for awareness and best practices.

3. Given the evolving nature of cyber security threats, the Parties recognise that risk-based approaches may be more effective than prescriptive approaches in addressing those threats including in the context of digital trade. Accordingly, each Party shall encourage enterprises within its jurisdiction to use risk-based approaches that rely on open and transparent industry standards to:

(a) manage cyber security risks and to detect, respond to, and recover from cybersecurity events; and

(b) otherwise improve the cyber security resilience of these enterprises and their customers.

**Article 15.19**
**Digital Innovation and Emerging Technologies**

1. The Parties recognise the increasing social and economic importance of digital innovation and emerging technologies, and the importance of the safe and responsible development and use of emerging technologies to foster public trust.

2. The Parties further recognise that digital innovation and emerging technologies:

(a) have important roles in promoting economic competitiveness and facilitating international trade and investment flows; and

(b) may require coordinated action, including between the Parties, across multiple sectors and trade policy areas to maximise their economic and social benefits, including trade between the Parties. When taking that action, the Parties shall take into consideration relevant international frameworks.

3. Each Party shall endeavour to develop governance and policy frameworks for the trusted, safe, and responsible use of emerging technologies. To this end, in developing those frameworks, the Parties recognise the importance of:

(a) taking into account the principles and guidelines of relevant international bodies, such as the OECD and the Global Partnership on Artificial Intelligence;

(b) utilising risk-based or outcome-based approaches to regulation that take into account industry-led standards and risk management best practices; and

(c) having regard to the principles of technological interoperability and technological neutrality.

4. The Parties shall cooperate, as appropriate, on matters related to digital innovation and emerging technologies with respect to trade. This may include:

(a) exchanging information, and sharing experiences and best practices on the development and implementation of law and policies, including matters of enforcement and compliance;

(b) cooperating on developments relating to emerging technologies, including ethical use, industry-led standards, and algorithmic transparency, to address issues such as unintended biases and exacerbation of existing divides, by ensuring human diversity is recognised in the development of technologies; and

(c) participating actively in international fora.

**Article 15.20**
**Digital Inclusion**

1. The Parties recognise the importance of digital inclusion, that all people and businesses can participate in, contribute to, and benefit from digital trade. To this end, the Parties recognise the importance of expanding and facilitating digital trade opportunities by removing barriers to participation in digital trade, and that this may require tailored approaches, developed in consultation with Māori, enterprises, individuals, and other groups that disproportionately face such barriers.

2. To promote digital inclusion, the Parties shall cooperate on matters relating to digital inclusion, including participation of Māori, women, persons with disabilities, rural populations, and low socio-economic groups as well as

other individuals and groups that disproportionately face barriers to digital trade. This may include:

(a) enhancing cultural and people-to-people links, including for Māori, through promoting business development services;

(b) identifying and addressing barriers to accessing digital trade opportunities;

(c) improving digital skills and access to online business tools; and

(d) sharing methods and procedures for developing datasets and conducting analysis to identify barriers and trends over time in relation to Māori, women, and other groups which face barriers to digital trade to inform the development of digital trade policies, including developing methods for monitoring their participation in digital trade.

3. The Parties recognise the role played by SMEs, including Māori-led and women-led enterprises, in economic growth and job creation, and the need to address the barriers to participation in digital trade for those entities. To this end, the Parties shall:

(a) foster close cooperation on digital trade between SMEs of the Parties;

(b) encourage their participation in platforms that help link them with international suppliers, buyers, and other potential business partners; and

(c) share best practices in improving digital skills and leveraging digital tools and technology to improve access to capital and credit, participation in government procurement opportunities, and other areas that could help SMEs adapt to digital trade.

4. The Parties also recognise the digital divide between developed and developing countries, and the role for digital trade in promoting economic development and poverty reduction. The Parties shall endeavour to undertake and strengthen cooperation, including through existing mechanisms, to promote the participation of developing countries in digital trade. This may include sharing best practices, active engagement in international fora, and promoting developing countries' participation in, and contribution to, the global development of rules on digital trade, which may include other WTO members as appropriate.

5. The Parties shall also participate actively at the WTO and in other international fora to promote initiatives for advancing digital inclusion in digital trade.

## Article 15.21
## Cooperation

1. The Parties shall, where appropriate, cooperate and participate actively in international fora, including the WTO, to promote the development of international frameworks for digital trade.

2. In addition to areas of cooperation between the Parties identified in other parts of this Chapter, the Parties shall exchange information on and share experiences and best practices on regulatory matters relating to digital trade.

3. The Parties shall endeavour to cooperate to promote and facilitate collaboration between governmental entities, enterprises, and other non-governmental entities on digital technologies and services, including digital innovation and emerging technologies, in relation to opportunities in trade, investment, and research and development, including in the areas of pandemic preparedness, clean technology, and low emissions technology.

## Article 15.22
## Review

1. To take into account developments in digital trade, the Parties shall review the operation and implementation of this Chapter and Article 11.7 (Financial Data and Information – Financial Services) within two years of the date of entry into force of this Agreement unless the Parties agree otherwise.

2. In the context of that review, and following the release of the Waitangi Tribunal's Report Wai 2522 dated 19 November 2021, New Zealand:

   (a) reaffirms its continued ability to support and promote Māori interests under this Agreement; and

   (b) affirms its intention to engage Māori to ensure the review outlined in paragraph 1 takes account of the continued need for New Zealand to support Māori to exercise their rights and interests, and meet its responsibilities under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

# CHAPTER 16

# GOVERNMENT PROCUREMENT

## Article 16.1
## Definitions

For the purposes of this Chapter:

**"commercial goods or services"** means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

**"construction service"** means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC Prov.);

**"electronic auction"** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

**"in writing"** or **"written"** means any worded or numbered expression that can be read, reproduced, and later communicated. It may include electronically transmitted and stored information;

**"limited tendering"** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

**"measure"** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

**"multi-use list"** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

**"notice of intended procurement"** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

**"offset"** means any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade, or similar action to encourage local development or to improve a Party's balance-of-payments accounts;

**"open tendering"** means a procurement method whereby all interested suppliers may submit a tender;

**"procuring entity"** means an entity listed in Annex 16A (Government Procurement Schedules);

**"qualified supplier"** means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

**"selective tendering"** means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

**"services"** includes construction services, unless otherwise provided in this Chapter;

**"standard"** means a document approved by a recognised body that provides for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method;

**"supplier"** means a person or group of persons that provides or could provide goods or services; and

**"technical specification"** means a tendering requirement that:

(a) lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or

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

## Article 16.2
## Scope

*Application of Chapter*

1. This Chapter shall apply to any measure regarding covered procurement.

2. For the purposes of this Chapter, covered procurement means government procurement:

(a) of goods, services, or any combination thereof as specified in each Party's Schedule to Annex 16A (Government Procurement Schedules);

(b) by any contractual means, including: purchase, lease, and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 to 8, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 16A (Government Procurement Schedules) at the time of publication of a notice in accordance with Article 16.6 (Notices);

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage under this Agreement.

3. Unless otherwise provided in a Party's Schedule to Annex 16A (Government Procurement Schedules), this Chapter shall not apply to:

(a) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes, and other securities;

(d) public employment contracts; or

(e) procurement conducted:

(i) for the specific purpose of providing international assistance including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

4. Each Party shall specify the following information in its Schedule to Annex 16A (Government Procurement Schedules):

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, all other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any General Notes; and

(h) in Section H, the publication of information required under Article 16.5 (Information on the Procurement System).

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's Schedule to Annex 16A (Government Procurement Schedules) to procure in accordance with particular requirements, Article 16.4 (General Principles) shall apply *mutatis mutandis* to those requirements.

*Valuation*

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements, nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions, and interest; and

(ii) where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts ("recurring contracts"), the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

## Article 16.3
## General Exceptions

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

(a) necessary to protect public morals, order, or safety;

(b) necessary to protect human, animal, or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

2. The Parties understand that subparagraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health, and measures necessary to mitigate climate change.

## Article 16.4
## General Principles

*Non-discrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services, and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

   (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

   (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

*Use of electronic means*

3. When conducting covered procurement, a procuring entity shall use electronic means:

   (a) for the publication of notices; and

   (b) to the widest extent practicable for information exchange and communication, the publication of tender documentation and the submission of tenders.

4. When conducting covered procurement by electronic means, a procuring entity shall:

   (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

*Conduct of procurement*

5. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

*Rules of origin*

6. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

*Offsets*

7. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce any offset at any stage of a procurement.

*Measures not specific to procurement*

8. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; and other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

## Article 16.5
## Information on the Procurement System

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation, and procedure regarding covered

procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

(b) provide an explanation thereof to the other Party, on request.

2. Each Party shall list in Section H of its Schedule to Annex 16A (Government Procurement Schedules):

(a) the electronic or paper media in which the Party publishes the information described in paragraph 1;

(b) the electronic media in which the Party publishes the notices required by Article 16.6 (Notices), paragraph 8 of Article 16.8 (Qualification of Suppliers), and paragraph 2 of Article 16.17 (Transparency of Procurement Information); and

(c) the electronic media where the Party publishes its procurement data pursuant to paragraph 4 of Article 16.17 (Transparency of Procurement Information).

3. Each Party shall promptly notify the other Party of any modification to the Party's information listed in Section H of its Schedule to Annex 16A (Government Procurement Schedules).

## Article 16.6
## Notices

*Electronic publication of procurement notices*

1. Notices of intended procurement and notices of planned procurement shall be directly accessible by electronic means, free of charge, through a single point of access, as listed in Section H of each Party's Schedule to Annex 16A (Government Procurement Schedules).

*Notice of intended procurement*

2. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the electronic medium listed in Annex 16A (Government Procurement Schedules), except in the circumstances described in Article 16.14 (Limited Tendering). The notice shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice.

3. Unless otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the timeframe for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which a tender or a request for participation may be submitted, if it may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless those requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement; and

(k) where, pursuant to Article 16.8 (Qualification of Suppliers), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender.

*Notice of planned procurement*

4. Procuring entities are encouraged to publish in the electronic medium listed in Annex 16A (Government Procurement Schedules), as early as possible in each fiscal year, a notice regarding their future procurement plans ("notice of planned procurement"). The notice of planned procurement should include

the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Section B or Section C of a Party's Schedule to Annex 16A (Government Procurement Schedules) may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 3 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

**Article 16.7**
**Conditions for Participation**

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

   (a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of the Party or that the supplier has prior work experience in the territory of that Party; and

   (b) may require relevant prior experience where essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

   (a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

   (b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

   (a) bankruptcy;

   (b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier;

(f) failure to pay taxes; or

(g) human rights violations by the supplier or in the supplier's supply chain.

## Article 16.8
## Qualification of Suppliers

*Registration systems and qualification procedures*

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

3. If a Party or a procuring entity maintains a supplier registration system, it shall:

   (a) ensure that interested suppliers have access to information on the registration system through electronic means and that interested suppliers may request registration at any time; and

   (b) if a request by a supplier is made, inform the supplier within a reasonable period of time of the decision with respect to this request and if the request is rejected this decision must be duly motivated.

4. Each Party shall ensure that:

   (a) its procuring entities make efforts to minimise differences in their qualification procedures; and

   (b) where its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

*Selective tendering*

5. Where a procuring entity intends to use selective tendering, the entity shall:

   (a) include in the notice of intended procurement at least the information specified in subparagraphs 3(a), 3(b), 3(f), 3(g), 3(j), and 3(k) of Article 16.6 (Notices) and invite suppliers to submit a request for participation; and

   (b) provide, by the commencement of the time period for tendering, at least the information in subparagraphs 3(c), 3(d), 3(e), 3(h), and 3(i) of Article 16.6 (Notices) to the qualified suppliers that it notifies as specified in subparagraph 3(b) of Article 16.12 (Time Periods).

6. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

7. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 5, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 6.

*Multi-use lists*

8. A Party, including its procuring entities, may establish or maintain a multi-use list, provided that it makes continuously available in the electronic medium listed in Annex 16A (Government Procurement Schedules) a notice inviting interested suppliers to apply for inclusion on the list.

9. The notice provided for in paragraph 8 shall include:

   (a) a description of the goods or services, or categories thereof, for which the list may be used;

   (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

   (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list; and

   (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an

indication of the method by which notice will be given of the termination of use of the list.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents within the time period provided for in paragraph 2 of Article 16.12 (Time Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

*Section B and Section C entities*

12. A procuring entity covered under Section B or Section C of a Party's Schedule to Annex 16A (Government Procurement Schedules) may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

    (a) the notice is published in accordance with paragraph 8 and includes the information as required under paragraph 9, as much of the information required under paragraph 3 of Article 16.6 (Notices) as is available, and a statement that it constitutes a notice of intended procurement, or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

    (b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in paragraph 3 of Article 16.6 (Notices), to the extent such information is available.

13. A procuring entity covered under Section B or Section C of a Party's Schedule to Annex 16A (Government Procurement Schedules) may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 12 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

*Information on procuring entity decisions*

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement, or application for inclusion on a multi-use list, of the procuring entity's decision with respect to the request or application.

15. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

## Article 16.9
## Technical Specifications and Tender Documentation

*Technical specifications*

1. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

   (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

   (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognised national standards, or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as “or equivalent” in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in those cases, the entity includes words such as “or equivalent” in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt, or apply technical specification to promote the conservation of natural resources or protect the environment.

*Tender documentation*

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, that documentation shall include a complete description of:

   (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;

   (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

   (c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

   (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

   (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

   (f) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

   (g) any dates for the delivery of goods or the supply of services.

8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and

the realistic time required for production, de-stocking, and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics, and terms of delivery.

10. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

*Modifications*

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or reissued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification or amendment or reissuance, where those suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

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

*Preliminary market research and engagement*

12. For greater certainty, a procuring entity may, prior to publication of a notice of intended procurement, conduct market research and engagement with suppliers with a view to informing and developing technical specifications and other tender documentation for a particular procurement or informing suppliers of its procurement plans and requirements. A procuring entity shall take appropriate steps to ensure that suppliers participating in such market research or engagement do not gain an unfair advantage over other interested suppliers.

## Article 16.10
## Environmental, Social, and Labour Considerations

A Party, including its procuring entities, may:

(a) take into account environmental, social, and labour considerations at any stage of a procurement, provided they are non-discriminatory and are indicated in the notice of intended procurement or tender documentation; and

(b) take appropriate measures to ensure compliance with its environmental, social, and labour law, international obligations, including under Chapter 22 (Environment) and Chapter 23 (Trade and Labour), and standards of conduct, ethics, and integrity, provided they are non-discriminatory.

## Article 16.11
## Facilitation of Participation by SMEs

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in procurement.

2. The Parties shall:

   (a) upon request, provide information on the measures designed to assist, promote, encourage, or facilitate participation by SMEs in government procurement covered by this Chapter; and

   (b) cooperate and share best practice in relation to measures to facilitate participation by SMEs in government procurement covered by this Chapter.

3. Each Party shall endeavour to facilitate participation by SMEs in covered procurement, and shall to the extent possible and appropriate:

   (a) seek opportunities to simplify administrative processes;

   (b) make all tender documentation available free of charge;

   (c) require prompt payment, including in subcontracting; and

   (d) consider the size, design, and structure of the procurement, including dividing procurement opportunities into smaller lots and promoting the use of joint bidding and subcontracting by SMEs.

## Article 16.12
## Time Periods

*General*

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

   (a) the nature and complexity of the procurement;

   (b) the extent of subcontracting anticipated; and

   (c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

   Such time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

*Deadlines*

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days after the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7, and 8, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days after the date on which:

   (a) in the case of open tendering, the notice of intended procurement is published; or

   (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 to no less than 10 days where:

   (a) the procuring entity has published a notice of planned procurement as described in paragraph 4 of Article 16.6 (Notices) at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under paragraph 3 of Article 16.6 (Notices), as is available;

(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time period for tendering established in accordance with paragraph 3 to less than 10 days after the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 to no less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial

goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 to no less than 10 days.

8. Where a procuring entity covered under Section B or Section C of a Party's Schedule to Annex 16A (Government Procurement Schedules) has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

## Article 16.13
## Negotiation

1. A Party may provide for its procuring entities to conduct negotiations:

   (a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under paragraph 2 of Article 16.6 (Notices); or

   (b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

   (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

   (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

## Article 16.14
## Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 16.6 (Notices) to Article 16.8 (Qualification of Suppliers), paragraphs 7 to 11 of Article 16.9 (Technical Specifications and Tender Documentation), Article 16.12 (Time Periods), Article 16.13 (Negotiation), Article 16.15 (Electronic Auctions), and Article 16.16 (Treatment of Tenders and Awarding of Contracts) only under any of the following circumstances:

(a) where:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive,

provided that the requirements of the tender documentation are not substantially modified;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights, or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development.

Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

## Article 16.15
## Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

## Article 16.16
## Treatment of Tenders and Awarding of Contracts

*Treatment of tenders*

1. A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

*Awarding of contracts*

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation, and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

   (a) the most advantageous tender; or

   (b) where price is the sole criterion, the lowest price.

6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

7. A procuring entity shall not use options, cancel a procurement, or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

## Article 16.17
## Transparency of Procurement Information

*Information provided to suppliers*

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article 16.19 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

*Publication of award information*

2. No later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate electronic medium listed in Annex 16A (Government Procurement Schedules) and the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

   (a) a description of the goods or services procured, including a classification code of the goods or services procured, such as the CPC Prov.;

   (b) the name and address of the procuring entity;

   (c) the name and address of the successful supplier;

   (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

   (e) the date of award; and

   (f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 16.14 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.

*Maintenance of documentation, reports, and electronic traceability*

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

   (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 16.14 (Limited Tendering); and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

*Access to procurement data*

4. Each Party shall ensure that data on the notices concerning awarded contracts under paragraph 2 is available to the public, electronically, in a form permitting analysis, including the export or download of that data into an accessible and manipulable format. Each Party shall list in Section H of its Schedule to Annex 16A (Government Procurement Schedules) the electronic medium to access the relevant data and information.

5. The data described in paragraph 4 shall:

(a) for awarded contracts covered by this Chapter, include the information in paragraph 2; and

(b) be updated at least annually.

## Article 16.18
## Ensuring Integrity in Procurement Practices

1. Each Party shall ensure that criminal or administrative measures exist that can address corruption, fraud, and other illegal acts in its procurement.

2. These measures may include procedures to render ineligible for, or exclude from, participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in corrupt, fraudulent, or other illegal acts. When applying such procedures, each Party, including its procuring entities:

(a) may consider the seriousness of the supplier's acts or omissions and any remedial measures or mitigating factors; and

(b) shall provide a supplier of the other Party directly implicated:

(i) reasonable opportunity to present facts and arguments in support of its position prior to the decision to render ineligible for, or exclude from, participation being made; and

(ii) notice that such a decision has been made and the reasons for the decision.

3. Each Party shall ensure that it has in place policies or procedures to address potential conflicts of interest on the part of those engaged in or having influence over a procurement.

4. Each Party may put in place policies or procedures that require successful suppliers to maintain and enforce appropriate measures, such as internal controls, business ethics, and compliance programmes, for preventing and detecting corruption, fraud, and other illegal acts.

## Article 16.19
## Disclosure of Information

*Provision of information*

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially, and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

*Non-disclosure of information*

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to disclose confidential information where disclosure:

   (a) would impede law enforcement;

   (b) might prejudice fair competition between suppliers;

   (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

   (d) would otherwise be contrary to the public interest.

## Article 16.20
## Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

   (a) a breach of this Chapter; or

(b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter, arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days after the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings ("participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

**Article 16.21**
**Modifications and Rectifications of Annex**

1. A Party may modify or rectify its Schedule to Annex 16A (Government Procurement Schedules) in accordance with paragraphs 3 to 11.

2. The Parties recognise the importance of maintaining accurate and up-to-date information in their Schedules to Annex 16A (Government Procurement Schedules).

*Notification of proposed modification*

3. A Party shall notify any proposed modification or rectification (collectively referred to as a "modification") to its Schedule to Annex 16A (Government Procurement Schedules) in writing to the other Party, through the contact point designated under Article 30.5 (Contact Points – Institutional Provisions).

4. The notification of proposed modification shall contain:

(a) for any proposed withdrawal of an entity on the grounds that government control or influence over the entity's covered

procurement has been effectively eliminated, evidence of such elimination; or

(b) for any other proposed modification, information as to the likely consequences of the change for the coverage provided for in this Chapter.

5. The Party may include the offer of compensatory adjustment pursuant to paragraph 6 in its notification of proposed modification.

*Compensatory adjustments*

6. Subject to paragraphs 7 and 8, a Party shall provide appropriate compensatory adjustments for a change in coverage, if necessary, to maintain a level of coverage comparable to the coverage that existed prior to the modification.

7. A Party shall not be required to provide compensatory adjustments to the other Party if the proposed modification:

(a) covers a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

(b) is negligible in its effect, including rectifications of a purely formal nature and minor modifications to its Schedule to Annex 16A (Government Procurement Schedules), such as:

(i) changes in the name of a procuring entity;

(ii) the merger of one or more procuring entities listed within a Section of a Party's Schedule to Annex 16A (Government Procurement Schedules);

(iii) the separation of a procuring entity listed in a Party's Schedule to Annex 16A (Government Procurement Schedules) into two or more procuring entities that are all added to the procuring entities listed in the same Section of the Annex; or

(iv) changes in website references.

8. The Parties may agree another form of resolution as an alternative to compensatory adjustments.

*Objection to notification*

9. If the other Party disputes that:

(a) compensatory adjustments pursuant to paragraph 6 are adequate to maintain a level of coverage comparable to the coverage that existed prior to the modification; or

(b) the modification is a change provided for in subparagraph 7(a) or 7(b),

it shall notify the modifying Party of its objection in writing within 45 days of receipt of the notification of proposed modification referred to in paragraphs 3 and 4 or shall be deemed to have agreed to the proposed modification, and compensatory adjustments if provided, including for the purposes of Chapter 31 (Dispute Settlement).

10. Where a Party submits an objection pursuant to paragraph 9, it shall set out, as may apply, the reasons why it believes:

(a) the modification is not a change provided for in subparagraph 7(a) or 7(b) and describe the effect of the proposed modification on the coverage provided for in the Chapter; and

(b) a compensatory adjustment pursuant to paragraph 6 is not adequate to maintain a level of coverage comparable to the coverage that existed prior to the modification.

11. The Joint Committee shall adopt a modification to the Schedule to Annex 16A (Government Procurement Schedules), in accordance with subparagraph 2(g) of Article 30.2 (Functions of the Joint Committee – Institutional Provisions) to reflect any agreed modification or rectification pursuant to paragraph 9, or the conclusion of dispute settlement proceedings.

**Article 16.22**
**Government Procurement Working Group**

1. The Government Procurement Working Group established under Article 30.10 (Working Groups – Institutional Provisions) shall be composed of government representatives of each Party.

2. The Government Procurement Working Group shall meet by agreement of the Parties, and may meet virtually, to address matters related to the implementation and operation of this Chapter, such as:

(a) considering matters regarding government procurement that are referred to it by a Party;

(b) exchanging information relating to government procurement opportunities, including those at sub-central levels, in each Party;

(c) experience and best practices, including on the use and adoption of information technology in conducting procurement and of measures to promote environmental, social, and labour considerations in government procurement;

(d) facilitation of participation by SMEs in covered procurement, as provided for in Article 16.11 (Facilitation of Participation by SMEs); and

(e) facilitation of participation by women in government procurement to the extent possible, acknowledging the objectives in Chapter 25 (Trade and Gender Equality).

**Article 16.23**
**Further Negotiations**

1. The Parties shall enter into negotiations on market access with a view to making improvements to coverage of sub-central and other entities as soon as possible following New Zealand local authorities, State Services, or State Sector entities being either:

   (a) covered by New Zealand in another international trade agreement; or

   (b) required to follow the New Zealand *Government Procurement Rules*[1] in the future,

   unless as at the date this Agreement enters into force, that entity was required to follow the New Zealand *Government Procurement Rules*.

2. For greater certainty, the obligation in paragraph 1 shall not apply if the entity is in one of the following categories that are required to follow the New Zealand *Government Procurement Rules* on the date of entry into force of this Agreement: Crown Agents, Autonomous Crown Entities, Independent Crown Entities, Crown Entity companies[2] and Public Finance Act schedule 4A Companies,[3] or local authorities in respect of procurement related to transport projects funded in whole or in part by the New Zealand Transport Agency.

[1] The New Zealand *Government Procurement Rules* are New Zealand's primary instrument for regulating government procurement. A Whole of Government Direction granted on 22 April 2014 under section 107 of the *Crown Entities Act 2004* required certain classes of entities to follow the *Government Procurement Rules*.
[2] As defined in sections 7a and 7b of the *Crown Entities Act 2004* but excluding Crown Research Institutes.
[3] As listed in schedule 4A of the *Public Finance Act 1989*.

# CHAPTER 17

# INTELLECTUAL PROPERTY

## Section A
## General Provisions

### Article 17.1
### Definitions

For the purposes of this Chapter:

**"Berne Convention"** means the *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 and amended on 28 September 1979;

**"broadcasting"** means the transmission by wire or wireless means, including by cable or satellite, for public reception of sounds or images and sounds or the representations thereof, and including transmission of encrypted signals if the means for decrypting are provided to the public by the transmitting broadcasting organisation or with its consent, and **"broadcast"** shall be construed accordingly;

**"Budapest Treaty"** means the *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;

**"covered subject matter"** means each and all of the subject matter categories covered in Section H (Copyright and Related Rights), being works, performances, phonograms, and broadcasts;

**"Declaration on TRIPS and Public Health"** means the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2) adopted on 14 November 2001;

**"fixation"** means the embodiment of sounds or moving images or representations thereof, in each case, from which they can be perceived, reproduced, or communicated through a device;

**"Hague Agreement"** means the *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs* done at Geneva on 2 July 1999;

**"intellectual property"** refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention;

**"Madrid Protocol"** means the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* done at Madrid on 27 June 1989, as amended on 3 October 2006 and 12 November 2007;

**"Marrakesh Treaty"** means the *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;

**"Nice Agreement"** means 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 at Geneva on 13 May 1977 and amended on 8 September 1979;

**"Paris Convention"** means the *Paris Convention for the Protection of Industrial Property* done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967 and amended on 28 September 1979;

**"performers"** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore, and **"performances"** shall be construed accordingly;

**"phonogram"** means the fixation of the sounds of a performance or of other sounds other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

**"producer of a phonogram"** means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds or the representations of sounds;

**"PCT"** means the *Patent Cooperation Treaty (PCT)* done at Washington on 19 June 1970, as amended on 28 September 1979 and modified on 3 February 1984 and 3 October 2001;

**"Rome Convention"** means the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* done at Rome on 26 October 1961;

**"Singapore Treaty"** means the *Singapore Treaty on the Law of Trade Marks* done at Singapore on 27 March 2006;

**"trade secret"** means information that:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

**"trade secret holder"** means any person lawfully in control of a trade secret;

**"WCT"** means the *WIPO Copyright Treaty* done at Geneva on 20 December 1996;

**"WIPO"** means the World Intellectual Property Organization;

for greater certainty, **"work"** includes a cinematographic work, photographic work, and computer program; and

**"WPPT"** means the *WIPO Performances and Phonograms Treaty* done at Geneva on 20 December 1996.

**Article 17.2**
**Objectives**

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.

**Article 17.3**
**Principles**

1. 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.

2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

**Article 17.4**
**Understandings in Respect of this Chapter**

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture, and the arts; and

(c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, users, and the general public.

**Article 17.5**
**Nature and Scope of Obligations**

1. The Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement. This Chapter shall complement and further specify the rights and obligations of the Parties under the TRIPS Agreement and other international agreements in the field of intellectual property to which they are parties.

2. 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 this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

**Article 17.6**
**Understandings Regarding Certain Public Health Measures**

The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the understanding that the obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the 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.

## Article 17.7
## National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals[1] of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection[2] of intellectual property rights, subject to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT, and the *Treaty on Intellectual Property in Respect of Integrated Circuits* adopted at Washington on 26 May 1989. In respect of performers, producers of phonograms, and broadcasting organisations, this obligation only applies in respect of the rights provided under this Agreement.[3]

2. Each Party may avail itself of the exceptions referred to under 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, only where those exceptions are:

   (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

   (b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 shall not apply to procedures provided for in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

## Article 17.8
## International Agreements

Each Party affirms that it has ratified or acceded to the following agreements:

(a) TRIPS Agreement;

(b) Paris Convention;

(c) Berne Convention;

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[1] For the purposes of this Article, "nationals" has the same meaning as in the TRIPS Agreement.

[2] 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 matters affecting the use of intellectual property rights specifically covered by this Chapter.

[3] For greater certainty, this national treatment obligation applies to Article 17.45 (Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes) only to the extent that the other Party provides for the same type of right under paragraph 1 of that Article.

(d) WCT;

(e) WPPT;

(f) Marrakesh Treaty;

(g) Madrid Protocol;

(h) Nice Agreement;

(i) Singapore Treaty;

(j) Budapest Treaty; and

(k) PCT.

**Article 17.9**
**Transparency**

1. Each Party shall endeavour to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

2. Each Party shall, subject to its law, endeavour to publish online information that it makes public concerning applications for trade marks, geographical indications, registered designs, patents, and plant variety rights.[4, 5]

3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trade marks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.[6]

**Article 17.10**
**Application of Chapter to Existing Subject Matter and Prior Acts**

1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

[4] For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 17.27 (Electronic Trade Marks System).
[5] For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.
[6] For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted intellectual property right.

2. Unless otherwise provided in this Chapter, a Party shall not be required to restore protection to subject matter that, on the date of entry into force of this Agreement, has fallen into the public domain in its territory.

3. This Chapter shall not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

### Article 17.11
### Exhaustion of Intellectual Property Rights

Nothing in this Agreement shall prevent a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

## Section B
## Cooperation

### Article 17.12
### Contact Points

1. As of the date of entry into force of this Agreement, each Party shall provide the other Party with a contact point for communication on all matters covered by this Chapter.

2. Each Party shall promptly notify the other Party of any amendments to the details of their contact point.

### Article 17.13
### Cooperation and Dialogue

1. The Parties recognise the growing importance of the protection of intellectual property in further promoting trade and investment between them, and shall cooperate and engage in dialogue on the subject matter covered by this Chapter.[7] This may include through appropriate coordination and exchange of information between their respective intellectual property offices, or other agencies or institutions, as determined by each Party. The areas of cooperation and dialogue shall include, at least:

   (a) exchanging information relating to developments in the Parties' domestic and international intellectual property policy;

[7] For greater certainty, the Parties may comply with this Article by cooperating under the auspices of the Working Group whose functions are set out in Article 17.14 (Intellectual Property Working Group).

(b) intellectual property administration and registration systems (where the Parties have such systems in place);

(c) cooperation between their respective collective management organisations;

(d) intellectual property issues relevant to SMEs including using, protecting, and enforcing intellectual property rights;

(e) cooperation on public and business educational awareness campaigns on intellectual property rights;

(f) cooperation on intellectual property issues relevant to science, technology, and innovation activities, including in the areas of clean growth, low-carbon, and environmentally beneficial technologies and other climate friendly technologies; and

(g) best practices, projects, and programmes aimed at reducing intellectual property rights infringement, including in relation to:

(i) preventing exports of counterfeit goods, including with other countries;

(ii) sharing of experience of intellectual property rights enforcement between customs and law enforcement bodies;

(iii) public awareness campaigns on the impact of intellectual property infringement; and

(iv) voluntary stakeholder initiatives to reduce intellectual property infringement, including over the Internet and other marketplaces.

2. In addition, the Parties shall endeavour to cooperate in relation to activities for improving the international intellectual property regulatory framework, including by working together on relevant activities in international organisations including the WTO and the WIPO.

**Article 17.14**
**Intellectual Property Working Group**

1. The Intellectual Property Working Group established under Article 30.10 (Working Groups – Institutional Provisions) ("the Working Group") shall be composed of representatives of each Party and with Māori in the case of New Zealand for functions under subparagraph 3(b). The Working Group may also invite experts to attend meetings and advise the Working Group on

any matter falling within its functions.[8]

2. The Working Group shall meet as often as necessary to carry out its functions set out under this Chapter and, in any event, within three months of a Party making a request for a meeting. The Working Group may meet physically or virtually, as agreed by the Parties. The Working Group shall make decisions by mutual agreement.

3. The Working Group shall:

   (a) carry out the functions specified in Articles 17.33 (Consultations on Recognition and Protection of Geographical Indications) and 17.34 (Ongoing Review of this Section);

   (b) carry out the functions specified in Article 17.20 (Section Review);

   (c) carry out any functions as directed by the Joint Committee;

   (d) monitor and consider matters relating to the implementation and operation of this Chapter; and

   (e) report to the Joint Committee on the performance of its activities, including the outcome of any reviews of the Chapter or Sections thereof.

4. The Working Group may make recommendations or submit proposals for decisions to be adopted by the Joint Committee, including recommendations or proposals arising out of any review of this Chapter or Sections thereof.

**Article 17.15**
**Patent Cooperation and Work Sharing**

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices to the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavour to cooperate through their respective patent offices to facilitate the sharing and use of search and examination work of the Parties. This may include:

   (a) making search and examination results available to the patent offices

[8] Experts may include, among others, experts from the private sector and appropriate Māori representatives.

of the other Party;[9] and

(b) exchanging information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

**Article 17.16**
**Cooperation on Request**

Cooperation activities undertaken under this Chapter are subject to the availability of resources, and on request, and on terms and conditions mutually decided upon between the Parties. The Parties affirm that cooperation under this Section is additional to and without prejudice to other past, ongoing, and future cooperation activities, both bilateral and multilateral, between the Parties, including between their respective intellectual property offices.

**Section C**
**Intellectual Property and Issues Related to Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions**

**Article 17.17**
**Cooperation**

1. 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.

2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, with the inclusive participation of Māori, if such participation is relevant and practicable, to enhance the understanding of:

(a) issues connected with traditional knowledge associated with genetic resources, and genetic resources; and

(b) matters of interest to Māori relating to intellectual property, and issues relating to genetic resources, traditional knowledge, and traditional cultural expressions.

[9] The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

## Article 17.18
## Patent Examination and Traditional Knowledge Associated with Genetic Resources

The Parties shall endeavour to pursue quality patent examination, which may include:

(a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;

(b) 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;

(c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and

(d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

## Article 17.19
## WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

1. The Parties shall, without prejudice to their respective positions, work under the auspices of WIPO to promote a multilateral outcome at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("WIPO IGC").

2. Relevant to promoting a multilateral outcome at the WIPO IGC the Parties shall, to the extent appropriate, cooperate through their respective relevant agencies and institutions and, where relevant and practicable, with the inclusive participation of Māori, by:

   (a) sharing information with each other; and

   (b) in response to any reasonable request, engaging actively in dialogue.

**Article 17.20**
**Section Review**

1. The Parties affirm the importance of the WIPO IGC as a forum for multilateral cooperation.

2. If an international instrument is agreed at the WIPO IGC, the Parties shall, under the auspices of the Working Group:

   (a) conduct consultations under this Article;

   (b) enter into those consultations as soon as reasonably practicable and, in any event, no later than two years after the date of entry into force of that international instrument;

   (c) agree a timetable at an initial meeting held within the time frame specified in subparagraph (b);

   (d) review this Section with a view to considering whether to amend this Agreement in accordance with the international instrument; and

   (e) endeavour to complete a review under this Article in a timely manner.

3. If this Agreement does not enter into force before the date the Parties would otherwise have been required to enter into consultations under subparagraph 2(b), the Parties shall, under the auspices of the Working Group, enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement and, in any event, no later than four months after the date of entry into force of this Agreement.

4. If the criteria requiring consultations under paragraph 2 have not been met within two years of the date of entry into force of this Agreement, the Parties shall, without prejudice to the possibility of a review under paragraph 2, review this Section with a view to considering provisions on genetic resources, traditional knowledge, and traditional cultural expressions. The Parties shall, under the auspices of the Working Group:

   (a) enter into consultations as soon as reasonably practicable and, in any event, no later than four months after the expiry of the time period referred to in this paragraph;

   (b) consider the Parties' interests on genetic resources, traditional knowledge, and traditional cultural expressions; and

   (c) endeavour to complete a review under this Article in a timely manner.

## Section D
## Trade Marks

### Article 17.21
### Types of Signs Registrable as Trade Marks

Neither Party shall require, as a condition of registration, that a sign be visually perceptible. A Party may require a concise and accurate description of a trade mark.

### Article 17.22
### Rights Conferred

Each Party shall provide that the owner of a registered trade mark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services that are identical or similar to those in respect of which the 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. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

### Article 17.23
### Exceptions

Each Party may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trade mark and of third parties.

### Article 17.24
### 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.

## Article 17.25
## Procedural Aspects of Examination, Opposition, and Cancellation

Each Party shall provide a system for the examination and registration of trade marks that includes amongst other things:

(a) communicating to the applicant in writing, preferably by electronic means, the reasons for any refusal to register a trade mark;

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trade mark;

(c) providing an opportunity to oppose an application for the registration of a trade mark and an opportunity to seek cancellation[10] of a trade mark registration through, at a minimum, administrative procedures; and

(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which are preferably provided by electronic means.

## Article 17.26
## Bad Faith Applications

Each Party shall provide, in accordance with its law, that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trade mark was made in bad faith.

## Article 17.27
## Electronic Trade Marks Systems

Each Party shall provide a:

(a) system for the electronic application for, and maintenance of, trade mark registrations; and

(b) publicly available electronic information system, including an online database, of trade mark applications and registered trade marks.

[10] For greater certainty, cancellation for the purposes of this Section may be implemented through an invalidation or revocation proceeding.

## Article 17.28
## 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 17.29
## Efforts toward the Harmonisation of Trade Mark Systems

The Parties recognise the importance of reducing differences in law and practice between the Parties' respective systems for the protection of trade marks. Each Party shall endeavour to cooperate in international fora, including WIPO, where appropriate and as resources permit, to harmonise standards of protection, and procedures, for the registration of trade marks.

## Article 17.30
## Domain Names

1. In connection with each Party's system for the management of its country code top-level domain (ccTLD) domain names, the Parties recognise the benefits of appropriate remedies being available, at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trade mark.

2. The Parties understand that such remedies may, but need not, include revocation, cancellation, transfer, damages, or injunctive relief.

# Section E
# Geographical Indications

## Article 17.31
## Scope of Application of this Section

This Section shall apply to the recognition and protection of geographical indications in the territories of the Parties for wines, spirits, agricultural products, and foodstuffs.

## Article 17.32
## Recognition and Protection of Geographical Indications

The Parties recognise that geographical indications may be protected through a trade mark or sui generis system or other legal means.

**Article 17.33**
**Consultations on Recognition and Protection of Geographical Indications**

1. The Parties shall enter into consultations to review this Section if, after this Agreement has been signed by the Parties:

   (a) New Zealand signs an international agreement with a non-party that includes obligations requiring New Zealand to adopt any substantive change to New Zealand's geographical indications regime; or

   (b) New Zealand adopts any substantive change to New Zealand's geographical indications regime for a reason other than that in subparagraph (a).

2. For the purposes of this Article, a substantive change to New Zealand's geographical indications regime includes:

   (a) the introduction of a sui generis scheme for the registration and protection of geographical indications for agricultural products or foodstuffs; or

   (b) any substantive change to the system or standard of protection[11] provided under New Zealand's sui generis scheme for the registration and protection of geographical indications for wine and spirits in effect on the date this Agreement is signed by both Parties.

3. New Zealand shall, through the contact point referred to in Article 17.12 (Contact Points):

   (a) promptly notify the United Kingdom of the signature of an international agreement as described in subparagraph 1(a) or the date of adoption of a domestic change as described in subparagraph 1(b); and

   (b) provide any relevant information about the substantive change to New Zealand's geographical indications regime as described in subparagraph 1(a) or subparagraph 1(b).

4. If the Parties are required to enter consultations under paragraph 1, the Parties shall:

   (a) conduct those consultations under the auspices of the Working Group;

[11] For the purposes of this Section, "system or standard of protection" shall include, but not be limited to, matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of geographical indications.

(b) enter into those consultations as soon as reasonably practicable after the signature of an international agreement as described in subparagraph 1(a) or the date of adoption of a domestic change as described in subparagraph 1(b) and, in any event, no later than four months after the date of that event;

(c) agree a timetable at an initial meeting held within the time frame specified in subparagraph (b) or paragraph 5;

(d) as part of those consultations, review this Section with a view to amending this Agreement so that no less favourable treatment is applied under this Section in relation to the standard of protection of geographical indications than the standard applied under:[12]

(i) the international agreement referred to in subparagraph 1(a); or

(ii) the domestic change referred to in subparagraph 1(b); and

(e) use reasonable endeavours to complete a review under this Article in a timely manner.

5. If this Agreement has not entered into force by the date the Parties would otherwise have been required to enter into consultations under subparagraph 4(b), the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement and, in any event, no later than four months after the date of entry into force of this Agreement.

6. If the Parties agree to amend this Section pursuant to a review under this Article conducted as part of consultations under:

(a) subparagraph 1(a), no further review shall be required under this Article or Article 17.34 (Alternative Review of this Section), unless the Parties agree otherwise; or

(b) subparagraph 1(b), no further review shall be required under Article 17.34 (Alternative Review of this Section), unless the Parties agree otherwise.

[12] Nothing in this Article requires New Zealand to agree to amendments to this Section prior to implementing the applicable substantive domestic change to New Zealand's geographical indications regime.

**Article 17.34**
**Alternative Review of this Section**

1. Subject to paragraph 6 of Article 17.33 (Consultations on Recognition and Protection of Geographical Indications), two years after the date of entry into force of this Agreement, the Parties shall enter into consultations to review this Section with a view to considering further provisions governing the recognition and protection of geographical indications.

2. If the Parties are required to enter consultations under paragraph 1, the Parties shall:

   (a) conduct the review under the auspices of the Working Group;

   (b) enter into consultations as soon as reasonably practicable and, in any event, no later than four months after the expiry of the time period in paragraph 1;

   (c) consider the Parties' interests and sensitivities concerning the recognition and protection of geographical indications; and

   (d) use reasonable endeavours to complete a review under this Article in a timely manner.

3. If the Parties do not agree to amend this Section following a review, the Parties shall conduct further reviews if agreed.[13]

4. A review of this Section conducted under this Article shall be undertaken without prejudice to the possibility of a consultation or review under Article 17.33 (Consultations on Recognition and Protection of Geographical Indications).

5. If, pursuant to a review of this Section under this Article, the Parties agree to amend this Section, no further review shall be required under this Article, unless the Parties agree otherwise.

**Article 17.35**
**Lists of Geographical Indications**

1. If, pursuant to a review of this Section under Article 17.33 (Consultations on Recognition and Protection of Geographical Indications) or Article 17.34 (Ongoing Review of this Section), the Parties agree to amend this Section to permit specific geographical indications to be identified and protected under this Agreement, without limiting what may otherwise be agreed, and where

[13] The Parties acknowledge that, where a general review of the Agreement under Article 17.3 (General Review) starts within 12 months of the conclusion of a review of this Section under this Article, the Parties shall not normally consider issues arising relating to this Section as part of that general review.

a Party intends to seek protection for a geographical indication in the territory of the other Party:

(a) that Party (Party A) shall notify the contact point nominated by the other Party (Party B), referred to in Article 17.12 (Contact Points), of a list of geographical indications protected in Party A's territory for which it intends to seek protection in the territory of Party B under this Agreement; and

(b) Party B shall examine and publish for opposition the notified geographical indications under its domestic requirements as soon as reasonably practicable following receipt of Party A's list.

2. As part of any amendments made to this Section, the Parties shall ensure that an Annex is added to this Agreement that lists the geographical indications of each Party that are protected in the other Party under this Agreement, and that geographical indications that have completed and passed an examination and opposition procedure in the other Party, as referred to in subparagraph 1(b), can be added to that Annex without undue delay.

## Section F
## Registered Designs

### Article 17.36
### Protection of Registered Designs

1. 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 their holder in accordance with the provisions of this Article.

2. Each Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. Each Party shall ensure that an owner of a protected industrial design has at least the right to prevent third parties not having the owner's consent from making, selling, or importing articles bearing or embodying a copy, or substantial copy, of the protected design, when such acts are undertaken for commercial purposes.

**Article 17.37**
**Duration of Protection**

Each Party shall ensure that the total term of protection available for registered designs is no less than 15 years.

**Article 17.38**
**Electronic Industrial Design System**

Each Party shall provide a:

(a) system for the electronic application for the registration of industrial designs; and

(b) publicly available electronic information system, which must include an online database of registered industrial designs.

**Article 17.39**
**Relationship to Copyright**

Each Party may provide that the subject matter of a design, including the unregistered appearance of a product, may be protected under copyright law if the conditions for such protection are met. The extent to which, and the conditions under which, such protection is conferred, including the level of originality required, shall be determined by each Party.

**Article 17.40**
**International Registration of Industrial Designs**

Each Party shall make all reasonable efforts to accede to the Hague Agreement if it is not already party to it.

**Section G**
**Copyright and Related Rights**

**Article 17.41**
**Authors**

Each Party shall provide for authors the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public, by sale or other transfer of ownership, of the original and copies of their works;

(c) the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them;[14] and

(d) the commercial rental to the public of originals or copies of their works comprising at least sound recordings, computer programs,[15] and films.

**Article 17.42**
**Performers**

Each Party shall provide for performers the exclusive right to authorise or prohibit:

(a) the fixation of their unfixed performances;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their performances fixed in phonograms;

(c) any form of distribution to the public, by sale or other transfer of ownership, of their performances fixed in phonograms;

(d) the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) the broadcasting and the communication to the public of their unfixed performances, except where the performance is itself already a broadcast performance; and

(f) the commercial rental to the public of their performances fixed in phonograms.

[14] The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter.
[15] A Party may exclude computer programs where the program itself is not the essential object of the rental.

## Article 17.43
## Producers of Phonograms

Each Party shall provide for producers of phonograms the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their phonograms;

(b) any form of distribution to the public, by sale or other transfer of ownership, of their phonograms;

(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental of their phonograms to the public.

## Article 17.44
## Broadcasting Organisations

Each Party shall provide for broadcasting organisations the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts;

(c) the making available to the public of fixations of their broadcasts, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(d) the distribution to the public, by sale or otherwise, of fixations of their broadcasts;

(e) the rebroadcasting of their broadcasts; and

(f) the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

## Article 17.45
## Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes[16]

1. With respect to the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public, each Party shall provide for performers and producers of those phonograms:

   (a) a right to a single equitable remuneration consistent with Article 15(1), Article 15(2), and Article 15(4) of the WPPT; or

   (b) the exclusive right to authorise or prohibit such use.

2. The Parties shall discuss measures to ensure adequate remuneration for performers and producers of phonograms when phonograms published for commercial purposes are used for broadcasting or for any communication to the public.

## Article 17.46
## Artist's Resale Right

1. Each Party shall provide, for the benefit of the author of an original work of art, a resale right that is defined as an inalienable right, which cannot be waived, even in advance, and the right to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. Each Party shall provide that the right referred to in paragraph 1 shall apply to all acts of resale involving any sellers, buyers, or intermediaries acting in the course of business of dealing in works of art, such as salesrooms, art galleries, and, in general, any dealers in works of art.

3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount specified in a Party's law.

4. Each Party may determine the procedure for collection of the royalty, its amount and the criteria for the works, resales and authors eligible to receive the royalty under its domestic law.

5. Each Party shall provide the right referred to in this Article for authors of the other Party on a reciprocal basis.

[16] For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.

6. Each Party shall implement its obligations under this Article no later than two years after the date of entry into force of this Agreement.

**Article 17.47**
**Limitations and Exceptions**

1. Each Party may provide for limitations or exceptions to the rights covered in this Section only in certain special cases that do not conflict with a normal exploitation of covered subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions to any rights permitted by international agreements such as the TRIPS Agreement, the Berne Convention, the Rome Convention, the WCT, or the WPPT.

**Article 17.48**
**Term of Protection**

1. Each Party shall provide that the rights of an author of a work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after the author's death.

2. In the case of a work of joint authorship, each Party shall provide that the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. Notwithstanding paragraphs 1 and 2, where the term of protection of a work is not determined by reference to the life of a natural person, each Party shall provide that the term of protection shall expire 70 years after the creation of the work or, if lawfully made available to the public within 70 years from creation, 70 years after the first such making available.

4. Each Party shall provide that the rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

5. Each Party shall provide that the rights of performers for their performances otherwise than in phonograms shall expire 50 years after the date of the fixation of the performance or, if lawfully made available to the public during this time, 50 years after the first such making available.

6. Each Party shall provide that the rights of performers for their performances in phonograms shall expire 50 years after the date of fixation of the

performance or, if lawfully made available to the public during this time, 70 years after the first such making available.

7. Each Party shall provide that the rights of producers of phonograms shall expire 50 years after the fixation being made or, if lawfully made available to the public during this time, 70 years after the first such making available. Each Party may adopt effective measures to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

8. Each Party shall provide that the terms laid down in this Article shall be calculated from 1 January of the year following the event.

9. Each Party may provide for longer terms of protection than those provided for in this Article.

10. The obligations in this Article shall only commence applying 15 years after the date of entry into force of this Agreement.

**Article 17.49**
**Collective Management Organisations**

1. The Parties shall endeavour to promote cooperation between the collective management organisations established in their respective territories, for the purpose of fostering the availability of works and other protected subject matter in the territories of the Parties, and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.

2. The Parties shall endeavour to promote the transparency of collective management organisations established in their respective territories, particularly in relation to the collection of rights revenues, the deductions they make from the rights revenue collected, their distribution policies, and the repertoire they represent.

3. Where a collective management organisation established in the territory of a Party has entered into a representation agreement with a collective management organisation established in the territory of the other Party, the Parties recognise the importance of non-discriminatory treatment by their respective collective management organisation of any right holder, whose rights this organisation manages under the representation agreement.

4. Where a collective management organisation represents a collective management organisation established in the territory of the other Party by way of a representation agreement, the Parties recognise the importance of:

(a) accurate, regular, and diligent payment of amounts owed to the represented collective management organisation by the representing collective management organisation; and

(b) the provision of information on the amount of rights revenue collected on the represented organisation's behalf and any deductions made to this rights revenue by the representing collective management organisation.

**Article 17.50**
**Technological Protection Measures**

1. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, producers of phonograms, or broadcasting organisations in connection with the exercise of their rights under this Section and that restrict acts, in respect of the covered subject matter, which are not authorised by the authors, the performers, the producers of phonograms, or the broadcasting organisations concerned or permitted by the domestic law of that Party.

2. A Party may adopt or maintain appropriate measures, as necessary, to ensure that the adequate legal protection and effective legal remedies under paragraph 1 do not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 17.47 (Limitations and Exceptions) from enjoying such exceptions or limitations.

**Article 17.51**
**Rights Management Information**

1. Each Party shall provide adequate and effective legal remedies against any person knowingly performing, without authority, any of the following acts knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights as provided by the law of the Party:

   (a) to remove or alter any electronic rights management information; or

   (b) to distribute, import for distribution, broadcast, communicate, or make available to the public covered subject matter knowing that electronic rights management information has been removed or altered without authority.

2. Each Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraph 1. The obligations set out in this Article

are without prejudice to the limitations and exceptions to infringement of copyright and related rights under a Party's law.

3. For the purposes of this Article, "rights management information" means:

   (a) information that identifies covered subject matter, the author, performer, producer of a phonogram, or any other right holder with respect to covered subject matter;

   (b) information about the terms and conditions of use of covered subject matter; or

   (c) any numbers or codes that represent the information described in subparagraph (a) or subparagraph (b), when any of these items of information is attached to covered subject matter, or appears in connection with the communication or making available of covered subject matter to the public.

## Section H
## Patents

### Article 17.52
### Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

   (a) if the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing for these purposes that product; and

   (b) if the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

### Article 17.53
### Patentable Subject Matter

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided

that the invention is new, involves any inventive step, and is capable of industrial application.[17]

2. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal, or plant life or health, or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.

3. A Party may also exclude from patentability:

   (a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and

   (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, each Party shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.

**Article 17.54**
**Exceptions**

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that those exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

**Article 17.55**
**Regulatory Review Exception**

Without prejudice to the scope of, and consistent with, Article 17.54 (Exceptions), each Party shall adopt or maintain a regulatory review exception for pharmaceutical products[18] that permits a third person to do an act that would otherwise infringe a patent in the territory of that Party, if the act is done for purposes related to generating information to meet requirements for marketing approval of a pharmaceutical product in that Party, or another country, or both.

[17] For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Party to be synonymous with the terms "non-obvious" and "useful" respectively.
[18] For greater certainty, this Article does not limit a Party's ability to adopt or maintain regulatory review exceptions for any other patented inventions.

## Article 17.56
## Other Use Without Authorisation of the Right Holder

The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 or Article 31bis of the TRIPS Agreement.

## Article 17.57
## Amendments, Corrections, and Observations

Neither Party shall revoke or invalidate a patent, either totally or in part, without the patent owner being given the opportunity to make observations on the intended revocation or invalidation, and to make amendments and corrections where permitted under a Party's law within a reasonable time limit.

## Article 17.58
## Publication of Patent Applications

1. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.

2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.

3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

## Article 17.59
## Information Relating to Published Patent Applications and Granted Patents

For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:

(a) search and examination results, including details of, or information related to, relevant prior art searches;

(b) as appropriate, non-confidential communications from applicants; and

(c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

## Article 17.60
## Conditions on Patent Applicants

1. 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.

2. A Party may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

## Section I
## Undisclosed Test or Other Data

## Article 17.61
## Protection of Undisclosed Test or Other Data for Agricultural Chemical Products

1. If a Party requires, as a condition for approving the marketing of a new agricultural chemical product, the submission of undisclosed test or other data, that Party shall ensure that, in accordance with its law, either:

   (a) third persons are not permitted, without the consent of the person that previously submitted such information, to market the same or a similar[19] product on the basis of that information, or the marketing approval granted to the person that submitted that information, for a period of at least 10 years from the date of marketing approval of the previously approved agricultural chemical product; or

   (b) applicants for marketing approval are generally required to submit a full set of test data, even in cases where there was a prior application for the same product, for a period of at least 10 years, from the date of approval of a prior application.[20]

[19] For greater certainty, for the purposes of this Section, an agricultural chemical product is "similar" to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.

[20] For greater certainty, nothing in this Article prevents a Party from applying reasonable exceptions in its law in order to protect animal welfare or prevent unnecessary animal testing.

2. For the purposes of this Article, a new agricultural chemical product is a product that contains[21] a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

**Article 17.62**
**Protection of Undisclosed Test or Other Data for Pharmaceutical Products**

1. If a Party requires, as a condition for approving the marketing of a new pharmaceutical product, the submission of undisclosed test or other data, that Party shall not permit third persons, without the consent of the person that previously submitted that information, to place on the market the same or a similar[22] product on the basis of:

   (a) that information; or

   (b) the marketing approval granted to the person that submitted that information, for at least five years from the date of marketing approval of the previously approved pharmaceutical product; such date to be determined in accordance with each Party's law.

2. For the purposes of this Article, a new pharmaceutical product means a pharmaceutical product that does not contain[23] a chemical entity or biologic that has been previously approved in that Party.

**Section J**
**Trade Secrets**

**Article 17.63**
**Trade Secrets**

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention, each Party shall provide that trade secret holders shall have the possibility of preventing their trade secrets from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.

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[21] For the purposes of this Article, a Party may treat "contain" as meaning utilise. For greater certainty, for the purposes of this Article, a Party may treat "utilise" as requiring the new chemical entity to be primarily responsible for the product's intended effect.

[22] For greater certainty, for the purposes of this Section, a pharmaceutical product is "similar" to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant's request for that approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

[23] For the purposes of this Article, a Party may treat "contain" as meaning utilise.

2. Subject to paragraphs 3 and 4, each Party shall provide that at least each of the following shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances, or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(i) having acquired the trade secret in a manner referred to in subparagraph (a);

(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or

(iii) being in breach of a contractual or any other duty to limit the use of the trade secret; and

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use, or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was disclosing the trade secret in a manner referred to in subparagraph (b).

3. Nothing in this subsection shall be understood as requiring a Party to consider any of the following conduct as contrary to honest commercial practices:

(a) independent discovery or creation;

(b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;

(c) acquisition, use, or disclosure of information as required or permitted by the Party's law;

(d) in the exercise of the right of workers or workers' representatives to information and consultation in accordance with the Party's law; or

(e) use by employees of their experience and skills honestly acquired in the normal course of their employment.

4. Each Party may provide for limited exceptions and limitations to the rights of trade secret holders in circumstances where the legitimate interests of third parties, the general public, or the Party outweigh the legitimate interests of trade secret holders, such as in the following cases:

   (a) for exercising the right to freedom of expression and information, including respect for the freedom and pluralism of the media;

   (b) for revealing misconduct, wrongdoing, or illegal activity, provided that the person acquiring, using, and disclosing the trade secret did so for the purpose of protecting the general public interest; and

   (c) disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with the Party's law, provided that such disclosure was necessary for that exercise.

## Section K
## Enforcement

### Sub-Section K.1
### Enforcement – General Obligations

### Article 17.64
### General Obligations

1. Each Party shall provide for the measures, procedures, and remedies set out in this Section in respect of the enforcement of intellectual property rights:

   (a) measures, procedures, and remedies must be:

      (i) fair, equitable, and effective;

      (ii) applied in such a manner as to avoid the creation of barriers to legitimate trade, including electronic commerce, and to provide for safeguards against their abuse; and

      (iii) be implemented in a manner consistent with the Party's laws, including laws concerning freedom of expression, fair process, and the right to privacy;

   (b) measures and procedures must not be unnecessarily complicated or costly, entail unreasonable time-limits, or give rise to unwarranted delays; and

(c) remedies must be dissuasive and proportionate, taking into account the seriousness of the infringement and the interests of third parties.

2. The Parties recognise the importance of ensuring that right holders[24] and alleged infringers have access to justice.

3. For the purposes of enforcing intellectual property rights and defending claims of infringement of intellectual property rights, each Party shall:

(a) have in place an effective judicial system;

(b) permit the use of alternative dispute resolution mechanisms; and

(c) endeavour to promote alternative dispute resolution.

4. This Section does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or

(b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.

## Sub-Section K.2
## Enforcement – Civil Remedies

### Article 17.65
### Entitled Applicants

Each Party shall make available to a right holder civil judicial procedures concerning the enforcement of any intellectual property right covered under this Chapter.

### Article 17.66
### Provisional Measures for Preserving Evidence

1. Each Party shall provide that its judicial authorities may order prompt and effective provisional measures to preserve relevant evidence in relation to an alleged infringement, subject to the protection of confidential information.

[24] For greater certainty, references in this Section to a right holder shall include a trade secret holder; and do not limit the persons a Party may permit to enforce intellectual property rights, in accordance with its law.

2. Each Party shall provide that its judicial authorities may adopt provisional measures, where appropriate, without the other party having been heard, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and the materials and implements used in the production or distribution of these goods and related documents.

**Article 17.67**
**Provisional and Precautionary Measures**

1. Each Party shall provide that its judicial authorities may, on request of the applicant:

   (a) order against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, as appropriate, to a recurring penalty payment where provided for by its law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder;

   (b) order against an intermediary whose services are being used by an alleged infringer of intellectual property rights an interlocutory injunction for the same purpose and under the same conditions as apply under subparagraph (a); and

   (c) order the seizure or delivery up of goods suspected of infringing rights in a trade mark, copyright or related right or, where a Party's law allows, any other intellectual property right.

2. In the case of an alleged infringement committed on a commercial scale, each Party shall provide that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

**Article 17.68**
**Safeguards**

1. Each Party shall provide that its judicial authorities have the authority to require the applicant for measures provided for in Article 17.66 (Provisional

Measures for Preserving Evidence) or Article 17.67 (Provisional and Precautionary Measures) to provide:

(a) reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent; and

(b) security or equivalent assurance set at a level:

(i) that is sufficient to protect the person against whom a measure is sought and to prevent abuse; and

(ii) that shall not unreasonably deter recourse to those procedures.

2. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to:

(a) order a party, at whose request a measure was taken and who has abused the enforcement proceeding, to adequately compensate a person wrongly enjoined or restrained for injury suffered because of that abuse;

(b) order a party to pay the defendant's expenses, which may include appropriate attorneys' fees; and

(c) impose sanctions on a party to the proceedings, counsel, experts, or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

## Article 17.69
## Right to Information

1. Each Party shall provide that, in the context of civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order a person specified in paragraph 2 to provide relevant information in that person's control or possession on the origin and distribution networks of the goods or services that infringe or allegedly infringe an intellectual property right.

2. An order described in paragraph 1 shall be available against:

(a) a person who has infringed, or is alleged to have infringed, an intellectual property right; and

(b) any other person who was:

(i) found in possession of the infringing, or allegedly infringing, goods on a commercial scale;

(ii) found to be using the infringing, or allegedly infringing, services on a commercial scale;

(iii) found to be providing, on a commercial scale, services used in the infringing, or allegedly infringing, activities; or

(iv) indicated by the person referred to in subparagraph (b)(i), subparagraph (b)(ii), or subparagraph (b)(iii) as being involved in the production, manufacture, or distribution of the goods, or the provision of the services.

3. The information referred to in paragraph 1 may include:

(a) the names and addresses of the producers, manufacturers, distributors, suppliers, and other previous holders of the goods or services, as well as the intended wholesalers and retailers; or

(b) information on the quantities produced, manufactured, delivered, received, or ordered, as well as the price obtained for the goods or services in question.

4. This Article shall apply without prejudice to other provisions in a Party's law that:

(a) permit the competent authorities or order the infringer or alleged infringer to provide additional information;

(b) govern the use in civil or criminal proceedings of the information communicated under this Article;

(c) govern responsibility for the misuse of the right of information;

(d) afford an opportunity for refusing to provide information where doing so would amount to an admission of a person's participation, or that of their close relatives, in an infringement of an intellectual property right;

(e) govern the protection of confidentiality of information sources;

(f) govern personal data; or

(g) govern privilege.

## Article 17.70
## Injunctions

1. Each Party shall provide that, if its judicial authority has found an infringement of an intellectual property right, the authority may grant an injunction aimed at prohibiting the continuation of the infringement.

2. The injunction provided for in paragraph 1 shall be available against:

   (a) the infringer; or
   (b) an intermediary whose services are used by an infringer to infringe an intellectual property right.

## Article 17.71
## Corrective Measures

1. Each Party shall provide that, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, its judicial authorities may order the definitive removal from the channels of commerce, or the destruction of goods that were found to be infringing an intellectual property right. Each Party shall provide that its judicial authorities may also order, as appropriate, the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party shall provide that its judicial authorities may order the measures referred to in paragraph 1 to be carried out at the expense of the infringer.

## Article 17.72
## Damages

1. Each Party shall provide that, on application of an injured party, its judicial authorities may order an infringer, who knowingly or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder adequate compensation for the injury the right holder has suffered as a result of the infringement.

2. A Party may provide that its judicial authorities have the authority to order recovery of profits even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

## Article 17.73
## Costs

Each Party shall provide that its judicial authorities may order, in accordance with its law, that reasonable and proportionate legal costs and other expenses incurred by the successful party in legal proceedings concerning the infringement of intellectual property rights shall be borne by the unsuccessful party.

## Sub-Section K.3
## Enforcement – Border Measures

## Article 17.74
## Border Measures

1. Each Party:

   (a) shall provide for applications and procedures to suspend the release of, or to detain, suspected goods under customs control; and

   (b) may provide for applications in respect of other goods that are suspected of infringing intellectual property rights.

2. For the purposes of this Article:

   (a) "competent authorities" may include the appropriate judicial, administrative, or law enforcement authorities under a Party's law; and

   (b) "suspected goods" means goods that are suspected of infringing a trade mark or copyright under the law of the Party providing for applications and procedures under paragraph 1.

3. With respect to the initiation of the procedures provided for in paragraph 1 by a right holder, each Party shall provide that the relevant right holder is required:

   (a) to provide adequate evidence to satisfy the competent authorities that, under its law, there is *prima facie* an infringement of the right holder's intellectual property right; and

   (b) to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognisable by its competent authorities.

4. A Party may provide that, if its competent authorities have detained or suspended the release of suspected goods, those authorities may inform the right holder of the names and addresses of the consignor, exporter, consignee, or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods. This paragraph is without prejudice to a Party's law pertaining to privacy or confidentiality.

5. Each Party shall provide that its competent authorities may initiate border measures *ex officio*, without the need for a formal complaint from a third party or right holder, with respect to suspected goods under customs control that are imported or destined for export. Each Party shall provide for its customs authorities to use risk management to identify suspected goods, which may include random selection.

6. Each Party shall ensure that its competent authorities decide about granting or recording applications to suspend the release of suspected goods, within a reasonable period of time after the initiation of procedures described in paragraph 1.

7. Each Party shall adopt and maintain procedures under which its competent authorities may determine, within a reasonable period after initiation of procedures described in paragraph 1, whether suspected goods infringe an intellectual property right.

8. Each Party shall provide that its competent authorities have the authority to order the destruction or disposal of suspected goods under customs control following a determination that the goods are infringing an intellectual property right. In cases in which the goods are not destroyed, each Party shall provide that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. With regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

9. Each Party may provide that, if requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, including storage, handling, and any costs relating to the destruction or disposal of the goods.

10. Each Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

11. It is understood that there shall be no obligation to apply the procedures described in this Article to imports of goods put on the market in another

country by, or with the consent of, the right holder,[25] or to goods in transit.

## Sub-Section K.4
## Enforcement – Criminal Remedies

### Article 17.75
### Criminal Offences

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trade mark counterfeiting or copyright or related rights piracy on a commercial scale. For the purposes of this Article, the term "on a commercial scale" includes at least:

   (a) acts carried out for commercial advantage or financial gain; and

   (b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.[26]

2. Each Party shall treat wilful importation or exportation of counterfeit trade mark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.[27]

3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation[28] and domestic use, in the course of trade and on a commercial scale, of a label or packaging:

   (a) to which a trade mark has been applied without authorisation that is identical to, or cannot be distinguished from, a trade mark registered in its territory; and

   (b) that is intended to be used in the course of trade on goods that are identical to goods for which that trade mark is registered.

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[25] For greater certainty, the consent of the right holder to their goods being imports of goods put on the market in another country may be express or implicit.

[26] A Party may comply with this subparagraph by addressing such significant acts under its criminal procedures and penalties for non-authorised uses of protected works, performances, and phonograms in its law. A Party may also provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related right holder in relation to the marketplace.

[27] A Party may comply with this paragraph by providing that distribution or sale of counterfeit trade mark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties.

[28] A Party may comply with the obligation relating to importation of labels or packaging through its laws concerning distribution.

4. With respect to the offences specified in this Article,[29] each Party shall provide that criminal liability for aiding and abetting is available under its law.

**Article 17.76**
**Penalties**

1. With respect to the offences specified in Article 17.75 (Criminal Offences), each Party shall provide for penalties that include imprisonment and monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.

2. Each Party shall provide that its judicial authorities may, in determining penalties, account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety.

**Article 17.77**
**Seizure, Forfeiture, and Destruction**

1. With respect to the offences specified in Article 17.75 (Criminal Offences), each Party shall provide the following:

   (a) its judicial or other competent authorities shall have the authority to order the seizure of suspected counterfeit trade mark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and assets derived from, or obtained through, the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure;

   (b) its judicial authorities shall have the authority in accordance with that Party's law to order the forfeiture of any assets derived from, or obtained through, the infringing activity;

   (c) subject to paragraph 2, its judicial authorities shall have the authority, in accordance with that Party's law, to order the forfeiture or destruction of:

      (i) counterfeit trade mark goods or pirated copyright goods;

[29] Each Party shall also provide that the offences specified in this Article are applicable in any free trade zones in a Party.

(ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trade mark goods; and

(iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence; and

(d) its judicial or other competent authorities shall have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil infringement proceedings.

2. With respect to forfeiture or destruction ordered in accordance with subparagraph 1(c), each Party shall provide that:

(a) in cases in which destruction of counterfeit trade mark goods or pirated copyright goods is not ordered, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder; and

(b) in cases in which forfeiture or destruction is ordered, it shall occur without compensation of any kind to the offender.

3. With respect to the offences specified in Article 17.75 (Criminal Offences), a Party may provide that its judicial authorities may order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

## Article 17.78
## *Ex Officio* Enforcement

Each Party shall provide that its competent authorities may act upon their own initiative to initiate legal action with respect to the offences specified in Article 17.75 (Criminal Offences), without the need for a formal complaint by a third party or right holder.

## Article 17.79
## Liability of Legal Persons

Each Party shall provide that legal persons[30] as well as natural persons may incur liability for the offences specified in Article 17.75 (Criminal Offences) in accordance with its law.

## Sub-Section K.5
## Enforcement in the Digital Environment

## Article 17.80
## General Obligations on Enforcement in the Digital Environment

Each Party shall provide that the enforcement measures, procedures and remedies, referred to in Sub-Sections K.2 (Enforcement – Civil Remedies) and K.4 (Enforcement – Criminal Remedies), including expeditious remedies to prevent infringement, as applicable, are available under its law to proceed against an act of infringement of intellectual property rights that takes place in the digital environment or over digital networks, including through electronic commerce platforms and social media.

## Article 17.81
## Limitations on Liability of Online Service Providers

1. The Parties recognise that the services of online service providers ("OSPs") are increasingly used in the course of the infringement of intellectual property rights, and that OSPs are often in the best position to bring such infringing activities to an end.

2. Each Party shall introduce or maintain measures that apply, in appropriate cases, to limit the liability of, or remedies available against, an OSP for copyright and related rights infringement by a user of its services. For greater certainty, a Party may extend these measures to cover other intellectual property rights.

3. Each Party shall ensure that the measures introduced or maintained under paragraph 2 include conditions to qualify for the limitation, in accordance with a Party's law, including, where practicable, requiring the OSP to take action to prevent access to the materials infringing copyright or related rights.

4. This Article shall not affect the ability of a court or administrative authority, in accordance with the legal system of a Party, to require the OSP to terminate or prevent an infringement, including by the grant of a blocking order under Article 17.82 (Blocking Orders).

[30] For the purposes of this Article, the term "legal person" shall mean bodies corporate.

**Article 17.82**
**Blocking Orders**

Each Party shall ensure that injunctions as provided for in Article 17.67 (Provisional and Precautionary Measures) and Article 17.70 (Injunctions):

(a) are available against an OSP, where its online services are used by a third party to infringe an intellectual property right; and

(b) include injunctions requiring that OSPs disable access to infringing content.

**Article 17.83**
**Procedures for Domain Registries**

Each Party shall encourage its domain registry to take appropriate, timely, and effective measures to suspend domains used for infringing intellectual property on their respective country-code top-level domains.[31]

**Article 17.84**
**Disclosure of Information**

Each Party shall provide that, in accordance with its law, its competent authorities[32] may order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, if that right holder has filed a legally sufficient claim of trade mark or copyright or related rights infringement, and if such information is being sought for the purpose of protecting or enforcing those rights.

**Sub-Section K.6**
**Enforcement Practices with Respect to Intellectual Property Rights**

**Article 17.85**
**Transparency of Judicial Decisions and Administrative Rulings**

Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights:

[31] For greater certainty, this Article is without prejudice to the independence of each Party's domain registry.
[32] For the purposes of this Article, "competent authorities" may include the appropriate judicial, administrative, regulatory, or law enforcement authorities under a Party's law.

(a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and

(b) are published or, if publication is not practicable, otherwise made available to the public in a national language of the Party in such a manner as to enable interested persons and the other Party to become acquainted with them.

**Article 17.86**
**Voluntary Stakeholder Initiatives**

Each Party shall endeavour to promote cooperative efforts within the business community to effectively address intellectual property infringement, including in the digital environment, while preserving legitimate competition. This may include encouraging the establishment of public or private advisory groups to address issues of at least trade mark counterfeiting and copyright piracy.

**Article 17.87**
**Public Awareness**

Each Party shall, as appropriate, endeavour to promote public awareness of the importance of respecting intellectual property rights, including in the digital environment, and the detrimental effect of the infringement of intellectual property rights. This may include cooperation with the business community, civil society organisations, and right holder representatives.

**Article 17.88**
**Specialised Enforcement Expertise, Information and Domestic Coordination**

1. Each Party shall encourage the development of specialised expertise within its competent authorities responsible for the enforcement of intellectual property rights, including with respect to infringement taking place in the digital environment.

2. Each Party shall, as appropriate, promote internal coordination between, and facilitation of joint actions by, its competent authorities with respect to the enforcement of intellectual property rights, subject to the Party's available resources.

**Article 17.89**
**Environmental Considerations in Destruction and Disposal of Infringing Goods**

The Parties recognise the importance of having due regard to environmental matters in their enforcement practices relating to the destruction and disposal of goods that have been found to infringe intellectual property rights.

# CHAPTER 18

# COMPETITION

## Article 18.1
## Objectives

The objectives of this Chapter are to promote economic efficiency and consumer welfare through the maintenance and enforcement of law to address anti-competitive activities and promote competition, and through cooperating on matters covered by this Chapter. The pursuit of these objectives will help to secure the benefits of this Agreement, including facilitating bilateral trade and investment between the Parties.

## Article 18.2
## Competition Law and Authorities

1. Each Party shall maintain competition law in their respective territories which:

   (a) proscribes anti-competitive agreements between enterprises, including cartel agreements;

   (b) proscribes anti-competitive practices by enterprises that have substantial market power; and

   (c) effectively addresses mergers with substantial anti-competitive effects.

2. Subject to paragraph 3, each Party shall ensure its competition law applies to all commercial activities in its territory regardless of an enterprise's nationality or ownership. This does not preclude a Party from applying its competition law to commercial activities outside its borders that have the object, or which have or may have the effect of, restricting competition within its jurisdiction.

3. Each Party may provide for certain exemptions from the application of its competition law provided that those exemptions are transparent, established in its law, and based on public policy grounds.

4. Each Party shall maintain an authority or authorities responsible and competent for the effective application and enforcement of its competition law ("national competition authorities"). Each Party's national competition authorities shall be operationally independent.

5. Each Party shall enforce its competition law in a manner which does not discriminate on the basis of nationality or ownership.

## Article 18.3
## Procedural Fairness

1. Each Party shall ensure that its national competition authorities provide transparency, including in writing, regarding the applicable competition laws, regulations, and procedural rules pursuant to which competition law investigations are conducted and pursuant to which any sanction or remedy[1] is imposed.

2. Each Party's national competition authorities shall endeavour to conduct their investigations subject to definitive deadlines or within a reasonable timeframe, if the investigations are not subject to definitive deadlines.

3. Each Party shall ensure that any public notice confirming or revealing the existence of a pending or ongoing investigation avoids any statement or implication that a person has in fact violated the Party's competition law. This does not preclude the issuing of provisional, reasoned objections by a Party's national competition authorities.

4. Each Party shall afford to a person a reasonable opportunity to be legally represented and shall respect legal privilege, if not waived or lost, for lawful confidential communications between the legal representative and the person (and where relevant, a third party) if the communications concern the soliciting or rendering of legal advice.

5. Each Party shall ensure that, where information which is protected as confidential or privileged by its law is obtained by its national competition authorities during investigations, that information is not disclosed, subject to applicable legal exceptions.

6. Each Party shall ensure that before it imposes a sanction or remedy against a person pursuant to its competition law, it affords that person a reasonable opportunity to:

   (a) be provided with information and evidence regarding the national competition authority's concerns, including identification of the relevant specific competition law engaged;

   (b) engage with the relevant national competition authority at key points on significant legal, factual, and procedural issues;

[1] For the purposes of this Article, "remedy" includes decisions to decline to clear a merger or clear a merger subject to undertakings or conditions.

(c) be heard and to present evidence before the relevant body (or as relevant, the applicable staff of that body) responsible for the imposition of the sanction or remedy including, if applicable, offering the analysis of a properly qualified expert, which may be in writing; and

(d) where applicable, cross-examine any witness testifying before any court or independent tribunal,

except that a Party may provide for these opportunities within a reasonable time after it imposes an interim sanction or remedy.

7. Each Party may authorise its national competition authorities to resolve any civil or administrative matters that may give rise to a person being subject to a sanction or remedy by consent of that person and the national competition authorities. Each Party may provide for such voluntary resolutions to be subject to review by a court or independent tribunal for approval or a public comment period before becoming final.

8. Each Party shall ensure that all final decisions in civil or administrative matters made pursuant to its competition law are in writing and that those decisions set out the findings of fact and conclusions of law on which they are based. Each Party shall make public those final decisions, with the exception of any confidential material contained therein.

9. Each Party shall provide a person that is subject to the imposition of a sanction or remedy made pursuant to its competition law with the opportunity to seek review of the sanction or remedy by a court or independent tribunal (subject to the applicable rules of that court or tribunal), save that the Parties shall not be required to provide that opportunity where the person voluntarily agreed to the imposition of the sanction or remedy.

10. Each Party's national competition authorities shall maintain measures to preserve evidence which they have identified as being relevant, including exculpatory evidence, that they collected as part of an investigation until the investigation is complete and any review by a court or independent tribunal of any sanction or remedy imposed is exhausted.

## Article 18.4
## Private Rights of Action

1. For the purposes of this Article, "private right of action" means the right of a person to seek redress, including injunctive, monetary, or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of competition law.

2. Recognising that a private right of action is an important supplement to the public enforcement of competition law, each Party shall maintain laws or other measures that provide a private right of action, both independently and following a finding of violation by a national competition authority.

3. Each Party shall ensure that a right provided pursuant to paragraph 2 is available to persons of the other Party on terms that are no less favourable than those available to its own persons.

4. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

**Article 18.5**
**Cooperation**

1. The Parties recognise the importance of cooperation between their respective national competition authorities to promote effective application and enforcement of competition law. To this end, the Parties may cooperate, through their national competition authorities, on issues relating to the application and enforcement of competition law. That cooperation may include:

   (a) notification by a Party to the other Party of its activities relating to application and enforcement of competition law that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;

   (b) exchange of information between the Parties to foster understanding or to facilitate effective application and enforcement of competition law; and

   (c) coordination of investigations that raise the same or related concerns relating to the application or enforcement of competition law.

2. The Parties agree that it is in their common interest to work together on technical cooperation activities to strengthen competition policy development and the application and enforcement of competition law. Technical cooperation activities may include:

   (a) the exchange of information on the development and implementation of competition policy and law, including in relation to competition issues in digital markets;

   (b) the sharing of competition-related studies, reviews, and research, including in relation to competition issues in digital markets; and

(c) the exchange of officials of policy agencies or national competition authorities to deepen cooperation and knowledge sharing.

3. Any cooperation under paragraphs 1 and 2 shall be compatible with each Party's law and important interests and within the Parties' available resources.

4. To implement the objectives of this Article, the Parties may enter into a separate agreement on cooperation and coordination which may provide for, among other things, enhanced information sharing and mutual legal assistance in non-criminal law enforcement.

**Article 18.6**
**Transparency**

1. The Parties recognise the value of making competition enforcement and advocacy policies as transparent as possible.

2. Each Party shall make public or require the following to be made public, including on an official website:

(a) its competition laws and regulations;

(b) exemptions and immunities to its competition law; and

(c) guidelines and any rules issued in relation to the administration and enforcement of its competition law,

but shall not be required to make public its internal operating procedures.

**Article 18.7**
**Consultation**

1. In order to foster understanding between the Parties or to address specific matters that arise under this Chapter, a Party shall enter into consultations upon request by the other Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party and shall reply promptly to the request.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavour to provide relevant non-confidential, non-privileged information to the other Party.

## Article 18.8
## Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

# CHAPTER 19

# STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

## Article 19.1
## Definitions

For the purposes of this Chapter:

**"Arrangement"** means the *Arrangement on Officially Supported Export Credits*, developed within the framework of the OECD, or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;

**"commercial activities"** means activities which an enterprise undertakes with an orientation toward profit-making[1] and which result in the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise;[2]

**"commercial considerations"** means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry;

**"designate"** means to establish, designate, or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

**"designated monopoly"** means a privately owned monopoly that is designated after the date of entry into force of this Agreement and any government monopoly that a Party designates or has designated;

**"government monopoly"** means a monopoly that is owned, or controlled through ownership interests, by a Party or by another government monopoly;

**"independent pension fund"** means an enterprise that is owned, or controlled through ownership interests, by a Party that:

(a) is engaged exclusively in the following activities:

(i) administering or providing a plan for pension, retirement, social security, disability, death or employee benefits, or any

[1] For greater certainty, activities undertaken by an enterprise which operates on a not-for-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making.
[2] For greater certainty, measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of an enterprise.

combination thereof, solely for the benefit of natural persons who are contributors to such a plan and their beneficiaries; or

(ii) investing the assets of these plans;

(b) has a fiduciary duty to the natural persons referred to in subparagraph (a)(i); and

(c) is free from investment direction from the government of the Party;[3]

**"market"** means the geographical and commercial market for a good or service;

**"monopoly"** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant;

**"non-commercial assistance"**[4] means assistance to a state-owned enterprise by virtue of that state-owned enterprise's government ownership or control, where:

(a) **"assistance"** means:

(i) direct transfers of funds or potential direct transfers of funds or liabilities, such as:

(A) grants or debt forgiveness;

(B) loans, loan guarantees, or other types of financing on terms more favourable than those commercially available to that enterprise; or

(C) equity capital inconsistent with the usual investment practice, including for the provision of risk capital, of

[3] Investment direction from the government of a Party:

(a) does not include general guidance with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and

(b) is not demonstrated, alone, by the presence of government officials on the enterprise's board of directors or investment panel.

[4] For greater certainty, non-commercial assistance does not include:

(a) intra-group transactions within a corporate group including state-owned enterprises, for example, between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal business practices require reporting the financial position of the group excluding these intra-group transactions;

(b) other transactions between state-owned enterprises that are consistent with the usual practices of privately owned enterprises in arm's length transactions; or

(c) a Party's transfer of funds, collected from contributors to a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof, to an independent pension fund for investment on behalf of the contributors and their beneficiaries.

private investors; or

(ii) goods or services other than general infrastructure on terms more favourable than those commercially available to that enterprise;

(b) **"by virtue of that state-owned enterprise's government ownership or control"**[5] means that the Party or any of the Party's state enterprises or state-owned enterprises:

(i) explicitly limits access to the assistance to the Party's state-owned enterprises;

(ii) provides assistance which is predominately used by the Party's state-owned enterprises;

(iii) provides a disproportionately large amount of the assistance to the Party's state-owned enterprises; or

(iv) otherwise favours the Party's state-owned enterprises through the use of its discretion in the provision of assistance;

**"public service mandate"** means a government mandate pursuant to which a state-owned enterprise makes available a service, directly or indirectly, to the general public in its territory;[6]

**"sovereign wealth fund"** means an enterprise owned, or controlled through ownership interests, by a Party that:

(a) serves solely as a special purpose investment fund or arrangement[7] for asset management, investment, and related activities, using financial assets of a Party; and

(b) is a Member of the International Forum of Sovereign Wealth Funds or endorses the *Generally Accepted Principles and Practices* ("Santiago Principles") issued by the International Working Group of Sovereign Wealth Funds, October 2008, or such other principles and practices as may be agreed to by the Parties,

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[5] In determining whether the assistance is provided "by virtue of that state-owned enterprise's government ownership or control", account shall be taken of the extent of diversification of economic activities within the territory of the Party, as well as of the length of time during which the non-commercial assistance programme has been in operation.

[6] For greater certainty, a service to the general public includes:

(a) the distribution of goods; and

(b) the supply of general infrastructure services.

[7] For greater certainty, the Parties understand that the word "arrangement" as an alternative to "fund" allows for a flexible interpretation of the legal arrangement through which the assets can be invested.

and includes any special purpose vehicles established solely for those activities described in subparagraph (a) wholly owned by the enterprise, or wholly owned by the Party but managed by the enterprise; and

**"state-owned enterprise"** means an enterprise that is principally engaged in commercial activities in which a Party:

(a) directly owns more than 50 per cent of the share capital;

(b) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights; or

(c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

## Article 19.2
## Scope[8]

1. This Chapter shall apply to the activities of state-owned enterprises and designated monopolies of a Party that affect trade or investment between Parties. This Chapter shall also apply to the activities of state-owned enterprises of a Party that cause adverse effects in the market of a non-party as provided in Article 19.7 (Adverse Effects).

2. Nothing in this Chapter shall prevent a central bank or monetary authority of a Party from performing regulatory or supervisory activities or conducting monetary and related credit policy and exchange rate policy.

3. Nothing in this Chapter shall prevent a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organisation or association, from exercising regulatory or supervisory authority over financial services suppliers.

4. Nothing in this Chapter shall prevent a Party, or one of its state enterprises or state-owned enterprises, from undertaking activities for the purpose of the resolution of a failing or failed established financial service supplier or any other failing or failed enterprise principally engaged in the supply of financial services.

5. This Chapter shall not apply with respect to a sovereign wealth fund of a Party, except:

[8] For the purposes of this Chapter, the terms "financial service supplier", "established financial service supplier", and "financial services" have the same meaning as in Article 11.1 (Definitions – Financial Services).

(a) paragraphs 1 and 3 of Article 19.6 (Non-Commercial Assistance) shall apply with respect to a Party's indirect provision of non-commercial assistance through a sovereign wealth fund; and

(b) paragraph 2 of Article 19.6 (Non-Commercial Assistance) shall apply with respect to a sovereign wealth fund's provision of non-commercial assistance.

6. This Chapter shall not apply with respect to:

(a) an independent pension fund of a Party; or

(b) an enterprise owned or controlled by an independent pension fund of a Party, except:

(i) paragraphs 1 and 3 of Article 19.6 (Non-Commercial Assistance) shall apply with respect to a Party's direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by an independent pension fund; and

(ii) paragraphs 1 and 3 of Article 19.6 (Non-Commercial Assistance) shall apply with respect to a Party's indirect provision of non-commercial assistance through an enterprise owned or controlled by an independent pension fund.

7. This Chapter shall not apply to:

(a) government procurement; or

(b) audio-visual services.

8. Nothing in this Chapter shall prevent a state-owned enterprise of a Party from providing goods or services exclusively to that Party for the purposes of carrying out that Party's governmental functions.

9. Nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing or maintaining a state enterprise or a state-owned enterprise; or

(b) designating a monopoly.

10. Article 19.4 (Non-Discriminatory Treatment and Commercial Considerations), Article 19.6 (Non-Commercial Assistance), and Article 19.9

(Transparency) shall not apply to any service supplied in the exercise of governmental authority.[9]

11. Subparagraphs 1(b), 1(c), 2(b), and 2(c) of Article 19.4 (Non-Discriminatory Treatment and Commercial Considerations) shall not apply to the extent that a Party's state-owned enterprise or designated monopoly makes purchases and sales of goods or services pursuant to:

    (a) any existing non-conforming measure that the Party maintains, continues, renews, or amends in accordance with Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services), Article 11.19 (Non-Conforming Measures – Financial Services), and Article 14.10 (Non-Conforming Measures – Investment) as set out in its Schedule to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures) or in Section A of its Schedule to Annex III (Financial Services Non-Conforming Measures); or

    (b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services), Article 11.19 (Non-Conforming Measures – Financial Services), and Article 14.10 (Non-Conforming Measures – Investment) as set out in its Schedule to Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures) or in Section B of its Schedule to Annex III (Financial Services Non-Conforming Measures).

12. Article 19.4 (Non-Discriminatory Treatment and Commercial Considerations), Article 19.6 (Non-Commercial Assistance), and Article 19.9 (Transparency) shall not apply with respect to a Party's state-owned enterprises or designated monopolies as set out in Annex 19D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies).

## Article 19.3
## Delegated Authority

Each Party shall ensure that when its state-owned enterprises, state enterprises, and designated monopolies exercise any regulatory, administrative, or other governmental authority that the Party has directed or delegated to such entities to carry out, those entities act in a manner that is not inconsistent with that Party's obligations under this Agreement.[10]

[9] For the purposes of this paragraph, "a service supplied in the exercise of governmental authority" has the same meaning as in the GATS, including the meaning in the Annex on Financial Services where applicable.

[10] Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licences, approve commercial transactions, or impose quotas, fees, or other charges.

## Article 19.4
## Non-Discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that each of its state-owned enterprises, when engaging in commercial activities:

   (a) acts in accordance with commercial considerations in its purchase or sale of a good or service, except to fulfil any terms of its public service mandate that are not inconsistent with subparagraph (c)(ii);

   (b) in its purchase of a good or service:

      (i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party or of any non-party; and

      (ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party or of any non-party; and

   (c) in its sale of a good or service:

      (i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party or of any non-party; and

      (ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party or of any non-party.[11]

2. Each Party shall ensure that each of its designated monopolies:

   (a) acts in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, except to fulfil any terms of its designation that are not inconsistent with subparagraphs (b), (c), or (d);

   (b) in its purchase of the monopoly good or service:

[11] Paragraph 1 shall not apply with respect to the purchase or sale of shares, stock, or other forms of equity by a state-owned enterprise as a means of its equity participation in another enterprise.

(i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party or of any non-party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party or of any non-party;

(c) in its sale of the monopoly good or service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party or of any non-party; and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party or of any non-party; and

(d) does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other entities the Party or the designated monopoly owns, anti-competitive practices in a non-monopolised market in its territory that negatively affect trade or investment between the Parties.[12]

3. Subparagraphs 1(b), 1(c), 2(b), and 2(c) shall not preclude a state-owned enterprise or designated monopoly from:

(a) purchasing or selling goods or services on different terms or conditions including those relating to price; or

(b) refusing to purchase or sell goods or services,

provided that such differential treatment or refusal is undertaken in accordance with commercial considerations.

[12] For greater certainty, a Party may comply with the requirements of this subparagraph through the enforcement or implementation of its generally applicable national competition laws and regulations, its economic regulatory laws and regulations, or other appropriate measures.

## Article 19.5
## Legal and Regulatory Framework

1. Each Party shall respect and make best use of relevant international standards including, amongst other things, the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* done at Paris on 8 July 2015.

2. Each Party shall provide its courts with jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign government based on a commercial activity carried on in its territory.[13] This shall not be construed to require a Party to provide jurisdiction over those claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

3. Each Party shall ensure that any administrative body that the Party establishes or maintains that regulates a state-owned enterprise exercises its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises.[14]

## Article 19.6
## Non-Commercial Assistance

1. Neither Party shall cause[15] adverse effects to the interests of the other Party through the use of non-commercial assistance that it provides, either directly or indirectly,[16] to any of its state-owned enterprises with respect to:

   (a) the production and sale of a good by the state-owned enterprise;

   (b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of the other Party; or

   (c) the supply of a service in the territory of the other Party through an enterprise that is a covered investment in the territory of that other Party.

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[13] This paragraph shall not be construed to preclude a Party from providing its courts with jurisdiction over claims against enterprises owned or controlled through ownership interests by a foreign government other than those claims referred to in this paragraph.

[14] For greater certainty, the impartiality with which an administrative body exercises its regulatory discretion is to be assessed by reference to a pattern or practice of that administrative body.

[15] For the purposes of paragraphs 1 and 2, it must be demonstrated that the adverse effects claimed have been caused by the non-commercial assistance. Thus, the non-commercial assistance must be examined within the context of other possible causal factors to ensure an appropriate attribution of causality.

[16] For greater certainty, indirect provision includes the situation in which a Party entrusts or directs an enterprise that is not a state-owned enterprise to provide non-commercial assistance.

2. Each Party shall ensure that its state enterprises and state-owned enterprises do not cause adverse effects to the interests of the other Party through the use of non-commercial assistance that the state enterprise or state-owned enterprise provides to any of its state-owned enterprises with respect to:

   (a) the production and sale of a good by the state-owned enterprise;

   (b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of the other Party; or

   (c) the supply of a service in the territory of the other Party through an enterprise that is a covered investment in the territory of that other Party.

3. Neither Party shall cause injury to a domestic industry[17] of the other Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises that is a covered investment in the territory of that other Party in circumstances where:

   (a) the non-commercial assistance is provided with respect to the production and sale of a good by the state-owned enterprise in the territory of the other Party; and

   (b) a like good is produced and sold in the territory of the other Party by the domestic industry of that other Party.[18]

4. A service supplied by a state-owned enterprise of a Party within that Party's territory shall be deemed not to cause adverse effects.[19]

**Article 19.7**
**Adverse Effects**

1. For the purposes of paragraphs 1 and 2 of Article 19.6 (Non-Commercial Assistance), adverse effects arise if the effect of the non-commercial assistance is:

   (a) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces

[17] The term "domestic industry" refers to the domestic producers as a whole of the like good, or to those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the state-owned enterprise that is a covered investment that has received the non-commercial assistance referred to in this paragraph.

[18] In situations of material retardation of the establishment of a domestic industry, it is understood that a domestic industry may not yet produce and sell the like good. However, in these situations, there must be evidence that a prospective domestic producer has made a substantial commitment to commence production and sales of the like good.

[19] For greater certainty, this paragraph shall not be construed to apply to a service that itself is a form of non-commercial assistance.

or impedes from the Party's market imports of a like good of the other Party or sales of a like good produced by an enterprise that is a covered investment in the territory of the Party;

(b) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from the market of a non-party imports of a like good of the other Party;

(c) a significant price undercutting by a good produced by a Party's state-owned enterprise that has received the non-commercial assistance and sold by the enterprise in:

(i) the market of a Party as compared with the price in the same market of imports of a like good of the other Party or a like good that is produced by an enterprise that is a covered investment in the territory of the Party, or significant price suppression, price depression, or lost sales in the same market; or

(ii) the market of a non-party as compared with the price in the same market of imports of a like good of the other Party, or significant price suppression, price depression, or lost sales in the same market;

(d) that services supplied by a Party's state-owned enterprise that has received the non-commercial assistance displace or impede from the market of the other Party a like service supplied by a service supplier of that other Party; or

(e) a significant price undercutting by a service supplied in the market of the other Party by a Party's state-owned enterprise that has received the non-commercial assistance as compared with the price in the same market of a like service supplied by a service supplier of that other Party, or significant price suppression, price depression, or lost sales in the same market.[20]

2. For the purposes of subparagraphs 1(a), 1(b), and 1(d), the displacing or impeding of a good or service includes any case in which it has been demonstrated that there has been a significant change in relative shares of the market to the disadvantage of the like good or like service. "Significant change in relative shares of the market" shall include any of the following situations:

[20] The purchase or sale of shares, stock, or other forms of equity by a state-owned enterprise that has received non-commercial assistance as a means of its equity participation in another enterprise shall not be construed to give rise to adverse effects as provided for in paragraph 1.

(a) there is a significant increase in the market share of the good or service of the Party's state-owned enterprise;

(b) the market share of the good or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or

(c) the market share of the good or service of the Party's state-owned enterprise declines, but at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

The change must manifest itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the good or service concerned, which, in normal circumstances, shall be at least one year.

3. For the purposes of subparagraphs 1(c) and 1(e), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of the prices of the good or service of the state-owned enterprise with the prices of the like good or service.

4. Comparisons of the prices in paragraph 3 shall be made at the same level of trade and at comparable times, and due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

5. Non-commercial assistance that a Party provides:

(a) before the signing of this Agreement; or

(b) within three years after the signing of this Agreement, pursuant to a law that is enacted, or contractual obligation undertaken, prior to the signing of this Agreement,

shall be deemed not to cause adverse effects.

6. For the purposes of subparagraphs 1(b) and 2(b) of Article 19.6 (Non-Commercial Assistance), the initial capitalisation of a state-owned enterprise, or the acquisition by a Party of a controlling interest in an enterprise, that is principally engaged in the supply of services within the territory of the Party, shall be deemed not to cause adverse effects.

## Article 19.8
## Injury

1. For the purposes of paragraph 3 of Article 19.6 (Non-Commercial Assistance), the term "injury" shall be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of such an industry. A determination of material injury shall be based on positive evidence and involve an objective examination of the relevant factors, including the volume of production by the covered investment that has received non-commercial assistance, the effect of such production on prices for like goods produced and sold by the domestic industry, and the effect of such production on the domestic industry producing like goods.[21]

2. With regard to the volume of production by the covered investment that has received non-commercial assistance, consideration shall be given as to whether there has been a significant increase in the volume of production, either in absolute terms or relative to production or consumption in the territory of the Party in which injury is alleged to have occurred. With regard to the effect of the production by the covered investment on prices, consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the covered investment as compared with the price of like goods produced and sold by the domestic industry, or whether the effect of production by the covered investment is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry of the goods produced and sold by the covered investment that received the non-commercial assistance shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the goods produced and sold by the covered investment are, through the effects[22] of the non-commercial assistance, causing injury within the meaning of this Article. The demonstration of a causal relationship between the goods produced and sold by the covered

[21] The periods for examination of the non-commercial assistance and injury shall be reasonably established and shall end as closely as practical to the date of initiation of the proceeding before the panel pursuant to Chapter 31 (Dispute Settlement).
[22] As set out in paragraphs 2 and 3.

investment and the injury to the domestic industry shall be based on an examination of all relevant evidence. Any known factors other than the goods produced by the covered investment which at the same time are injuring the domestic industry shall be examined, and the injuries caused by these other factors must not be attributed to the goods produced and sold by the covered investment that has received non-commercial assistance. Factors which may be relevant in this respect include, among other things, the volumes and prices of other like goods in the market in question, contraction in demand or changes in the patterns of consumption, and developments in technology and the export performance and productivity of the domestic industry.

5. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture, or remote possibility and shall be considered with special care. The change in circumstances which would create a situation in which non-commercial assistance to the covered investment would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, there should be consideration of relevant factors[23] and of whether the totality of the factors considered lead to the conclusion that further availability of goods produced by the covered investment is imminent and that, unless protective action is taken, material injury would occur.

## Article 19.9
## Transparency

1. Each Party shall provide to the other Party or otherwise make publicly available on an official website a list of its state-owned enterprises no later than six months after the date of entry into force of this Agreement for that Party, and thereafter shall update the list annually.

2. Each Party shall promptly notify the other Party or otherwise make publicly available on an official website the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation.

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[23] In making a determination regarding the existence of a threat of material injury, a panel pursuant to Chapter 31 (Dispute Settlement) should consider, among other things, such factors as:

(a) the nature of the non-commercial assistance in question and the trade effects likely to arise therefrom;

(b) a significant rate of increase in sales in the domestic market by the covered investment, indicating a likelihood of substantially increased sales;

(c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the covered investment indicating the likelihood of substantially increased production of the good by that covered investment, taking into account the availability of export markets to absorb additional production;

(d) whether prices of goods sold by the covered investment will have a significant depressing or suppressing effect on the price of like goods; and

(e) inventories of like goods.

3. On the written request of the other Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly, provided that the request includes an explanation of how the activities of the entity may be affecting trade or investment between the Parties:

   (a) the percentage of shares that the Party, its state-owned enterprises, or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold, in the entity;

   (b) a description of any special shares or special voting or other rights that the Party, its state-owned enterprises, or designated monopolies hold, to the extent these rights are different than the rights attached to the general common shares of the entity;

   (c) the government titles of any government official serving as an officer or member of the entity's board of directors;

   (d) the entity's annual revenue and total assets over the most recent three-year period for which information is available;

   (e) any exemptions and immunities from which the entity benefits under the Party's law; and

   (f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

4. On the written request of the other Party, a Party shall endeavour to provide in writing no later than two months after the date of that request, information regarding any policy or programme it has adopted or maintains that provides for non-commercial assistance, provided that the request includes an explanation of how the policy or programme affects or could affect trade or investment between the Parties.

5. When a Party provides a response pursuant to paragraph 4, the information it provides shall be sufficiently specific to enable the requesting Party to understand the operation of and evaluate the policy or programme and its effects or potential effects on trade or investment between the Parties. The Party responding to a request shall ensure that the response it provides contains the following information:

   (a) the form of the non-commercial assistance provided under the policy or programme, for example, grant or loan;

   (b) the names of the government agencies, state-owned enterprises, or state enterprises providing the non-commercial assistance and the

names of the state-owned enterprises that have received or are eligible to receive the non-commercial assistance;

(c) the legal basis and policy objective of the policy or programme providing for the non-commercial assistance;

(d) with respect to goods, the amount per unit of the non-commercial assistance or, in cases where this is not possible, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the average amount per unit in the previous year;

(e) with respect to services, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the total amount in the previous year;

(f) with respect to policies or programmes providing for non-commercial assistance in the form of loans or loan guarantees, the amount of the loan or amount of the loan guaranteed, interest rates, and fees charged;

(g) with respect to policies or programmes providing for non-commercial assistance in the form of the provision of goods or services, the prices charged, if any;

(h) with respect to policies or programmes providing for non-commercial assistance in the form of equity capital, the amount invested, the number and a description of the shares received, and any assessments that were conducted with respect to the underlying investment decision;

(i) the duration of the policy or programme or any other time-limits attached to it; and

(j) statistical data permitting an assessment of the effects of the non-commercial assistance on trade or investment between the Parties.

6. If a Party considers that it has not adopted or does not maintain any policies or programmes referred to in paragraph 4, it shall so inform the requesting Party in writing.

7. If any relevant points in paragraph 5 have not been addressed in the written response, an explanation shall be provided in the written response itself.

8. The Parties recognise that the provision of information under paragraphs 5 and 7 does not prejudge the legal status of the assistance that was the subject of the request under paragraph 4 or the effects of that assistance under this Agreement.

9. When a Party provides written information pursuant to a request under this Article and informs the requesting Party that it considers the information to be confidential, the requesting Party shall not disclose the information without the prior consent of the Party providing the information.

## Article 19.10
## Technical Cooperation

The Parties shall, where appropriate and subject to available resources, engage in mutually agreed technical cooperation activities, including:

(a) exchanging information regarding the Parties' experiences in improving the corporate governance and operation of their state-owned enterprises;

(b) sharing best practices on policy approaches to ensure a level playing field between state-owned and privately owned enterprises, including policies related to competitive neutrality; and

(c) organising international seminars, workshops, or any other appropriate forum for sharing technical information and expertise related to the governance and operations of state-owned enterprises.

## Article 19.11
## Contact Points

Each Party shall designate a contact point from its relevant authorities and notify the other Party of the contact details of its contact point within 90 days of the date of entry into force of this Agreement, in order to facilitate communication between the Parties on any matter relating to this Chapter. Each Party shall promptly notify the other Party of any change to its contact point or those contact details.

## Article 19.12
## Exceptions

1. Nothing in Article 19.4 (Non-Discriminatory Treatment and Commercial Considerations) or Article 19.6 (Non-Commercial Assistance) shall be construed to:

(a) prevent the adoption or enforcement by a Party of measures to respond temporarily to a national or global economic emergency; or

(b) apply to a state-owned enterprise with respect to which a Party has adopted or enforced measures on a temporary basis in response to a

national or global economic emergency, for the duration of that emergency.

2. Paragraph 1 of Article 19.4 (Non-Discriminatory Treatment and Commercial Considerations) shall not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate if that supply of financial services:

   (a) supports exports or imports, provided that these services are:

      (i) not intended to displace commercial financing; or

      (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;[24]

   (b) supports private investment outside the territory of the Party, provided that these services are:

      (i) not intended to displace commercial financing; or

      (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

   (c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

3. The supply of financial services by a state-owned enterprise pursuant to a government mandate shall be deemed not to give rise to adverse effects under subparagraphs 1(b), 1(c), 2(b), or 2(c) of Article 19.6 (Non-Commercial Assistance), where the Party in which the financial service is supplied requires a local presence in order to supply those services, if that supply of financial services:[25]

   (a) supports exports and imports, provided that these services are:

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[24] In circumstances where no comparable financial services are offered in the commercial market:

(a) for the purposes of subparagraphs 2(a)(ii), 2(b)(ii), 3(a)(ii), and 3(b)(ii), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and

(b) for the purposes of subparagraphs 2(a)(i), 2(b)(i), 3(a)(i), and 3(b)(i), the supply of the financial services shall be deemed not to be intended to displace commercial financing.

[25] For the purposes of this paragraph, in cases where the country in which the financial service is supplied requires a local presence in order to supply those services, the supply of the financial services identified in this paragraph through an enterprise that is a covered investment shall be deemed to not give rise to adverse effects.

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

4. Article 19.6 (Non-Commercial Assistance) shall not apply with respect to an enterprise located outside the territory of a Party over which a state-owned enterprise of that Party has assumed temporary ownership as a consequence of foreclosure or a similar action in connection with defaulted debt, or payment of an insurance claim by the state-owned enterprise, associated with the supply of the financial services referred to in paragraphs 2 and 3, provided that any support the Party, a state enterprise, or state-owned enterprise of the Party, provides to the enterprise during the period of temporary ownership is provided in order to recoup the state-owned enterprise's investment in accordance with a restructuring or liquidation plan that will result in the ultimate divestiture from the enterprise.

5. Article 19.4 (Non-Discriminatory Treatment and Commercial Considerations), Article 19.6 (Non- Commercial Assistance), Article 19.9 (Transparency), and Article 19.11 (Contact Points) shall not apply with respect to a state-owned enterprise or designated monopoly if, in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the state-owned enterprise or designated monopoly was less than a threshold amount which shall be calculated in accordance with Annex 19A (Threshold Calculation).[26]

6. Subparagraphs 1(b) and 2(b) of Article 19.6 (Non-Commercial Assistance) shall not apply to New Zealand, or any of its existing and future state enterprises or state-owned enterprises, with respect to:

[26] When a Party invokes this exception during consultations under Article 31.5 (Consultations – Dispute Settlement), the Parties should exchange and discuss available evidence concerning the annual revenue of the state-owned enterprise or the designated monopoly derived from the commercial activities during the three previous consecutive fiscal years in an effort to resolve during the consultations period any disagreement regarding the application of this exception.

(a) the supply of construction, operation, maintenance, or repair services of physical infrastructure supporting communications between New Zealand and the United Kingdom; and

(b) the supply of air transport services and maritime transport services to the extent that they provide a connection for New Zealand to the rest of the world, provided that non-commercial assistance for the supply of air transport services:

(i) is provided in order to maintain ongoing operations; and

(ii) does not cause:

(A) a significant increase in the entity's market share of the service; or

(B) a significant price undercutting by the service supplied  same market of a like service supplied by a service supplier of the other Party, or significant price suppression, price depression, or lost sales in the same market.

**Article 19.13**
**Process for Developing Information**

Annex 19B (Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies) applies in any dispute under Chapter 31 (Dispute Settlement) regarding a Party's conformity with Article 19.4 (Non-Discriminatory Treatment and Commercial Considerations) or Article 19.6 (Non-Commercial Assistance).

# CHAPTER 20

# CONSUMER PROTECTION

## Article 20.1
## Objectives

1. The objectives of this Chapter are to:

   (a) promote transparent and effective measures to protect consumers;

   (b) promote effective enforcement of consumer protection measures;

   (c) enhance consumer trust and welfare; and

   (d) facilitate cooperation between the Parties' respective national consumer protection agencies or other relevant bodies on matters related to consumer protection.

2. The Parties recognise that, in addition this Chapter, there are provisions in other Chapters of this Agreement that seek to enhance cooperation among the Parties on consumer issues or that otherwise may be of particular benefit to consumers. In particular, the Parties note the provisions benefitting consumers engaged in online commercial activities set out in Chapter 15 (Digital Trade), including Article 15.11 (Unsolicited Commercial Electronic Messages – Digital Trade) and Article 15.13 (Personal Information Protection – Digital Trade).

## Article 20.2
## Consumer Protection Law

1. Each Party shall maintain measures against fraudulent, deceptive, misleading, or unfair commercial activities. Fraudulent, deceptive, misleading, or unfair commercial activities include:

   (a) making misrepresentations or false claims as to material qualities, price, suitability for purpose, quantity, or origin of goods or services;

   (b) advertising goods or services for supply without intention to supply;

   (c) charging consumers for goods or services for supply without intention to supply; or

   (d) charging or debiting consumers' financial, telephone, or other accounts without authorisation.

2. Each Party shall maintain measures that:

(a) require goods provided to be of reasonable and satisfactory quality at the time of delivery and consistent with the supplier's claims regarding the quality of the goods;

(b) require services provided to be performed with reasonable skill and care, in a reasonable time, and consistent with the supplier's claims regarding the quality of the services; and

(c) provide consumers with appropriate redress when a supplier breaches the measures described in subparagraphs (a) and (b).

**Article 20.3**
**Online Consumer Protection**

Each Party shall provide consumers engaged in online commercial activities with a level of protection not less than that provided under its law to consumers engaged in other forms of commerce.[1]

**Article 20.4**
**Transparency**

1. The Parties recognise the value of transparency in relation to consumer protection law.

2. Each Party shall publish information on the consumer protections it provides to consumers, including for consumers engaged in online commercial activities. That information shall include how:

(a) consumers can pursue remedies; and

(b) enterprises can comply with any legal requirements.

3. Each Party shall encourage enterprises to publish their policies and procedures related to consumer protection.

[1] The form of protection provided by each Party may be different as between online and other forms of commerce, provided that the level of protection provided to consumers engaged in online commercial activities is, in its effect, not less than that provided to consumers engaged in other forms of commerce.

## Article 20.5
## Consumer Redress in Cross-Border Transactions

1. The Parties recognise the importance of robust, effective, and accessible consumer redress mechanisms in protecting consumers engaged in cross-border trade, and promoting the continued growth of cross-border trade in goods and services.

2. The Parties shall cooperate to identify obstacles to consumers in accessing redress mechanisms for claims involving consumers of a Party transacting with suppliers of the other Party, and consider appropriate measures to enhance the ability of consumers to seek, and suppliers to facilitate, effective and timely redress.

## Article 20.6
## Cooperation

1. The Parties shall cooperate on matters of mutual interest related to consumer protection, including with respect to:

   (a) enforcement of consumer protection laws and regulations against fraudulent, deceptive, misleading, or unfair commercial activities; and

   (b) online consumer protection, including building consumer confidence in digital trade.

   Such cooperation shall be in a manner compatible with each Party's respective law and within their available resources.

2. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organisations in this area, including the OECD Committee on Consumer Policy, and the International Consumer Protection and Enforcement Network.

## Article 20.7
## Consultations

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, a Party shall enter into consultations upon request by the other Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party and shall reply promptly to the request.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavour to provide relevant non-confidential, non-privileged information to the other Party.

4. This Article shall not apply to matters arising under Article 20.3 (Online Consumer Protection).

**Article 20.8**
**Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter, except for matters arising under Article 20.3 (Online Consumer Protection).

# CHAPTER 21

# GOOD REGULATORY PRACTICE AND REGULATORY COOPERATION

## Article 21.1
## Definitions

For the purposes of this Chapter:

**"regulatory authority"** means:

(a) for New Zealand, any central government organisation that administers a regulatory measure covered by this Agreement;

(b) for the United Kingdom, a ministerial department of the central level of government; and

**"regulatory measure"** means:

(a) for New Zealand:

(i) a Public Act of the Parliament of New Zealand; or

(ii) a Regulation made by Order in Council,

which is a measure of general application related to any matter covered by this Agreement, excluding:

(iii) any measure that would have no or only minor impacts on businesses, individuals, or not-for-profit entities;

(iv) any measure imposing, abolishing, or varying any tax, duty, levy, or other charge (or any measure in connection with that measure);

(v) any measure in connection with public sector procurement;

(vi) any measure in connection with the giving of grants or other financial assistance by or on behalf of a public sector organisation;

(vii) any measure which is to have effect for a period of less than 12 months; or

(viii) any measure related to managing, mitigating, or alleviating the impacts of declared emergency events;

(b) for the United Kingdom:

(i) an Act of the UK Parliament; or

(ii) a statutory instrument made by a Minister of the Crown under an Act of the UK Parliament,

which makes provision in relation to a matter covered by this Agreement which relates to a business activity, excluding:

(iii) any measure imposing, abolishing, or varying any tax, duty, levy, or other charge (or any measure in connection with that measure);

(iv) any measure in connection with public sector procurement;

(v) any measure in connection with the giving of grants or other financial assistance by or on behalf of a public authority; or

(vi) any measure which is to have effect for a period of less than 12 months.

**Article 21.2**
**General Principles**

1. The purpose of this Chapter is to promote good regulatory practice, and regulatory cooperation between the Parties, with the aim of:

(a) promoting an effective, transparent, and predictable regulatory environment;

(b) promoting compatible regulatory approaches and reducing unnecessarily burdensome, duplicative, or divergent regulatory requirements;

(c) discussing regulatory measures, practice, or approaches of the Parties, including how to enhance their effective and efficient application; and

(d) reinforcing bilateral cooperation between the Parties in international fora.

2. Each Party shall be free to determine its approach to good regulatory practice and regulatory cooperation under this Agreement in a manner consistent with its own legal framework, practice, and relevant principles of governance.

3. Each Party shall be free to identify its regulatory priorities and prepare and adopt regulatory measures to address those priorities to ensure the levels of

protection that the Party considers appropriate to achieve its public policy objectives, which may include health, safety, and environmental goals.

4. This Chapter shall not be construed so as to require a Party to:

(a) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives, or would otherwise risk undermining or compromising those public policy objectives;

(b) achieve any particular regulatory outcome; or

(c) adopt or apply domestic procedures, processes, and mechanisms that are unlikely to be cost effective for that Party.

## Article 21.3
## Internal Coordination Processes and Mechanisms

Each Party shall maintain internal coordination processes and mechanisms that foster good regulatory practice and promote the application of good regulatory practice principles to its regulatory measures. Each Party shall make descriptions of those processes and mechanisms freely and publicly available through a digital medium.

## Article 21.4
## Public Consultation

In addition to paragraph 2 of Article 29.2 (Publication – Transparency), when developing a proposed[1] major[2] regulatory measure,[3] each Party is encouraged to:

(a) make its consultation documentation freely and publicly available through a digital medium, including information on how to provide input; and

(b) make publicly available a summary of how relevant input received has informed the development of the proposed regulatory measure.

[1] For New Zealand, for the purposes of this Chapter, obligations with respect to proposed regulatory measures apply to Government-initiated proposals only.
[2] Each Party may determine what constitutes a "major" regulatory measure for the purposes of its obligations under this Chapter.
[3] For greater certainty, for the purposes of this Chapter, a proposed major regulatory measure could take the form of a set of proposed policy options or policy changes that would need to be given effect, in whole or in part, by creating, amending, or repealing a regulatory measure.

## Article 21.5
## Impact Assessment

1. Each Party shall endeavour to carry out, in accordance with its own rules and procedures, proportionate impact assessments of proposed major regulatory measures.

2. Each Party shall establish and maintain processes and mechanisms for carrying out proportionate impact assessments. Those processes and mechanisms shall consider:

   (a) the need for a regulatory measure, including the nature and the significance of the issue that a regulatory measure intends to address;

   (b) any feasible and appropriate regulatory or non-regulatory options, including the option of not regulating, if available, that would achieve the Party's public policy objectives; and

   (c) reasonably obtainable existing information including relevant scientific, technical, economic, or other information, within the boundaries of the authorities, mandates, and resources of the regulatory authority responsible for undertaking the impact assessment.

3. When conducting regulatory impact assessments, a Party may take into consideration the potential impact of the proposed regulatory measure on SMEs.[4]

4. Each Party shall, in accordance with its own rules and procedures, publish the findings of its impact assessments in a timely manner. The Party may explain the grounds for concluding that the selected option achieves its public policy objectives effectively.

## Article 21.6
## Access to Regulatory Measures

In addition to paragraphs 1 and 4 of Article 29.2 (Publication –Transparency), each Party shall ensure, consistent with its own rules and procedures, that its regulatory measures that are in effect are freely available and searchable.

[4] For the United Kingdom, for the purposes of this Chapter, "SMEs" means small and micro businesses.

## Article 21.7
## Periodic Review of Measures

1. Each Party shall endeavour to maintain processes or mechanisms to promote periodic reviews of major regulatory measures at intervals it deems appropriate.

2. Each Party shall endeavour to ensure that periodic reviews consider, where appropriate:

   (a) whether there are opportunities to achieve its public policy objectives more effectively and efficiently;[5] and

   (b) whether those regulatory measures are likely to remain fit for purpose.

## Article 21.8
## Cooperation General Provisions

1. The Parties shall cooperate to facilitate the implementation of this Chapter and to maximise the benefits arising from it, including those envisioned in paragraph 1 of Article 21.2 (General Principles).

2. Each Party may propose a good regulatory practice or a regulatory cooperation activity to the other Party through the designated contact points in accordance with Article 21.10 (Contact Points on Good Regulatory Practice) and Article 21.13 (Contact Points on Regulatory Cooperation**)** respectively or through direct contact between the relevant regulatory authorities.

## Article 21.9
## Cooperation on Good Regulatory Practice

1. Good regulatory practice cooperation activities may include:

   (a) information exchanges, dialogues, or meetings between policy officials responsible for oversight of good regulatory practice;

   (b) engaging with interested persons, including business and consumers;

   (c) seeking to collaborate in relevant international fora; and

   (d) other activities that the Parties may agree.

[5] For greater certainty, this may include whether unnecessary regulatory burdens, including on SMEs, can be reduced.

2. The Parties may undertake cooperation activities under this Article on a voluntary basis.

## Article 21.10
## Contact Points on Good Regulatory Practice

1. Each Party shall designate and notify a contact point on good regulatory practice to facilitate communication and cooperation between the Parties on any good regulatory practice covered by this Chapter.

2. Each Party shall promptly notify the other Party of any change to its good regulatory practice contact point.

## Article 21.11
## General Principles on Regulatory Cooperation

1. The Parties affirm the importance of regulatory cooperation and its role in:

   (a) facilitating economic activity, trade, and investment, including the efficient operation of value chains;

   (b) helping to reduce or remove potential regulatory barriers;

   (c) improving the effectiveness of domestic regulation; and

   (d) facilitating innovation, including the adoption of new technologies and dealing with the risks and opportunities arising out of those new technologies,

   while furthering public policy objectives, and ensuring certainty and predictability for businesses.

2. The Parties affirm the importance of undertaking regulatory cooperation in the most efficient way, having regard to the full range of regulatory cooperation activities. Activities include considering unilateral recognition or adoption and less formal arrangements such as information sharing and joint capacity building, along with equivalence, harmonisation, and mutual recognition.

3. The Parties recognise the value of regulatory cooperation, both bilaterally and in concert with other trading partners. The Parties may, whenever practicable and mutually beneficial, approach regulatory cooperation in a way that is open to participation by other international trading partners. Each Party may also, whenever practicable and mutually beneficial, approach regulatory cooperation with other international trading partners in a way that is open to participation by the other Party. The Parties may share information and,

where appropriate, take a coordinated approach to influencing regulatory settings in non-parties and the development of international models in international fora.

4. Where a Party is engaging in regulatory cooperation activities with a non-party, it is encouraged to give positive consideration to a request from the other Party to participate in this activity.

**Article 21.12**
**Regulatory Cooperation Activities**

1. Regulatory cooperation activities may include:

   (a) information exchanges, dialogues, or meetings between policy officials;

   (b) formal cooperation, including mutual recognition, equivalence, or harmonisation;

   (c) engaging with interested persons, including business and consumers; and

   (d) other activities that the Parties may agree.

2. Where the Parties agree to engage in a regulatory cooperation activity, and where they agree it is appropriate, each Party shall endeavour to:

   (a) inform the other Party of the development of new regulatory measures or the revision of existing regulatory measures that are relevant for the regulatory cooperation activity;

   (b) on request, provide information and discuss measures that are relevant for the regulatory cooperation activity; and

   (c) consider, when developing new regulatory measures or revising existing regulatory measures, any regulatory approaches by the other Party on the same or a related manner.

3. The Parties acknowledge the importance of regulators having a mandate and powers that enable them to cooperate with each other. Each Party shall endeavour to encourage informal cooperation between its regulators and their counterparts in the other Party to address barriers to trade and investment.

4. The regulatory cooperation contact points in Article 21.13 (Contact Points on Regulatory Cooperation) shall endeavour to:

(a) proactively identify potential opportunities for undertaking regulatory cooperation between regulatory authorities of the Parties;

(b) consider regulatory cooperation activities that respond to business concerns or issues raised by regulatory authorities, where those concerns or issues are not solely addressed in other Chapters of this Agreement; and

(c) prioritise those cases that would reduce regulatory barriers for SMEs or best support the efficient operation of value chains that operate between the Parties, including those that extend into other regions.

5. The contact points shall endeavour to ensure that regulatory cooperation activities under this Chapter add value in addition to any related initiatives underway in other relevant fora or other Chapters of this Agreement.

**Article 21.13**
**Contact Points on Regulatory Cooperation**

1. Each Party shall designate and notify a contact point on regulatory cooperation, to facilitate communication and cooperation between the Parties on any regulatory cooperation matter covered by this Chapter.

2. Each Party shall promptly notify the other Party of any change to its regulatory cooperation contact point.

**Article 21.14**
**Relation to Other Chapters**

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

**Article 21.15**
**Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

# CHAPTER 22

# ENVIRONMENT

## Article 22.1
## Definitions

For the purposes of this Chapter:

**"2030 Agenda"** means 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;

**"CITES"** means the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* done at Washington, D.C. on 3 March 1973;

**"environmental law"** means a law or regulation of a Party, or provision thereof, including any that implements the Party's obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, including the mitigation of climate change, or the prevention of a danger to human life or health, through:

(a) the prevention, abatement, or control of: the release, discharge, or emission of pollutants or environmental contaminants including greenhouse gases;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, or wastes, and the dissemination of information related thereto;

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas;[1, 2] or

(d) the protection, preservation, and enhancement of natural water resources,

but does not include laws or regulations, or a provision thereof, directly related to worker safety or health nor any laws or regulations, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources;

[1] For the purposes of this Chapter, the term "specially protected natural areas" means those areas as defined by the Party in its legislation.

[2] The Parties recognise that such protection or conservation may include the protection or conservation of biological diversity.

**"Montreal Protocol"** means the *Montreal Protocol on Substances that Deplete the Ozone Layer* done at Montreal on 16 September 1987;

**"Paris Agreement"** means the *Paris Agreement* done at Paris on 12 December 2015 by the Conference of the Parties to the UNFCCC at its 21st session; and

**"UNFCCC"** means the *United Nations Framework Convention on Climate Change* done at New York on 9 May 1992.

## Article 22.2
## Māori Environmental Concepts

In order to acknowledge the special relationship of Māori with the environment in New Zealand, the Parties include the following concepts for the purposes of this Chapter:

**"kaitiakitanga"** refers to the Māori concept of active stewardship, guardianship, and protection of our natural surroundings (land, sea, water, and air), and of the mauri of the environment; and

**"mauri"** refers to the essential quality and vitality of a being or entity. It is also used for a physical object or ecosystem in which this essence is located. All objects have mauri. A waterway, for example, or a mountain have a mauri including through their connection to the land.

## Article 22.3
## Context and Objectives

1. The Parties recall the *Agenda 21* and the *Rio Declaration on Environment and Development* adopted by the UN Conference on Environment and Development in 1992, the *Johannesburg Plan of Implementation of the World Summit on Sustainable Development* of 2002, the Outcome Document of the UN Conference on Sustainable Development of 2012 titled *The Future We Want* endorsed by the UN General Assembly Resolution 66/288 adopted on 27 July 2012, and the 2030 Agenda.

2. The objectives of this Chapter are to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; encourage the Parties to address the urgent threat of climate change; and enhance the capacities of the Parties to address trade or investment-related environmental issues, including through cooperation.

3. The Parties recognise that:

(a) sustainable development encompasses economic development, social development, and environmental protection, all three being interdependent and mutually reinforcing, and affirm their commitment to promote the development of international trade and investment in a way that contributes to the objective of sustainable development;

(b) enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance, and complement the objectives of this Agreement;

(c) the urgent need to address climate change, as outlined in the *Intergovernmental Panel on Climate Change Special Report on Global Warming of 1.5°C*, is a contribution to the economic, social, and environmental objectives of sustainable development; and

(d) the environment plays an important role in the economic, social, and cultural well-being of Māori in the case of New Zealand, and acknowledge the importance of engaging with Māori in the long-term conservation of the environment.

**Article 22.4**
**General Commitments**

1. The Parties recognise the sovereign right of each Party to establish its own environmental priorities and levels of environmental protection relating to the environment, including mitigation of and adaptation to climate change, and those which a Party establishes pursuant to the multilateral environmental agreements to which it is a party, and to establish, maintain, or modify its relevant law and policies accordingly.

2. Each Party shall endeavour to ensure that its environmental and other relevant law and policies provide for, and encourage, high level of environmental protection, and to continue to improve its respective level of environmental protection.

3. Without prejudice to paragraph 1, the Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in that law in order to encourage trade or investment between the Parties.

4. Neither Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction to encourage trade or investment between the Parties.

5. The Parties recognise that each Party retains the right to exercise discretion and to make decisions regarding:

   (a) investigations, prosecutions, and regulatory and compliance matters; and

   (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priority.

   Accordingly, the Parties understand that with respect to the enforcement of environmental laws, a Party is in compliance with paragraph 4 if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a *bona fide* decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

6. The Parties further recognise that it is inappropriate to establish or use their environmental laws in a manner which would constitute a disguised restriction on trade or investment between the Parties.

## Article 22.5
## Multilateral Environmental Agreements

1. 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 to enhance the mutual supportiveness between trade and environmental laws and policies.

2. Each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.

3. In accordance with Article 22.19 (Cooperation) the Parties shall cooperate as appropriate with respect to environmental issues of mutual interest related to multilateral environmental agreements, in particular trade-related issues, including:

   (a) exchanging information on the implementation of multilateral environmental agreements to which a Party is a party;

   (b) exchanging information on ongoing negotiations of new multilateral environmental agreements; and

   (c) exchanging each Party's respective views on becoming a party to additional multilateral environmental agreements.

## Article 22.6
## Climate Change

1. The Parties recognise the importance of achieving the objectives of the UNFCCC and the Paris Agreement in order to address the urgent threat of climate change, and the role of trade and investment in pursuing this objective, and commit to working together to take actions to address climate change. The Parties recognise that nothing in this Agreement prevents a Party from taking measures to fulfil its commitments under the UNFCCC and the Paris Agreement provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other Party or a disguised restriction on trade. The Parties reaffirm their right to make use of the general exceptions and general provisions in Chapter 32 (General Exceptions and General Provisions), recalling their understanding that the measures referred to in Article XX(b) of GATT 1994 and Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health and measures necessary to mitigate climate change, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Accordingly, the Parties affirm their commitment to implement the Paris Agreement and to take action to reduce greenhouse gas emissions with the aim of strengthening the global response to climate change by holding the increase in global average temperature to well below 2ºC above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5ºC above pre-industrial levels, and their ambition of achieving their respective domestic net zero targets by 2050, and shall:

   (a) promote the mutual supportiveness of trade, investment, and climate policies and measures;

   (b) facilitate and promote trade and investment in goods and services of particular relevance for climate change mitigation and adaptation; and

   (c) promote carbon pricing as an effective policy tool for reducing greenhouse gas emissions efficiently, and promote environmental integrity in the development of international carbon markets.

3. In accordance with Article 22.19 (Cooperation) the Parties shall cooperate bilaterally and in international fora, including at the WTO and the UN, to address matters of mutual interest with respect to trade-related aspects of climate change policies and measures, and on ways to mitigate and adapt to climate change, that may include:

   (a) implementation of the Paris Agreement;

(b) international trade-related aspects of the fight against climate change, such as carbon leakage and systems of carbon pricing, and linking emissions trading schemes;

(c) supporting the development, adoption, and implementation of ambitious and effective greenhouse gas emissions reduction measures by the International Maritime Organization to be implemented by ships engaged in international trade;

(d) supporting the development, adoption, and implementation of ambitious and effective greenhouse gas emissions reduction measures by the International Civil Aviation Organization; and

(e) policies, laws, and measures that can contribute to a reduction in greenhouse gas emissions and increased climate resilience and ways to mitigate and adapt to climate change.

**Article 22.7**
**Environmental Goods and Services**

1. The Parties recognise the importance of facilitating trade and investment in environmental goods and services, including clean technology, as a means of improving environmental and economic performance, contributing to clean growth and jobs, and encouraging sustainable development while addressing global environmental challenges including climate change.

2. Accordingly, each Party shall:

(a) eliminate customs duties on originating goods of the other Party upon entry into force of this Agreement on HS six-digit subheadings containing the environmental goods listed in Annex 22A (Environmental Goods List),[3] in accordance with Chapter 2 (National Treatment and Market Access for Goods) and Annex 2A (Schedule of Tariff Commitments for Goods). The Environment and Climate Change Sub-Committee established under Article 30.9 (Sub-Committees – Institutional Provisions) shall keep this list under review, in conjunction with other relevant committees established under this Agreement, as appropriate, and may make recommendations to the Joint Committee for modifications to Annex 22A (Environmental Goods List). In keeping this list under review, the Environment and Climate Change Sub-Committee may consider factors such as the extent to which a good contributes to the clean growth and sustainable development objectives of the Parties,

[3] For the purposes of this Agreement, the environmental goods listed in Annex 22A (Environmental Goods List) are goods which can positively contribute to the clean growth and sustainable development objectives of the Parties, including climate change mitigation and adaptation, and wider environmental goals.

advances in available technologies, any potential dual-use of proposed environmental goods, relevant multilateral or plurilateral developments, and other environmental and climate factors; and

(b) facilitate and promote trade and investment in environmental goods and services, and endeavour to address any potential tariff and non-tariff barriers to such trade and investment that may be identified by a Party, including by working through the Environment and Climate Change Sub-Committee and in conjunction with other relevant committees established under this Agreement, as appropriate.

3. In accordance with Article 22.19 (Cooperation) the Parties shall cooperate on ways to enhance trade in environmental goods and services. Areas of cooperation may include:

(a) renewable and low carbon energy;

(b) energy efficient products and services;

(c) clean transport including uptake of electric vehicles;

(d) energy storage technologies;

(e) sustainable financial services;

(f) clean heat;

(g) carbon capture, utilisation, and storage;

(h) climate change adaptation and resilience technologies and services;

(i) conservation of biological diversity, pollution abatement, and water conservation; and

(j) identification of, and further liberalisation of trade in, environmental services.

4. The Parties acknowledge that achieving the objectives of the UNFCCC and the Paris Agreement requires collective action. Accordingly, the Parties shall also cooperate in international fora, including at the WTO and under the UN Environment Programme, on ways to further facilitate and liberalise global trade in environmental goods and services.

**Article 22.8**
**Fossil Fuel Subsidy Reform and Transition to Clean Energy**

1. The Parties recognise the need to reduce the use of fossil fuels and to support the global transition to clean energy in order to further the implementation of the Sustainable Development Goals of the 2030 Agenda and the objectives of the UNFCCC and Paris Agreement. The Parties further recognise that fossil fuel subsidies can distort trade and investment, disadvantage renewable and clean energy, encourage wasteful consumption, and contribute significantly to global greenhouse gas emissions.

2. Accordingly, each Party shall:

   (a) take steps to eliminate harmful fossil fuel subsidies where they exist, with limited exceptions in support of legitimate public policy objectives;

   (b) as fellow members of the Powering Past Coal Alliance, end unabated coal-fired electricity generation in their territories as part of a clean energy transition aligned with the goals of the Paris Agreement;

   (c) encourage the transition to clean energy for electricity, heat, and transport;

   (d) ensure that information on fossil fuel support measures, including any subsidies, is published;

   (e) end new direct financial support, such as officially supported export credits, for fossil fuel energy in non-parties, except in limited circumstances where it:

      (i) meets a legitimate policy goal, such as improved safety or environmental standards; or

      (ii) supports a clean energy transition aligned with the goals of the Paris Agreement;

   (f) end international aid funding for fossil fuel energy except in limited circumstances where it is not feasible to provide access to energy solely from renewable sources and the aid:

      (i) is essential as part of a humanitarian response;

      (ii) is to meet a legitimate policy goal such as improved safety or environmental standards; or

      (iii) supports a clean energy transition aligned with the goals of the Paris Agreement; and

(g) encourage non-parties to develop and undertake best practice approaches to fossil fuel subsidy reform.

3. The Parties shall cooperate bilaterally and in relevant international fora such as the WTO, UNFCCC, and G20 in relation to fossil fuel subsidy reform and the transition to clean energy.

## Article 22.9
## Marine Capture Fisheries[4]

1. The Parties recognise the importance of kaitiakitanga in conserving and sustainably managing fisheries and the mauri of marine ecosystems, and the role of trade in pursuing these objectives.

2. The Parties acknowledge their roles in the marine fisheries sector and recognise the importance of the conservation and sustainable use of fisheries resources and marine ecosystems, and the role of trade in pursuing these objectives.

3. In this regard, the Parties acknowledge that inadequate fisheries management, fisheries subsidies that contribute to overfishing and overcapacity, and illegal, unreported and unregulated ("IUU") fishing[5] threaten fish stocks, the environment, trade, and livelihoods, and recognise the need for individual and collective action to end such practices.

4. Accordingly, each Party shall operate a fisheries management system designed to:

   (a) prevent overfishing and overcapacity;

   (b) reduce bycatch of non-target species and juveniles;

   (c) promote the recovery of overfished stocks; and

   (d) minimise adverse impacts on associated marine ecosystems.

   Such a management system shall be based on the best scientific evidence available, the precautionary approach, an ecosystem-based approach, and

[4] For greater certainty, this Article does not apply with respect to aquaculture or inland fishing.
[5] The term "illegal, unreported and unregulated fishing" is to be understood to have the same meaning as paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* of the UN Food and Agricultural Organisation ("FAO") done at Rome on 2 March 2001 ("2001 IUU Fishing Plan of Action").

internationally recognised best practices as reflected in relevant international instruments.[6]

5. Each Party shall promote the long-term conservation of sharks, marine turtles, seabirds, marine mammals, and other species recognised as threatened in relevant international agreements to which each Party is a party.

6. The Parties recognise that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity and to promote the recovery of overfished stocks must include the control, reduction, and eventual elimination of all subsidies that contribute to overfishing and overcapacity or IUU fishing. To that end, neither Party shall grant or maintain any of the following subsidies[7] within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement:

   (a) subsidies for fishing[8] that negatively affect[9] fish stocks that are in an overfished[10] condition;

   (b) subsidies for the transfer of fishing vessels[11] from the United Kingdom or New Zealand to other States, including through the creation of joint enterprises;

   (c) subsidies for operations that increase the fishing capacity of a fishing vessel, or for equipment that increases the ability of a fishing vessel

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[6] These instruments include, as they may apply, the *United Nations Convention on the Law of the Sea* done at Montego Bay on 10 December 1982 ("UNCLOS"), the *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* done at New York on 4 December 1995 ("UN Fish Stocks Agreement"), the *FAO Code of Conduct for Responsible Fisheries* adopted on 31 October 1995, the 1993 FAO *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* done at Rome on 24 November 1993 ("Compliance Agreement"), and the 2001 IUU Fishing Plan of Action.

[7] For the purposes of this Article, a subsidy shall be attributable to the Party conferring it, regardless of the flag of the vessel involved or the application of rules of origin to the fish involved.

[8] For the purposes of this paragraph, "fishing" means searching for, attracting, locating, catching, taking or harvesting fish, or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.

[9] The negative effect of those subsidies shall be determined based on the best scientific evidence available.

[10] For the purposes of this Article, a fish stock is overfished if the stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available. Fish stocks that are recognised as overfished by the national jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation shall also be considered overfished for the purposes of this paragraph.

[11] The term "fishing vessel" refers to any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for fishing or fishing-related activities.

to find fish, except where they meet legitimate public policy goals such as improved safety or sustainability;

(d) subsidies provided to fishing for fish stocks managed by a Regional Fisheries Management Organisation or Arrangement where the subsidising Party or vessel flag State is not a member or cooperating non-member of the Organisation or Arrangement;

(e) subsidies provided to fishing or fishing-related activities[12] conducted without the permission of the flag State where required and, if operating in another State's waters, without permission of that State;

(f) subsidies provided to any fishing vessel or operator while listed by the flag State, the subsidising Party, the FAO or a relevant Regional Fisheries Management Organisation, or Arrangement for IUU fishing in accordance with the rules and procedures of that State, Party, organisation, or arrangement and in conformity with international law; or

(g) subsidies provided to any vessel or operator that has been found to have committed a serious violation of conservation or management measures within the preceding 12 months.

7. Subsidy programmes that are established by a Party before the date of entry into force of this Agreement for that Party and which are inconsistent with subparagraphs 6(a) to subparagraph 6(c) shall be brought into conformity with that paragraph as soon as possible and no later than three years after the date of entry into force of this Agreement for that Party.

8. In relation to subsidies that are not prohibited by subparagraphs 6(a) to subparagraph 6(g) and taking into consideration a Party's social and developmental priorities, each Party shall make best efforts to refrain from introducing new, or extending or enhancing existing, subsidies within the meaning of Article 1.1 of the SCM Agreement, to the extent they are specific within the meaning of Article 2 of the SCM Agreement, that contribute to overfishing, overcapacity, or IUU fishing.

9. With a view to achieving the objective of eliminating subsidies that contribute to overfishing and overcapacity, the Parties shall review the disciplines in paragraph 5 within the Environment and Climate Change Sub-Committee, including their implementation, two years after the date of entry into force of this Agreement and thereafter at intervals not exceeding five years unless the Parties agree otherwise.

[12] The term "fishing-related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, trans-shipping, or transporting of fish that have not been previously landed at port, as well as the provisioning of personnel, fuel, gear, and other supplies at sea.

10. Each Party shall notify the other Party within one year of the date of entry into force of this Agreement and every two years thereafter of any subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement that the Party grants or maintains to persons engaged in fishing or fishing-related activities.

11. These notifications shall cover subsidies provided within the previous two year period and shall include the information required under Article 25.3 of the SCM Agreement and the following information:[13]

(a) programme name;

(b) legal basis and granting authority for the programme;

and, to the extent possible,

(c) catch data by species in the fishery for which the subsidy is provided;

(d) status of the fish stocks in the fishery for which the subsidy is provided (for example, overfished, fully fished, and underfished);

(e) fleet capacity in the fishery for which the subsidy is provided;

(f) conservation and management measures in place for the relevant fish stock; and

(g) total imports and exports per species.

12. Each Party shall also provide, to the extent possible, information in relation to other fisheries subsidies that the Party grants or maintains that are not covered by paragraph 6, for example, fuel subsidies.

13. A Party may request additional information from the notifying Party regarding the notifications under paragraphs 10 and 11. The notifying Party shall respond to that request in writing as quickly as possible and in a comprehensive manner. In the event that any requested information is not provided by the notifying Party, that Party shall explain the absence of such information in its response.

14. A Party shall meet the notification requirements of the preceding paragraphs through:

(a) notification under Article 25 of the SCM Agreement; or

[13] Sharing information and data on existing fisheries subsidy programmes does not prejudge their legal status, effects, or nature under the GATT 1994 or the SCM Agreement and is intended to complement WTO data reporting requirements.

(b) publication, by the Party or on its behalf, on a publicly accessible website. The website address on which this publication is made shall be communicated to the other Party in each instance.

15. The Parties recognise the importance of concerted international action to address IUU fishing as reflected in regional and international instruments.[14] In support of efforts to combat IUU fishing practices and to help prevent, deter, and eliminate trade in products from species harvested from those practices, each Party shall:

(a) implement monitoring, control, surveillance, compliance, and enforcement systems, including by adopting, reviewing, or revising, as appropriate, effective measures to:

(i) deter vessels that are flying its flag[15] and its nationals from engaging in IUU fishing activities and take effective action in response to IUU fishing where it occurs; and

(ii) deter exporters, importers, trans-shippers, buyers, consumers, equipment suppliers, bankers, insurers, and other services suppliers and the public from doing business with vessels or operators engaging in IUU fishing, such as through measures prohibiting such business;

(b) cooperate with regard to electronic traceability and certification, and exchange of information and assistance with a particular focus on the New Zealand/United Kingdom IUU exchange of letters;[16]

(c) implement port State measures including through actions consistent with the Port State Measures Agreement;[17] and

(d) act consistently with conservation and management measures, including catch documentation schemes, of Regional Fisheries Management Organisations where that Party is not a member, so as not to undermine them.

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[14] Regional and international instruments include, as they may apply, the 2001 IUU Fishing Plan of Action, the *2005 Rome Declaration on Illegal, Unreported and Unregulated Fishing* done at Rome on 12 March 2005 ("Declaration on IUU"), the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* done at Rome on 22 November 2009 ("PSMA"), as well as instruments establishing and adopted by Regional Fisheries Management Organisations, which are defined as intergovernmental fisheries organisations or arrangements, as appropriate, that have the competence to establish conservation and management measures.

[15] For the purposes of this paragraph, for the United Kingdom, "vessels that are flying its flag" is to be understood to mean vessels that are both flying the United Kingdom flag and registered on the United Kingdom register of British ships.

[16] The exchange of letters recording understandings reached between New Zealand and the United Kingdom on *Catch Certification for Fisheries Products Imported into the United Kingdom* of 9 December 2020 and 18 December 2020, respectively.

[17] PSMA.

16. The Parties shall cooperate bilaterally, regionally, and in international fora to further the objective of sustainable development on international fisheries and related trade issues, including bycatch reduction, combatting IUU fishing and the trade in IUU products, and strengthening international rules on and transparency of fisheries subsidies.

17. The Parties agree to coordinate and collaborate on compliance activities and research with regard to fisheries under the jurisdiction of Regional Fisheries Management Organisations and Arrangements in which both Parties operate.

18. The Parties shall afford appropriate recognition of the sustainability and fisheries compliance performance of each other's vessels and operators in the consideration of their applications for foreign fishing licences.

**Article 22.10**
**Sustainable Agriculture**

1. The Parties recognise the increasing impact that global challenges to kaitiakitanga of mauri such as land degradation, drought, the emergence of new pests and diseases, climate change, and loss of biodiversity, have on the development of productive sectors such as agriculture.

2. Recalling Sustainable Development Goal 2 of the 2030 Agenda, the Parties also recognise the importance of strengthening and implementing policies that contribute to the development of more productive, sustainable, inclusive, and resilient agricultural systems.

3. Accordingly, each Party shall:

   (a) take measures to, and promote efforts to, reduce greenhouse gas emissions from agricultural production; and

   (b) promote sustainable agriculture and associated trade.

4. Consistent with Article 22.19 (Cooperation), the Parties shall cooperate on the development and the implementation of integrated policies that promote sustainable agriculture consistent with Sustainable Development Goal 2 and the Parties' specific circumstances. Areas of cooperation may include:

   (a) encouraging sustainable methods of improving agricultural productivity;

   (b) integrating the protection and sustainable use of ecosystems and natural resources in agricultural systems;

   (c) adaptation and resilience to climate change in relation to agriculture; and

(d) research and collaboration on methods to measure and reduce emissions from agriculture.

**Article 22.11**
**Sustainable Forest Management**

1. The Parties recognise the importance of:

   (a) kaitiakitanga in the conservation of the mauri, and the conservation and sustainable management, of forests and the sustainable production of forest products in providing environmental and ecosystem services; economic and social benefits and opportunities for present and future generations including by addressing climate change and reducing biodiversity loss; and the role of trade in pursuing this objective; and

   (b) combatting illegal logging, illegal deforestation and forest degradation, and associated trade, including with respect to non-parties.

2. The Parties acknowledge their role as consumers, producers, and traders of forest products, and the importance of sustainable supply chains for forest products and commodities that can generally be associated with deforestation in addressing greenhouse gas emissions and biodiversity loss and achieving sustainable forest management.

3. Accordingly, each Party shall:

   (a) promote the conservation and sustainable management of forests;

   (b) contribute to combatting illegal logging, illegal deforestation, and associated trade, including with respect to non-parties;

   (c) promote trade in forest products harvested in accordance with the law of the country of harvest and from sustainably managed forests;

   (d) promote trade in legally and sustainably produced commodities which could otherwise be associated with deforestation; and

   (e) endeavour to reduce deforestation and forest degradation, including from land use and land use change.

4. In accordance with Article 22.19 (Cooperation) the Parties shall cooperate on ways to promote sustainable forest management and land use practices in support of the Sustainable Development Goals of the 2030 Agenda. Such cooperation may include:

(a) initiatives designed to combat illegal logging, illegal deforestation and forest degradation, and associated trade, including assurance schemes;

(b) the encouragement of sustainable supply chains for forest products and commodities that can generally be associated with deforestation;

(c) methodologies for the assessment and monitoring of supply chains for forest products and commodities that can generally be associated with deforestation; and

(d) policies on sustainable supply chains.

**Article 22.12**
**Conservation of Biological Diversity**

1. The Parties recognise the role that terrestrial and marine biological diversity plays in achieving sustainable development, including through the provision of ecosystem services and genetic resources, and the importance of conservation and sustainable use of biological diversity. The Parties recognise that climate change can contribute to biodiversity loss, and that biologically diverse ecosystems including marine ecosystems can adapt better to the impacts of climate change and help to mitigate climate change through the natural sequestration and storage of carbon.

2. The Parties also recognise the importance of respecting, protecting, preserving, and maintaining knowledge, innovations, and practices of Māori in the case of New Zealand, embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.

3. The Parties acknowledge that threats to terrestrial and marine biological diversity include climate change, illegal take of and illegal trade in wild flora and fauna, the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways, habitat degradation and destruction, pollution, and unsustainable use.

4. The Parties further recognise the particular harms caused to conservation from the illegal trade in ivory, and the importance of appropriate regulation of domestic markets worldwide for ivory and goods containing ivory as a means of supporting international conservation efforts.

5. The Parties affirm their commitment to implement CITES[18] and shall endeavour to implement, as appropriate, CITES resolutions that aim to

[18] For the purposes of this Article, CITES includes existing and future amendments, as well as any existing and future reservations, exemptions, and exceptions, that are applicable to a Party.

protect and conserve species whose survival is threatened by international trade.

6. Accordingly, each Party shall:

(a) take measures to combat the illegal trade in wildlife, including with respect to non-parties as appropriate;

(b) take appropriate measures to protect and conserve native wild fauna and flora that it has identified to be at risk including from trade-related activities within its territory, including by taking measures to conserve the ecological integrity of specially protected natural areas;

(c) continue efforts to combat the illegal trade in ivory, including through appropriate domestic restrictions on commercial activities concerning ivory and goods containing ivory;

(d) promote and encourage the conservation and sustainable use of biodiversity including in trade-related activities, in accordance with its law or policy; and

(e) promote the conservation of marine ecosystems and species, including those in the areas beyond national jurisdiction.

7. In accordance with Article 22.19 (Cooperation) the Parties may cooperate on matters of mutual interest such as:

(a) protection of terrestrial and marine ecosystems and ecosystem services, including marine ecosystems and species in areas beyond national jurisdiction from trade-related impacts;

(b) combatting illegal take of and illegal trade in or unsustainable use of wild flora and fauna, including through consultation with interested non-government entities;

(c) opportunities to encourage non-party efforts to close their domestic ivory markets;

(d) sharing information and management experiences on the movement, prevention, detection, control, and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species;

(e) access to genetic resources and the fair and equitable sharing of benefits from their utilisation consistent with the objectives of the *Convention on Biological Diversity* done at Rio de Janeiro on 5 June 1992; and

(f) identifying opportunities, consistent with their respective law and in accordance with applicable international agreements, to enhance law enforcement cooperation and information sharing.

**Article 22.13**
**Resource Efficient and Circular Economy**

1. The Parties recognise that the transition towards a circular economy and greater resource efficiency can reduce adverse environmental and climate impacts of products and production processes, improve resource security, and contribute to their respective efforts to achieve their international commitments, including Sustainable Development Goal 12 of the 2030 Agenda. The Parties further recognise the role that trade can play in achieving this transition through trade in second-hand goods, end-of-life products, secondary materials or waste, as well as trade in related services.

2. The Parties also recognise that policy objectives to facilitate the transition to a resource efficient and circular economy include: extending product lifetimes; increasing the proportion of materials and products that are reused and recycled; and reducing waste throughout supply chains.

3. Accordingly, each Party shall:

   (a) encourage resource efficient product design, including the designing of products to be easier to reuse, dismantle, or recycle at end of life;

   (b) encourage environmental labelling, including eco-labelling, to make it easier for consumers to make more sustainable choices;

   (c) endeavour to avoid the generation of waste, including electronic waste, by encouraging reuse, repair, and remanufacture as well as the recycling of waste where it does occur, and strive to reduce the amount of waste sent to landfill; and

   (d) encourage relevant public entities to consider the policy objectives in paragraph 2 in their purchasing decisions in accordance with Article 16.10 (Environmental, Social, and Labour Considerations – Government Procurement).

4. In accordance with Article 22.19 (Cooperation) the Parties shall cooperate on ways to encourage a transition towards a resource efficient and circular economy, which may include:

   (a) policies and practices to encourage the shift to a resource efficient and circular economy;

(b) promoting and facilitating trade that contributes to a resource efficient and circular economy, including trade in secondary materials and used goods, and goods for repair, reuse, and remanufacture; and

(c) resource efficient product design and related product information and quality standards for secondary materials and goods.

**Article 22.14**
**Ozone Depleting Substances and Hydrofluorocarbons**

1. The Parties recognise that emissions of ozone depleting substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. The Parties further recognise that the continued consumption and emission of ozone depleting substances and hydrofluorocarbons can undermine efforts to address global environmental challenges including climate change.

2. Accordingly, each Party shall: take measures to control the production and consumption of, and trade in, substances controlled by the Montreal Protocol;[19, 20, 21] pursue a more ambitious phase-down of hydrofluorocarbons; and endeavour to reduce the use of pre-charged equipment containing hydrofluorocarbons.

3. Consistent with Article 22.19 (Cooperation) the Parties shall cooperate to address matters of mutual interest related to ozone-depleting substances and hydrofluorocarbons which may include:

(a) environmentally friendly alternatives to ozone-depleting substances and hydrofluorocarbons and barriers to their uptake;

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[19] For greater certainty, this provision pertains to substances controlled by the Montreal Protocol and any existing amendments or adjustments to the Montreal Protocol, including the *Kigali Amendment* done at Kigali on 15 October 2016 ("Kigali Amendment"), and any future amendments or adjustments to which the Parties are party.

[20] A Party shall be deemed in compliance with this provision if it maintains the measure or measures implementing its obligations under the Montreal Protocol (for New Zealand, the *Ozone Layer Protection Act 1996*; for the United Kingdom, *Regulation (EC) 1005/2009* as it applies in Great Britain as retained EU law and as it applies in Northern Ireland directly, and *Regulation (EU) 517/2014* as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly, as amended by *The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment Act) (EU Exit) Regulations 2019* and *The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment Act) (EU Exit) Regulations 2020*), or any subsequent measure or measures, including any amendments to the measure or measures listed, that provide an equivalent or higher level of environmental protection as the measure or measures listed.

[21] If compliance with this provision is not established pursuant to footnote 20, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to control the production and consumption of, and trade in, substances controlled by the Montreal Protocol in a manner that is likely to result in adverse effects on human health and the environment, in a manner affecting trade or investment between the Parties.

(b) refrigerant management practices, policies, and programmes, including lifecycle management of coolants and refrigerants;

(c) methodologies for stratospheric ozone measurements;

(d) combating illegal trade in ozone-depleting substances and hydrofluorocarbons; and

(e) emerging technologies for sustainable heat pumps, cooling, and refrigeration that use environmentally friendly refrigerants.

**Article 22.15**
**Air Quality**

1. The Parties recognise that air pollution is a serious threat to public health and ecosystem integrity, and note that reducing air pollution can help reduce emissions of greenhouse gases and contribute to addressing climate change and other environmental problems. Accordingly, the Parties recognise the value of an integrated approach in addressing air pollution and climate change.

2. Noting that some production, consumption, and transport activities can cause air pollution and that air pollution can travel long distances, the Parties recognise the importance of reducing domestic and transboundary air pollution, and that cooperation can be beneficial in achieving these objectives. To that end, each Party shall endeavour to reduce air pollution.

3. In accordance with Article 22.19 (Cooperation) the Parties shall cooperate to address matters of mutual interest with respect to air quality, which may include:

(a) ambient air quality planning;

(b) modelling and monitoring, including spatial distribution of main sources and their emissions;

(c) measurement and inventory methodologies for air quality and emissions' measurements; and

(d) reduction, control, and prevention technologies and practices.

**Article 22.16**
**Protection of the Marine Environment from Ship Pollution and Marine Litter**

1. The Parties recognise the importance of:

(a) protecting and preserving the marine environment and the impact of pollution from ships on climate change; and

(b) taking action to prevent and reduce marine litter, including plastics and microplastics, in order to preserve marine and coastal ecosystems, prevent the loss of biodiversity, and mitigate marine litter's costs and impacts, including impacts on human health.

2. Accordingly, each Party shall:

(a) take measures to prevent the pollution of the marine environment from ships;[22, 23, 24] and

(b) take measures to prevent and reduce marine litter, recognising the global nature of the challenge of marine litter.

3. Recognising that the Parties are taking action to address marine litter in other fora, in accordance with Article 22.19 (Cooperation) the Parties shall cooperate to address matters of mutual interest with respect to combatting pollution of the marine environment from marine litter and ships, which may include:

(a) addressing land and sea based pollution, including accidental and deliberate pollution from ships, and pollution from routine operations of ships;

(b) promoting waste management infrastructure, including the development of technologies to minimise ship-generated waste;

(c) adequacy of port waste reception facilities;

(d) advancing efforts related to abandoned, lost, or otherwise discarded fishing gear;

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[22] For greater certainty, this provision pertains to pollution regulated by the *International Convention for the Prevention of Pollution from Ships* done at London on 2 November 1973, as modified by the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ship* done at London on 17 February 1978, and the *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships 1973*, as modified by the *Protocol of 1978* relating thereto, done at London on 26 September 1997 ("MARPOL Convention"), and any existing and future amendments to the MARPOL Convention to which the Parties are party.

[23] A Party shall be deemed in compliance with this provision if it maintains the measure or measures implementing its obligations under the MARPOL Convention (for New Zealand, the *Maritime Transport Act 1994*; for the UK, the *Merchant Shipping Act 1995* and regulations made under the Act) or any subsequent measure or measures, including any amendments to the measure or measures listed, that provide an equivalent or higher level of environmental protection as the measure or measures listed.

[24] If compliance with this provision is not established pursuant to footnote 23, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to prevent the pollution of the marine environment from ships, in a manner affecting trade or investment between the Parties.

(e) circular economy measures relevant to addressing marine litter;

(f) increased protection in special areas; and

(g) enforcement measures including notifications to flag states and as appropriate by port states.

**Article 22.17**
**Voluntary Mechanisms to Enhance Environmental Performance**

1. The Parties recognise that flexible, voluntary mechanisms, for example, voluntary auditing and reporting, market-based incentives, voluntary sharing of information and expertise, and public-private partnerships, can contribute to the achievement and maintenance of high levels of environmental protection and complement domestic regulatory measures. The Parties acknowledge that those mechanisms should be designed in a manner that maximises their environmental benefits and avoids the creation of unnecessary barriers to trade.

2. With respect to paragraph 1, each Party shall, in accordance with its laws, regulations, or policies, and to the extent it considers appropriate, encourage:

   (a) the use of flexible and voluntary mechanisms to protect natural resources and the environment in its territory; and

   (b) its relevant authorities, businesses and business organisations, non-governmental organisations, and other interested persons involved in the development of criteria used to evaluate environmental performance, with respect to these voluntary mechanisms, to continue to develop and improve those criteria.

3. Further, if private sector entities or non-governmental organisations develop voluntary mechanisms for the promotion of products based on their environmental qualities, each Party shall endeavour to encourage those entities and organisations to develop voluntary mechanisms that, among other things:

   (a) are truthful, are not misleading, and take into account scientific and technical information;

   (b) if applicable and available, are based on relevant international standards, recommendations, guidelines, and best practices;

   (c) promote competition and innovation; and

   (d) do not treat a product less favourably on the basis of origin.

## Article 22.18
## Responsible Business Conduct and Corporate Social Responsibility

1. The Parties recognise the importance of responsible business conduct and corporate social responsibility practices including responsible supply chain management and the role of trade in pursuing this objective.

2. Accordingly, each Party shall:

   (a) encourage enterprises operating in its territory or jurisdiction to adopt principles of responsible business conduct and corporate social responsibility that are related to the environment, consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Party; and

   (b) provide supportive policy frameworks that encourage businesses to behave in a manner that takes into account those principles of responsible business conduct and corporate social responsibility related to the environment.

3. In accordance with Article 22.19 (Cooperation) the Parties may cooperate on responsible business conduct and corporate social responsibility bilaterally and in international fora as appropriate.

## Article 22.19
## Cooperation

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits, and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development and clean growth as they strengthen their trade and investment relations.

2. Accordingly, the Parties shall cooperate as appropriate on the matters identified in this Chapter, and may cooperate on other matters where there is mutual benefit from that cooperation. Such cooperation may take place bilaterally and in international fora, including the WTO, the OECD, under the UN Environment Programme, and under multilateral environmental agreements.

3. Each Party shall, through the contact points designated in accordance with Article 22.20 (Institutional Arrangements):

   (a) share its priorities for cooperation with the other Party, including the objectives of that cooperation;

(b) propose cooperation activities related to the implementation of this Chapter; and

(c) develop and participate in cooperation activities and programmes in accordance with the priorities identified by the Environment and Climate Change Sub-Committee.

4. Cooperation may be undertaken through various means including: dialogues; workshops; seminars; conferences; collaborative programmes and projects; internships; graduate trainee programmes; technical assistance to promote and facilitate training; the sharing of information, data, and best practices on policies and procedures; joint analysis; and the exchange of experts. Cooperation may include non-governmental bodies or organisations and non-parties to this Agreement, where mutually agreed.

5. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the Parties. The Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

6. Each Party shall promote public participation in the development and implementation of cooperative activities, as appropriate, and make publicly available information related to cooperative activities developed under this Chapter.

**Article 22.20**
**Institutional Arrangements**

1. Each Party shall designate a contact point within 90 days of the date of entry into force of this Agreement. Each Party shall notify the other Party promptly in the event of any change to its contact point.

2. The contact points shall:

(a) facilitate regular communication between the Parties;

(b) act as a channel for communication with the public in their respective territories;

(c) coordinate cooperative activities; and

(d) receive and respond to requests for information in accordance with this Chapter.

3. The Environment and Climate Change Sub-Committee shall be composed of official level representatives from the relevant trade, environment, and

climate national authorities of each Party responsible for the implementation of this Chapter.

4. The Environment and Climate Change Sub-Committee shall meet within one year of the date of entry into force of this Agreement and thereafter as mutually agreed. The Environment and Climate Change Sub-Committee shall be chaired alternately and may take place physically or virtually as mutually agreed.

5. The purpose of the Environment and Climate Change Sub-Committee is to oversee the implementation of this Chapter and its functions include to:

   (a) monitor and review the implementation of this Chapter;

   (b) provide periodic reports to the Joint Committee regarding the implementation of this Chapter;

   (c) establish priorities for cooperation and review cooperative activities undertaken pursuant to this Chapter;

   (d) coordinate with other committees established under this Agreement as appropriate; and

   (e) perform any other functions as the Parties may decide.

6. All Environment and Climate Change Sub-Committee decisions and reports shall be made publicly available, unless the Environment and Climate Change Sub-Committee decides otherwise.

7. The Environment and Climate Change Sub-Committee shall seek public input on matters relevant to the Environment and Climate Change Sub-Committee's work, as appropriate, and at each meeting shall hold a public session which may be virtual.

8. The Environment and Climate Change Sub-Committee shall agree on a joint summary report on its work at the end of each Environment and Climate Change Sub-Committee meeting.

**Article 22.21**
**Public Submissions**

1. Each Party shall provide for the receipt and consideration of written submissions from persons of that Party regarding its implementation of this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures for the receipt and consideration of written submissions.

2. A Party may provide in its procedures that a submission should:

   (a) raise an issue directly relevant to this Chapter;

   (b) clearly identify the person or organisation making the submission; and

   (c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.

3. Each Party shall consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate.

**Article 22.22**
**Independent Advisory Groups**

1. Each Party shall make use of existing, or establish new, independent advisory groups of appropriate persons, seeking a balanced representation of relevant interests, including business organisations, environmental organisations, and academics, and shall engage those groups as appropriate in relation to the operation and implementation of this Chapter.

2. Each Party shall inform its independent advisory group as to the outcome of any dispute relating to this Chapter, together with any follow-up actions or measures.

**Article 22.23**
**Environment Consultations**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through cooperation, dialogue, consultations, and exchange of information to address any matter arising under this Chapter.

2. A Party (the Requesting Party) may request consultations with the other Party (the Responding Party) regarding any matter arising under this Chapter by delivering a written request to the Responding Party's contact point. The Requesting Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

3. Without prejudice to Article 31.18 (Choice of Forum – Dispute Settlement), where the matter arising under this Chapter regards compliance with obligations under a multilateral environmental agreement to which the Parties are party, the Requesting Party shall endeavour, where appropriate, to

address the matter through the consultative or other procedures under that multilateral environmental agreement.

4. The Responding Party shall, unless agreed otherwise with the complaining Party, respond to the request in writing no later than 10 days after the date of receipt of the request.

5. Unless the Parties agree otherwise, they shall enter into consultations promptly, and no later than 30 days after the date of receipt by the Responding Party of the request.

6. The Parties shall make every effort to arrive at a mutually agreed solution to the matter, which may include appropriate cooperative activities. The Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

7. Consultations pursuant to this Article, Article 22.24 (Joint Committee Consultations), and Article 22.25 (Ministerial Consultations), and in particular, positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of a Party in any further proceedings.

**Article 22.24**
**Joint Committee Consultations**

1. If the Parties have failed to resolve the matter under Article 22.23 (Environment Consultations), a Party may request that the Joint Committee convene to consider the matter by delivering a written request to the contact point of the other Party.

2. The Joint Committee shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant scientific and technical information from governmental or non-governmental experts.

**Article 22.25**
**Ministerial Consultations**

If the Parties have failed to resolve the matter under Article 22.24 (Joint Committee Consultations), a Party may refer the matter to the relevant Ministers of the Parties by delivering a written request to the contact point of the other Party. The relevant Ministers shall seek to resolve the matter.

**Article 22.26**
**Dispute Resolution**

1. Articles 22.23 (Environment Consultations) to Article 22.25 (Ministerial Consultations) apply by way of derogation from Article 31.5 (Consultations – Dispute Settlement).

2. If the matter at issue falls within the scope of Article 31.4 (Scope – Dispute Settlement), and if the Parties have failed to resolve the matter under Articles 22.23 (Environment Consultations) to Article 22.25 (Ministerial Consultations) within 120 days of the date of receipt of a request under Article 22.23 (Environment Consultations), or any other period as the Parties may agree, the Requesting Party may request the establishment of a panel under Article 31.6 (Establishment of a Panel – Dispute Settlement) and, as provided in Chapter 31 (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

3. Before a Party initiates dispute settlement under this Agreement for a matter arising under paragraphs 2 or 4 of Article 22.4 (General Commitments), that Party shall consider whether it maintains environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute.

4. If a Party requests consultations with another Party for a matter arising under paragraphs 2 or 4 of Article 22.4 (General Commitments), and the Responding Party considers that the Requesting Party does not maintain environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute, the Parties shall discuss the issue during the consultations.

5. In addition to the requirements under Article 31.8 (Qualifications of Arbitrators – Dispute Settlement), the Parties shall ensure that the Panel appointed in accordance with Article 31.7 (Composition of Panel – Dispute Settlement) has sufficient expertise or experience in environmental law for the purposes of a dispute arising under this Chapter. In a dispute arising under this Chapter, the Panel shall seek information or technical advice from any expert that it deems appropriate, which may include experts in multilateral environmental agreements.

# CHAPTER 23

# TRADE AND LABOUR

## Article 23.1
## Definitions

For the purposes of this Chapter:

**"2014 Protocol to the ILO Forced Labour Convention"** means the *Protocol of 2014 to the Forced Labour Convention 1930 (No. 29)* done at Geneva on 11 June 2014;

**"Call to Action to End Forced Labour, Modern Slavery and Human Trafficking"** means the *Call to Action to End Forced Labour, Modern Slavery and Human Trafficking* done at New York City on 19 September 2017;

**"ILO"** means the International Labour Organization;

**"ILO Centenary Declaration for the Future of Work"** means the *Centenary Declaration for the Future of Work* done at Geneva on 21 June 2019;

**"ILO Declaration on Fundamental Principles and Rights at Work"** means the *Declaration on Fundamental Principles and Rights at Work and its Follow-up 1998* done at Geneva on 18 June 1998;

**"ILO Declaration on Social Justice for a Fair Globalization"** means the *Declaration on Social Justice for a Fair Globalization of 2008* done at Geneva on 10 June 2008;

**"labour laws"** means laws and regulations, or provisions of laws and regulations, of a Party that are required in order to implement the internationally recognised labour rights of:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour, and prohibition of the worst forms of child labour;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) labour protections relating to minimum wages, hours of work, and healthy and safe working conditions;

**"Modern Slavery"** means forced or compulsory labour, human trafficking, debt bondage, or other slavery and slavery like practices as defined in the laws and regulations of each Party; and

**"Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains"** means the *Principles to Combat Human Trafficking in Global Supply Chains* between the Governments of Australia, Canada, New Zealand, the United Kingdom, and the United States done at New York City in September 2018.

**Article 23.2**
**Objective**

1. The objective of this Chapter is for the Parties to promote the development of international trade and investment between them in a way that is conducive to full and productive employment and decent work for all.

2. The Parties affirm their commitment to mutually supportive trade and labour policies and practices, including the promotion of adherence to internationally recognised labour rights and decent work, and cooperation and dialogue between the Parties.

**Article 23.3**
**Statement of Shared Commitment**

1. The Parties affirm their obligations as members of the ILO, and the commitments stated in the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Declaration on Social Justice for a Fair Globalization, and the ILO Centenary Declaration for the Future of Work, regarding labour rights within their territories.

2. The Parties recall the ILO Declaration on Social Justice for a Fair Globalization, and note 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.

3. The Parties recognise the important role of workers' and employers' organisations in participating in the international development and supervision of internationally recognised labour rights.

4. The Parties also recognise the importance of tackling modern slavery in global supply chains to promote inclusive and sustainable economic growth, full and productive employment, and decent work for all.

## Article 23.4
## Right to Regulate and Levels of Protection

1. The Parties recognise the sovereign right of each Party to:

   (a) determine its own labour policies and priorities;

   (b) establish its own levels of labour and social protection; and

   (c) establish, adopt, or modify its labour laws and policies, in a manner consistent with its international labour commitments and those in this Chapter.

2. Each Party shall strive to ensure that its labour laws and policies provide for and encourage high levels of labour protection and strive to continue to improve those laws and policies with the goal of providing high levels of labour protection.

## Article 23.5
## Labour Rights[1]

1. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work, each Party shall respect, promote, and realise in its laws the principles concerning the fundamental rights at work namely:

   (a) freedom of association and the effective recognition of the right to collective bargaining;

   (b) the elimination of all forms of forced or compulsory labour;

   (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and

   (d) the elimination of discrimination in respect of employment and occupation.

2. Each Party shall adopt or maintain laws and regulations, and practices thereunder governing decent working conditions,[2] with respect to minimum wages, hours of work, and healthy and safe working conditions.

[1] To establish a violation of an obligation under paragraphs 1 or 2, a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice to encourage trade or investment.

[2] As determined by each Party.

3. Each Party reaffirms its commitment to implement in its laws and regulations, and practices thereunder, in its territory, the ILO Conventions that each Party has ratified respectively.

4. Recalling the ILO Centenary Declaration for the Future of Work, each Party recognises the importance of working towards the ratification and implementation of the ILO fundamental conventions in accordance with its national conditions, circumstances, and priorities.

5. The Parties shall exchange information, as appropriate, on their respective situations and progress regarding the ratification of ILO Conventions and Protocols that are classified as up to date by the ILO.

**Article 23.6**
**Trade and Labour**

1. The Parties recognise that it is inappropriate to use labour laws for protectionist trade purposes.

2. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws.

3. Accordingly, the Parties shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, their respective labour laws in order to encourage trade or investment if the waiver or derogation weakens or reduces adherence to the internationally recognised labour rights in paragraph 1 of Article 23.5 (Labour Rights) and the labour protections referred to in paragraph 2 of Article 23.5 (Labour Rights).

4. Neither Party shall, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour laws to encourage trade or investment.

5. Each Party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources between labour enforcement activities relating to paragraphs 1 and 2 of Article 23.5 (Labour Rights), provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

**Article 23.7**
**Decent Work**

The Parties recognise the importance of decent work, and each Party shall, with due regard to national conditions, circumstances, and priorities, promote

through its laws and regulations, policies, and practices the objectives of the Decent Work Agenda, as expressed in the ILO Declaration on Social Justice for a Fair Globalization, with respect to labour protection.

**Article 23.8**
**Non-Discrimination and Gender Equality in the Workplace**

1. The Parties support the goals of eliminating discrimination in employment and occupation, and of promoting the equality of women in relation to their engagement in trade and the workplace. Accordingly, each Party shall implement policies and measures that it considers appropriate to:

   (a) ensure equal opportunities and an inclusive labour market;

   (b) protect workers against employment discrimination on the basis of sex or gender (including with regard to sexual harassment or gender-based violence), pregnancy, and sexual orientation;

   (c) provide job-protected leave for birth or adoption of a child; and

   (d) protect against wage discrimination including working towards the elimination of gender wage gaps with the aim of achieving equal pay.

2. To assist in the implementation of paragraph 1, the Parties shall develop cooperation activities to improve the capacity and conditions for women in trade and the workplace. These activities shall be carried out with the inclusive participation of women. Areas of cooperation may include:

   (a) the promotion of labour practices that facilitate the integration, retention, and progression of women in the job market, and seek to build the capacity and skills of women workers;

   (b) the advancement of policies and programmes encouraging, valuing, and recognising women's unpaid care work including parenting and other family co-responsibilities, such as access to flexible working arrangements or access to leave and affordable childcare; and

   (c) the development of sex or gender-disaggregated data, the use of indicators, monitoring, and evaluation methodologies, and the analysis of sex or gender-focused statistics related to trade and the workplace including pay transparency data and labour force participation.

**Article 23.9**
**Modern Slavery**

1. The Parties reaffirm the importance of the ILO's *Forced Labour Convention 1930 (No. 29)* done at Geneva on 28 June 1930, the ILO's *Abolition of Forced Labour Convention 1957 (No.105)* done at Geneva on 25 June 1957, and the 2014 Protocol to the ILO Forced Labour Convention, as key international instruments in helping combat Modern Slavery. The Parties also recall their endorsement of the Call to Action to End Forced Labour, Modern Slavery and Human Trafficking, their commitment to implement the Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains, and the United Nations' *Guiding Principles on Business and Human Rights* done at Geneva on 16 June 2011 ("Guiding Principles").

2. Each Party shall encourage private and public sector entities operating in its territory to take appropriate steps to prevent Modern Slavery in their supply chains. To this end, each Party shall adopt or maintain measures, in a manner it considers appropriate to:

   (a) facilitate private and public sector entities to identify and address Modern Slavery in their global and domestic supply chains, including to publish relevant guidance to raise awareness, to promote responsible business conduct, and to foster collaboration across sectors and with civil society;

   (b) encourage private and public sector entities to identify and address Modern Slavery in their global and domestic supply chains, which may include proposing laws and regulations;

   (c) facilitate the capability of staff in public sector entities working on government procurement to identify and address Modern Slavery in their global and domestic supply chains, including through training; and

   (d) encourage responsible recruitment policies and practices, which may include the regulation of work-finding fees or premiums to secure employment sought from or charged to workers by employers or their agents.

3. The Parties shall endeavour to:

   (a) cooperate, share information and best practice, including with regard to the implementation of paragraph 2 in their jurisdictions, as appropriate, and identify areas of alignment to tackle Modern Slavery; and

   (b) cooperate bilaterally and in international fora as appropriate, on initiatives to tackle Modern Slavery.

## Article 23.10
## Corporate Social Responsibility and Responsible Business Conduct

1. The Parties recognise the importance of responsible business conduct and corporate social responsibility practices, including responsible supply chain management, and the role of trade in pursuing this objective.

2. In light of paragraph 1, each Party shall:

   (a) encourage enterprises to adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party; and

   (b) commit to promote the relevant international instruments such as the OECD's *Guidelines for Multinational Enterprises* (2011 Edition) done at Paris on 25 May 2011 and *Due Diligence Guidance for Responsible Business Conduct* done at Paris on 31 May 2018, the *United Nations Global Compact* done at New York on 26 July 2000, and the Guiding Principles, including by supporting their dissemination and use.

3. The Parties shall endeavour to strengthen their cooperation on corporate social responsibility and responsible business conduct bilaterally and in international fora as appropriate, on issues of mutual interest.

## Article 23.11
## Labour Cooperation

1. The Parties recognise the importance of cooperation in the implementation of this Chapter and commit to cooperate on labour issues of mutual interest to further advance the Chapter's commitments through actions which may include:

   (a) the exchange of information on best practices on issues of common interest and on relevant events, activities, and initiatives;

   (b) cooperation in international fora that deal with issues relevant for trade and labour, including in particular the WTO and the ILO;

   (c) the international promotion of the effective application of fundamental principles and rights at work referred to in paragraph 1 of Article 23.5 (Labour Rights), and the Decent Work Agenda as expressed in the ILO Declaration on Social Justice for a Fair Globalization;

(d) the exploration of collaboration in initiatives regarding non-parties; and

(e) any other form of cooperation deemed appropriate.

2. The Parties will consider any views provided by their stakeholders, including worker and employer organisations, when identifying potential areas for cooperation and carrying out cooperative activities.

**Article 23.12**
**Public Awareness**

Each Party shall promote public awareness of its labour laws, including by ensuring that information related to its labour laws and enforcement and compliance procedures is publicly available.

**Article 23.13**
**Procedural Guarantees**

1. Each Party shall adopt and implement laws and policies for facilitating the resolution of individual and collective labour disputes, and maintain an effective labour enforcement system, including labour inspections in accordance with its international obligations.

2. Each Party shall ensure that its administrative, judicial, and labour tribunal proceedings for the enforcement of its labour laws are fair, accessible, and transparent, and permit effective action against infringements of labour rights referred to in this Chapter, including appropriate remedies.

**Article 23.14**
**Advisory Groups**

1. Each Party shall establish or maintain and consult an independent advisory group with a balanced representation of its worker and employer organisations, and other relevant experts as appropriate, on matters relating to the operation and implementation of this Chapter.

2. Each Party shall inform its independent advisory group of the outcome of any dispute relating to this Chapter, together with any follow-up actions or measures.

## Article 23.15
## Public Submissions

1. Each Party shall provide for the receipt and consideration of written submissions from persons of a Party regarding its implementation of this Chapter in accordance with its domestic procedures. Each Party shall make its procedures, including timelines, for the receipt and consideration of written submissions readily accessible and publicly available.

2. A Party may provide in its procedures that, to be eligible for consideration, a submission should, at a minimum:

   (a) raise an issue directly relevant to this Chapter;

   (b) clearly identify the person or organisation making the submission; and

   (c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.

3. Each Party shall respond in a timely manner to those submissions in accordance with domestic procedures. A Party may request from the person or organisation that made the submission additional information that is necessary to consider the substance of the submission.

## Article 23.16
## Contact Points

1. Each Party shall designate a contact point within 90 days of the date of entry into force of this Agreement. Each Party shall notify the other Party of the contact details of its contact point and shall promptly notify the other Party of any change to its contact point or those contact details.

2. The contact points shall facilitate regular communication between the Parties on any matter relating to this Chapter. The contact point may also:

   (a) act as a channel for communication with the public in their respective territories;

   (b) work together, including with appropriate departments of their central level of government, to coordinate cooperative activities in line with the priorities of the Committee; and

   (c) receive and respond to requests for consultations in accordance with this Chapter.

## Article 23.17
## Labour Sub-Committee

1. The Labour Sub-Committee ("Sub-Committee") established under Article 30.9 (Sub-Committees – Institutional Provisions) shall be composed of official level representatives with relevant trade or labour responsibilities as designated by each Party.

2. The purpose of the Sub-Committee is to oversee the implementation of this Chapter and its functions shall be to:

   (a) provide a forum to discuss and review the implementation of this Chapter;

   (b) provide periodic reports to the Joint Committee regarding the implementation of this Chapter;

   (c) provide a forum to establish and review cooperative priorities and activities under this Chapter;

   (d) provide a forum to resolve differences between the Parties as to the interpretation or application of this Chapter; and

   (e) perform any other functions as the Parties may decide.

3. The Sub-Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Sub-Committee shall meet at least every two years, unless the Parties agree otherwise. The Sub-Committee meetings shall be chaired by each Party in turn and may meet physically or virtually as mutually agreed.

4. All decisions and reports of the Sub-Committee shall be made by consensus.

5. As part of its proceedings, the Sub-Committee shall convene Dialogues on issues relevant to the implementation of this Chapter with the members of their advisory groups referred to in Article 23.14 (Advisory Groups), including representatives of its worker and employer organisations, unless the Parties agree otherwise. Participation in the Joint Dialogues may take place by any appropriate means of communication as the Parties agree.

6. The Sub-Committee shall monitor and periodically review the implementation and operation of this Chapter and make appropriate recommendations to the Joint Committee for its consideration.

7. To facilitate public awareness of the implementation of this Chapter, the Sub-Committee shall agree on a joint summary report on its work at the end of each Sub-Committee meeting, which shall be made publicly available.

8. The Parties shall, as appropriate, liaise with relevant international organisations, such as the ILO, on matters related to this Chapter. The Committee may seek to develop joint proposals or collaborate with those organisations or with non-parties.

**Article 23.18**
**Labour Consultations**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through cooperation, dialogue, consultations, and exchange of information to address any matter arising under this Chapter.

2. A Party ("the requesting Party") may request consultations with the other Party ("the responding Party") regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the request. The responding Party shall, unless agreed otherwise with the requesting Party, respond to the request in writing no later than 10 days after the date of receipt of the request.

3. Unless the Parties agree otherwise, they shall enter into consultations promptly, and no later than 30 days after the date of receipt by the responding Party of the request.

4. The Parties shall make every effort to arrive at a mutually agreed solution to the matter, which may include appropriate cooperative activities. The Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

**Article 23.19**
**Joint Committee Consultations**

1. If the Parties have failed to resolve the matter under Article 23.18 (Labour Consultations), a Party may request that the Joint Committee convene to consider the matter by delivering a written request to the contact point of the other Party.

2. The Joint Committee shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant information from governmental or non-governmental experts.

**Article 23.20**
**Ministerial Consultations**

If the Parties have failed to resolve the matter under Article 23.19 (Joint Committee Consultations), a Party may refer the matter to the relevant Ministers of the Parties who shall seek to resolve the matter.

**Article 23.21**
**Consultation Procedure**

Consultations pursuant to Articles 23.18 (Labour Consultations) to Article 23.20 (Ministerial Consultations) may be held in person or by any technological means available as agreed by the Parties. Consultations and, in particular, positions taken by the Parties during their consultations, shall be confidential and without prejudice to the rights of a Party in any further proceedings.

**Article 23.22**
**Dispute Settlement**

1. Articles 23.18 (Labour Consultations) to Article 23.20 (Ministerial Consultations) apply by way of derogation from Article 31.5 (Consultations – Dispute Settlement).

2. If the matter at issue falls within Article 31.4 (Scope – Dispute Settlement) and the Parties have failed to resolve the matter under Articles 23.18 (Labour Consultations) to Article 23.20 (Ministerial Consultations) within 120 days of the date of receipt of a request under Article 23.18 (Labour Consultations), or any other period as the Parties may agree, the requesting Party may request the establishment of a panel under Article 31.6 (Establishment of a Panel – Dispute Settlement) and, as provided in Chapter 31 (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

3. In addition to the requirements under Article 31.8 (Qualifications of Arbitrators – Dispute Settlement), the Parties shall ensure that the panel appointed in accordance with Article 31.7 (Composition of a Panel – Dispute Settlement) has sufficient expertise or experience in labour law for the purposes of a dispute arising under this Chapter. In a dispute arising under this Chapter, the panel shall seek information or technical advice from any expert that it deems appropriate, which may include experts in labour law.

# CHAPTER 24

# SMALL AND MEDIUM-SIZED ENTERPRISES

## Article 24.1
## General Principles

1. The Parties, recognising the fundamental role SMEs play in contributing to economic growth, sustainable development, employment, and innovation, shall seek to cooperate in promoting SME participation in international trade and global value chains to support their growth and the creation of jobs.

2. The Parties recognise the importance of SMEs in trade and investment between the Parties and affirm their commitment to enhance the ability of SMEs to benefit from this Agreement.

3. The Parties recognise the importance of providing assistance to SMEs, including under this Chapter, to encourage their participation in global markets and supply chains.

4. The Parties recognise the importance of current initiatives, efforts, and work on SMEs developed under various international fora, and taking into account their findings and recommendations, where appropriate.

## Article 24.2
## Information Sharing

1. Each Party shall establish or maintain a digital medium that allows the public to access information regarding this Agreement free of charge, including:

   (a) the text of this Agreement;

   (b) a summary of this Agreement; and

   (c) information designed for SMEs that includes:

      (i) a description of the provisions in this Agreement that the Party considers to be relevant to SMEs; and

      (ii) any additional information that the Party considers to be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall provide access through the digital medium to:

   (a) the equivalent information of the other Party; and

(b) the information of its own government agencies or authorities and other appropriate entities that provide information the Party considers useful to persons interested in trading, investing, or doing business in that Party's territory.

3. The information described in subparagraph 2(b) may include:

(a) customs regulations, procedures, or enquiry points;

(b) regulations and procedures concerning intellectual property rights;

(c) technical regulations, standards, or conformity assessment procedures;

(d) relevant sanitary or phytosanitary measures relating to importation or exportation;

(e) foreign investment regulations;

(f) business registration procedures;

(g) trade promotion programmes;

(h) employment regulations;

(i) taxation information;

(j) information related to the temporary entry of business persons (as provided for in Chapter 13 (Temporary Entry of Business Persons)); and

(k) government procurement opportunities within the scope of Chapter 16 (Government Procurement).

4. Each Party shall regularly, or on request of the other Party, review the information made available under paragraphs 1 and 2 to ensure that they are up-to-date and accurate.

## Article 24.3
## Cooperation to Increase Trade and Investment Opportunities for SMEs

1. The Parties acknowledge the importance of cooperating to reduce barriers to SMEs' access to international markets and global supply chains. Accordingly, the Parties may, among other forms of cooperation:

(a) exchange and discuss each Party's experience and best practice in supporting and assisting SMEs with respect to, among other things:

(i) training programmes;

(ii) trade education;

(iii) trade finance;

(iv) identifying commercial partners in the other Party;

(v) establishing good business credentials;

(vi) insurance, tax, and payment practices in the other Party's market; and

(vii) helping SMEs adapt to changing market conditions;

(b) facilitate the development of programmes to assist SMEs to participate in and integrate effectively into global markets and supply chains;

(c) promote the participation in international trade of SMEs owned by under-represented groups, such as women, youth, Māori, and minority groups; and

(d) support SMEs to participate in digital trade and e-commerce to take advantage of opportunities resulting from this Agreement.

2. The Parties may seek to collaborate with appropriate experts and international organisations in carrying out any programme or activity. The Parties also recognise that the involvement of the private sector is important in these activities.

**Article 24.4**
**Cooperation on Implementation of this Agreement**

Each Party shall cooperate, as part of the implementation of this Agreement, on promotional activities targeted at SMEs. These activities may include:

(a) undertaking joint roadshows to promote the Agreement to SMEs and the opportunities it creates for them; and

(b) providing guidance on where SMEs can find information on doing business in each Party's market, such as the information referred to in Article 24.2 (Information Sharing).

## Article 24.5
## SME Contact Points

1. Each Party shall designate and notify a contact point on SMEs to facilitate communications between the Parties on any matter the Party considers relevant to SMEs.

2. Each Party shall promptly notify the other Party of any change to its contact point.

3. The contact points shall meet as necessary and shall carry out their work through communication channels decided by the Parties.

4. Where appropriate, the contact points shall:

   (a) exchange information to assist in monitoring the implementation of this Agreement as it relates to SMEs;

   (b) consider any other matter pertaining to SMEs, including any issues raised by SMEs regarding their ability to benefit from this Agreement; and

   (c) facilitate provision of recommendations to the Inclusive Trade Sub-Committee, as necessary.

## Article 24.6
## Obligations in the Agreement that Benefit SMEs

The Parties recognise that in addition to the provisions in this Chapter, there are provisions in other Chapters of this Agreement that seek to enhance cooperation among the Parties on SME issues or that otherwise may be of particular benefit to SMEs. These include:

(a) Chapter 2 (National Treatment and Market Access for Goods);

(b) Chapter 3 (Rules of Origin and Origin Procedures).

(c) Chapter 4 (Customs Procedures and Trade Facilitation);

(d) Chapter 9 (Cross-Border Trade in Services);

(e) Chapter 15 (Digital Trade);

(f) Chapter 16 (Government Procurement); and

(g) Chapter 17 (Intellectual Property).

**Article 24.7**
**Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

# CHAPTER 25

# TRADE AND GENDER EQUALITY

## Article 25.1
## Māori Terminology

For the purposes of this Chapter:

**"wāhine Māori"** refers to indigenous women of New Zealand.

## Article 25.2
## Objectives

1. The Parties affirm their intention to implement the provisions of this Agreement in a manner that advances women's economic empowerment and promotes gender equality. In addition to this Chapter, other Chapters of this Agreement contain Articles which seek explicitly to advance this objective, including:

   (a) Article 10.4 (Development of Measures – Domestic Regulation);

   (b) Article 11.11 (Transparency – Financial Services) and Article 11.13 (Diversity in Finance – Financial Services);

   (c) Article 15.20 (Digital Inclusion – Digital Trade);

   (d) Article 16.22 (Working Group on Government Procurement – Government Procurement);

   (e) Article 23.8 (Non-Discrimination and Gender Equality in the Workplace – Trade and Labour);

   (f) Article 24.3 (Cooperation to Increase Trade and Investment Opportunities for SMEs – Small and Medium-Sized Enterprises); and

   (g) Article 27.1 (General Provisions – Trade and Development).

2. The Parties acknowledge the key role that gender-responsive policies can play in achieving inclusive economic growth and sustainable development. Gender-responsive polices aim to ensure that the benefits of economic growth are more broadly shared by:

   (a) recognising the systemic barriers that affect women in trade and investment and in accessing finance; and

(b) providing equal rights and access to opportunities for the participation of women in business, industry, and the labour market.

3. The Parties affirm the importance of promoting gender equality policies and practices and building the capacity of the Parties in this area, including in non-government sectors, to eliminate all forms of gender-based discrimination in trade.

4. The Parties acknowledge the benefit of sharing their respective experiences in designing, implementing, monitoring, evaluating, and strengthening policies and programmes to address the systemic barriers which exist for women in international trade, and prevent them from participating equitably in global, regional, or domestic economies.

**Article 25.3**
**General Commitments**

1. The Parties agree to advance women's economic empowerment across this Agreement and promote the importance of a gender perspective in the Parties' trade and investment relationship.

2. The Parties shall implement and enforce their respective laws, policies, practices, and regulations that promote gender equality and improve women's access to trade and economic opportunities.

3. The Parties shall take steps towards increasing women's participation in trade and investment, including by identifying the range of barriers that limit opportunities for women in the economy, to enable the delivery of evidence-based interventions in response.

4. Each Party shall promote public awareness of its gender equality laws, regulations, policies, and practices relating to trade, including by making them publicly available.

5. The Parties acknowledge that it is inappropriate to waive, or otherwise derogate from, their gender equality laws to encourage trade or investment.

**Article 25.4**
**International Instruments**

1. The Parties affirm their commitment to implement the obligations under the *Convention on the Elimination of All Forms of Discrimination against Women* done at New York City on 18 December 1979, and acknowledge the general recommendations made under its Committee.

2. The Parties affirm the objectives of the *Joint Declaration on Trade and Women's Economic Empowerment* done at Buenos Aires on 12 December 2017, including acknowledgment of the need to develop evidence-based interventions to address the barriers that limit opportunities for women in the economy.

3. The Parties recognise that inclusive trade policies can contribute to advancing women's economic empowerment and gender equality in line with Sustainable Development Goal 5 of the *UN 2030 Agenda on Sustainable Development* adopted by the UN General Assembly Resolution 70/1on 25 September 2015. The Parties acknowledge the important contribution by women to economic growth through their participation in economic activity, including international trade, the labour market, business leadership, and entrepreneurship.

4. The Parties also affirm their commitment to implement the obligations under any other international agreement or instrument addressing women's rights or gender equality to which they are party.

**Article 25.5**
**Cooperation**

1. The Parties recognise the importance of strengthening their trade relations and cooperation in the implementation of this Agreement, and shall carry out cooperation activities with the aim of enhancing the ability of women including workers, entrepreneurs, businesswomen and business owners, and wāhine Māori in the case of New Zealand, to fully access and benefit from the opportunities created under this Agreement. These activities shall be carried out in a transparent manner, as appropriate with the inclusive participation of women.

2. Cooperation activities shall be carried out on issues determined by the Parties, through the interaction and coordination, as appropriate, with their respective government agencies, private companies, labour unions, civil society, academic institutions, and non-governmental organisations, among others, and with the participation of Māori in the case of New Zealand.

3. Areas of cooperation may include:

   (a) developing programmes to promote women's full and equal participation, empowerment, and advancement in society by encouraging, valuing, and recognising women's unpaid care work, capacity building, and skills enhancement including at work, in business, and at senior levels in all sectors of society (such as on public and private boards), insofar as doing so is related to trade;

(b) improving women's access, participation, leadership, and education, in particular in fields in which they are underrepresented such as science, technology, engineering, mathematics (STEM), as well as innovation, e-commerce, and any other field as it relates to trade;

(c) advancing the development of women's leadership and business networks;

(d) promoting business development services for women to improve women's digital skills and access to online business tools;

(e) promoting financial inclusion and literacy, access to relevant financing, and financial assistance;

(f) developing trade missions for businesswomen and women entrepreneurs;

(g) enhancing women entrepreneurs' participation in government procurement markets;

(h) fostering women's entrepreneurship, including activities to promote the internationalisation of SMEs led by women;

(i) promoting equal opportunities for women in the workplace, including workplace flexibility;

(j) advancing care policies and programmes with a gender and shared social responsibility perspective including parenting and other family co-responsibilities;

(k) supporting economic opportunities for diverse groups of women in trade and investment;

(l) in the case of New Zealand, providing opportunities for wāhine Māori to engage in trade activities including with a Te Ao Māori framework;[1]

(m) collaborating in international and multilateral fora, including at the OECD, WTO, and with developing countries as appropriate to advance trade and gender equality issues and understanding;

(n) enhancing the competitiveness of women-owned enterprises to allow them to participate and compete in local, regional, and global value chains; and

(o) any other areas as the Parties may decide.

[1] For the purposes of this Chapter, the term "Te Ao Māori" will have the meaning ascribed to it under Article 26.1 (Māori Terminology – Māori Trade and Economic Cooperation).

4. The Parties shall develop a framework for analysing sex or gender-disaggregated data and gender-focused analysis of trade policies, including where appropriate through cooperation activities, joint research, and the sharing of data insights, concepts, and best practices. Areas of cooperation may include:

   (a) conducting gender-based analysis and monitoring the gender-based effects of trade, including by both qualitative and quantitative methods;

   (b) sharing methods and procedures for the collection of gender statistics and sex-disaggregated data, the use of indicators, monitoring and evaluation methodologies, and the analysis of gender-focused statistics related to trade;

   (c) improving analysis and monitoring of access to trade for women-led or owned businesses and, in the case of New Zealand, wāhine Māori, including in relation to specific barriers to trade;

   (d) sharing data insights, lessons, and best practices for analysing gender segregation in the labour market, and on the working conditions of women in export-oriented industries and sectors impacted by trade; and

   (e) encouraging the integration of gender-related monitoring, consideration, and activities across the implementation of this Agreement, including through cooperation with specialised committees or subsidiary bodies where appropriate.

5. The priorities for cooperation activities shall be decided by the Parties based on their interests and available resources with the aim of achieving mutual benefits and measurable advances in women's economic empowerment and gender equality outcomes.

6. The Parties may undertake cooperation activities through modes such as:

   (a) dialogues, workshops, seminars, conferences, cooperation programmes, and projects, including internships, visits, and research;

   (b) technical assistance to promote and facilitate capacity building and training;

   (c) exchange of experts and information; and

   (d) sharing of experiences and best practices in designing, implementing, monitoring, evaluating, and strengthening policies and programmes

to enhance women's participation in domestic, regional, and global economies.

**Article 25.6**
**Inclusive Trade Sub-Committee**

The Inclusive Trade Sub-Committee established under Article 30.9 (Inclusive Trade Sub-Committee – Institutional Provisions) shall support the effective implementation and operation of this Chapter and monitor and review its implementation and that of relevant provisions in other Chapters. With respect to this Chapter, the Inclusive Trade Sub-Committee shall have the functions set out in Article 30.8 (Inclusive Trade Sub-Committee – Institutional Provisions).

**Article 25.7**
**Contact Points**

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

2. The contact points may consider any matter that they consider appropriate to advance women's economic empowerment across the Agreement and make recommendations to the Inclusive Trade Sub-Committee.

3. The contact points may communicate or facilitate communication with relevant stakeholders and groups, including women workers, business owners, and entrepreneurs and, in the case of the contact point for New Zealand, wāhine Māori.

**Article 25.8**
**Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

# CHAPTER 26

# MĀORI TRADE AND ECONOMIC COOPERATION

## Article 26.1
## Māori Terminology

The Parties include the following Māori terminology for the purposes of this Chapter:

**"Haka Ka Mate"** refers to the Haka (war expression) Ka Mate written by Ngāti Toa Rangatira chief Te Rauparaha;

**"Kaupapa Māori"** refers to an approach entrenched in a Māori world view;

"**Māori relational approaches**" refers to 'Whakapapa' or family connections, and building strong relationships, which are core values at the heart of the Māori worldview and central to how Māori engage;

**"Mātauranga Māori"** refers to Māori traditional knowledge which relates to the Māori world view;

**"Ngāti Toa Rangatira"** refers to the iwi (tribe) defined as the collective group composed of individuals who are descended from both:

(a) Toa Rangatira;

(b) any other recognised ancestor of Ngāti Toa Rangatira who migrated permanently to the area of interest of Ngāti Toa Rangatira in the nineteenth century and who exercised customary rights predominantly within that area;

(c) includes those individuals; and

(d) includes any whānau (extended family group), hapū (kinship group), or group to the extent that it is composed of those individuals;

**"Te Ao Māori"** refers to the Māori world view based on a holistic approach to life;

**"Tikanga Māori"** refers to Māori protocols, customs, and normal practice; and

**"*wellbeing*"** refers to the Māori view of the culmination, balancing, and interconnection of numerous factors required for individuals and groups to be truly well and thrive. This includes balance between taha tinana (body), taha hinengaro (mind), and taha wairua (spirit) and can include environmental, economic, and cultural aspects.

**Article 26.2**
**Context and Purpose**

1. The Parties recognise the unique relationship that exists between Māori and the United Kingdom, noting that representatives of the British Crown and Māori were the original signatories to Te Tiriti o Waitangi/The Treaty of Waitangi whilst acknowledging that the New Zealand Crown has now succeeded the British Crown and assumed all rights and obligations under that Treaty.

2. The Parties acknowledge that Te Tiriti o Waitangi/The Treaty of Waitangi is a foundational document of constitutional importance to New Zealand.

3. The Parties recognise the importance of cooperation under this Chapter being implemented, in the case of New Zealand, in a manner consistent with Te Tiriti o Waitangi/The Treaty of Waitangi and where appropriate informed by Te Ao Māori, Mātauranga Māori, and tikanga Māori.

4. The Parties recognise the value of Māori leadership, Te Ao Māori approaches, and Mātauranga Māori that contribute to the design and implementation of policies and programmes in New Zealand, that protect and promote Māori economic aspirations.

5. The Parties recognise the value of increased Māori participation in international trade and investment, including digital trade. This includes through the promotion of Māori relational approaches, Mātauranga Māori, technologies, and Kaupapa Māori methodologies, in the case of New Zealand.

6. Subject to its international obligations, New Zealand may adopt or maintain measures to respect, preserve, and promote traditional knowledge and traditional cultural expressions.

7. The Parties recognise the value of enhancing cultural and people-to-people links that may result from the opportunities created by this Chapter for both Parties.

8. The Parties recognise the challenges that exist for Māori in accessing the trade and economic opportunities derived from international trade, and the importance of international trade in enabling and advancing Māori *wellbeing.*

9. The Parties agree that the purpose of this Chapter is to pursue cooperation between them that contributes towards New Zealand's efforts to enable and advance Māori economic aspirations and *wellbeing*.

10. For greater certainty, nothing in this Chapter:

(a) gives rise to obligations that relate to intellectual property, except for paragraph 6 in the case of New Zealand;

(b) creates any requirement on the United Kingdom to change its law relating to intellectual property or intellectual property policy;

(c) constitutes recognition by the United Kingdom that Genetic Resources, Traditional Knowledge, or Traditional Cultural Expressions are forms of intellectual property in their own right; or

(d) constitutes recognition by the United Kingdom that any examples of Genetic Resources, Traditional Knowledge, or Traditional Cultural Expressions are protectable as intellectual property other than to the extent such protection is consistent with United Kingdom intellectual property law.

**Article 26.3**
**International Instruments**

The Parties note:

(a) their commitments as Parties to the *UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions* done at Paris on 20 October 2005;

(b) the objectives of 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;

(c) their rights and responsibilities under the *Convention on Biological Diversity* done at Rio de Janeiro on 5 June 1992; and

(d) the *UN Declaration on the Rights of Indigenous Peoples* adopted by the UN General Assembly in New York on 13 September 2007, and further note the national positions of the United Kingdom and New Zealand made on that Declaration.

**Article 26.4**
**Provisions Across the Agreement Benefitting Māori**

In addition to this Chapter, there are provisions in other Chapters of this Agreement that enhance the participation of Māori in trade and investment opportunities derived from this Agreement which, in the case of New Zealand, further contribute to the ability of Māori to exercise their rights and interests under Te Tiriti o Waitangi/The Treaty of Waitangi. These include:

(a) Chapter 15 (Digital Trade);

(b) Chapter 16 (Government Procurement);

(c) Chapter 17 (Intellectual Property);

(d) Chapter 22 (Environment);

(e) Chapter 24 (Small and Medium-Sized Enterprises);

(f) Chapter 25 (Trade and Gender Equality); and

(g) Chapter 32 (General Exceptions and General Provisions).

**Article 26.5**
**Cooperation Activities**

1. The Parties may facilitate, where appropriate and practicable, with Māori in the case of New Zealand and in coordination with other relevant stakeholders as appropriate, the following activities:[1]

(a) collaborating on enhancing the ability of Māori-owned enterprises to access and benefit from the trade and investment opportunities created by this Agreement;

(b) collaborating on developing links between United Kingdom enterprises and Māori-owned enterprises and entrepreneurship, which may include facilitating access to new and existing supply chains, enabling and strengthening e-commerce opportunities, and facilitating cooperation between enterprises on trade in products of Māori origin. This may additionally include undertaking joint roadshows and activities promoting links between United Kingdom SMEs and Māori-owned SMEs, consistent with cooperation activities set out in Article 24.3 (Cooperation to Increase Trade and Investment Opportunities for SMEs – Small and Medium-Sized Enterprises) and Article 24.4 (Cooperation on Implementation of this Agreement – Small and Medium-Sized Enterprises); and

(c) continuing to support science, research, and innovation links as appropriate between the United Kingdom and Māori communities.

[1] The details and resourcing of any cooperation activities shall be agreed between the Parties as set out in paragraph 3, through the existing cooperation framework between the Parties, and subject to the resources available to each Party. For greater certainty, the provisions in this Chapter do not impose any legal or financial obligations requiring the Parties to explore, commence, or conclude any individual cooperation activities.

2. Each Party may invite the views and participation in the cooperation activities of this Chapter of relevant stakeholders, and in the case of New Zealand of Māori in accordance with Te Tiriti o Waitangi/The Treaty of Waitangi principles.

3. All cooperation shall be at the request of a Party, on mutually agreed terms in respect of each cooperation activity.

**Article 26.6**
**Recognition of Haka Ka Mate**

1. The Parties acknowledge the significance of the Haka Ka Mate to Ngāti Toa Rangatira, and as an integral part of its history, culture, and identity.

2. The Parties shall jointly endeavour to identify appropriate means to advance recognition and protection of Haka Ka Mate. New Zealand will invite the participation of Ngāti Toa Rangatira in these cooperation activities.

**Article 26.7**
**Inclusive Trade Sub-Committee**

The Inclusive Trade Sub-Committee established under Article 30.9 (Sub-Committees – Institutional Provisions) shall support the effective implementation and operation of this Chapter and monitor and review its implementation. The Inclusive Trade Sub-Committee shall have the functions set out in Article 30.8 (Inclusive Trade Sub-Committee – Institutional Provisions).

**Article 26.8**
**Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

# CHAPTER 27

# TRADE AND DEVELOPMENT

## Article 27.1
## General Provisions

1. The Parties acknowledge the importance of development in promoting inclusive economic growth, as well as the instrumental role that sustainable trade and investment can play in contributing to economic development, prosperity, and a resilient global economy. Inclusive economic growth includes a more broad-based distribution of the benefits of economic growth through the expansion of business and industry, including for SMEs and women-led businesses, the creation of jobs, and the alleviation of poverty.

2. The Parties acknowledge that inclusive economic growth should be sustainable, and that sustainable growth encompasses economic development, social development, climate resilience, and environmental protection. Effective coordination of trade, investment, climate change, and development policies can contribute to sustainable economic growth for developing countries, including least developed countries and small island developing states.

3. The Parties recognise the fundamental importance of a stable, open, and rules-based multilateral trading system, including for developing countries, and recognise the vital contribution of the WTO to trade and development.

4. The Parties affirm their commitment to promote and strengthen an open trade and investment environment that seeks to improve livelihoods, reduce poverty, raise living standards, and create new employment opportunities for all persons in support of development.

5. The Parties recognise that transparency, good governance, and accountability contribute to the effectiveness of trade and development policies and sustainability of development outcomes.

6. The Parties further recognise that in addition to this Chapter, there are provisions in other Chapters of this Agreement that seek to enhance cooperation between the Parties on trade and development issues or that otherwise may be of particular benefit to developing countries. Relevant Articles include:

   (d) paragraphs 5 and 6 of Article 3.8 (Cumulation – Rules of Origin and Origin Procedures);

   (b) paragraph 4 of Article 7.5 (Cooperation – Technical Barriers to Trade);

(c) Article 9.13 (Development Cooperation – Cross-Border Trade in Services);

(a) paragraph 4 of Article 15.20 (Digital Inclusion – Digital Trade); and

(e) paragraph 3 of Article 25.5 (Cooperation – Trade and Gender Equality).

**Article 27.2**
**Cooperation**

1. The Parties recognise that undertaking and strengthening cooperation between the Parties under this Agreement can promote developing country participation in trade, support inclusive and sustainable growth, reinforce international development strategies, and build competitive and diverse supply chains. Cooperative activities may include:

   (a) dialogue and an exchange of information between the Parties;

   (b) sharing of best practice on trade and development policies and programmes;

   (c) promoting developing country participation in multilateral and regional fora and joint advocacy in areas relating to trade and development; or

   (d) any other form of cooperation as may be agreed between the Parties including in support of least developed countries and small island developing states.

2. The Parties may invite, as appropriate, multilateral, regional, private sector, non-governmental, or other relevant organisations to assist with these cooperative activities.

3. The Parties may share best practice for monitoring and conducting analysis of trade agreements and their effects on developing countries, including the use of both qualitative and quantitative methods.

4. The Parties may monitor, jointly or individually, the impact of this Agreement on developing countries and shall endeavour to share any outcomes with each other.

## Article 27.3
## Inclusive Trade Sub-Committee

The Inclusive Trade Sub-Committee established under Article 30.9 (Sub-Committees – Institutional Provisions) shall support the effective implementation and operation of this Chapter. The functions of the Inclusive Trade Sub-Committee with respect to this Chapter shall be those set out in Article 30.8 (Inclusive Trade Sub-Committee – Institutional Provisions).

## Article 27.4
## Contact Points

Each Party shall designate a contact point from its relevant authorities within 90 days of the date of entry into force of this Agreement, in order to facilitate communication between the Parties on any matter relating to this Chapter. Each Party shall notify the other Party of the contact details of its contact point and shall promptly notify any change to its contact point or those contact details.

## Article 27.5
## Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.

# CHAPTER 28

# ANTI-CORRUPTION

## Article 28.1
## Definitions

For the purposes of this Chapter:

**"act or refrain from acting in relation to the performance of official duties"** includes any use of the public official's or foreign public official's position, whether or not within the official's authorised competence;

**"Anti-Bribery Convention"** means the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* done at Paris on 17 December 1997;

**"confiscation"** means the permanent deprivation of property by order of a court or other competent authority, and includes forfeiture, where applicable;

**"foreign public official"** means any natural person holding a legislative, executive, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected, permanent or temporary, paid or unpaid, irrespective of that individual's seniority; and any natural person exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

**"freezing"** or **"seizure"** means temporarily prohibiting the transfer, conversion, disposition, or movement of property, or temporarily assuming custody or control of property, on the basis of an order issued by a court or other competent authority;

**"official of a public international organisation"** means a civil servant of a public international organisation or any natural person authorised by a public international organisation to act on its behalf;

**"property"** means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in those assets;

**"public enterprise"** means an enterprise over which a government or governments may, directly or indirectly, exercise a dominant influence;[1]

**"public official"** means:

[1] "Dominant influence" for the purposes of this definition shall be deemed to exist, inter alia, if the government or governments hold the majority of the enterprise's subscribed capital, control the majority of votes attaching to shares issued by the enterprise, or can appoint a majority of the members of the enterprise's administrative or managerial body or supervisory board.

(a) any natural person holding a legislative, executive, administrative, or judicial office of a Party, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that natural person's seniority;

(b) any other natural person who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service as defined under that Party's law and as applied in the pertinent area of law in that Party; or

(c) any other person defined as a "public official" under a Party's law; and

**"UNCAC"** means the *United Nations Convention against Corruption* done at New York on 31 October 2003.

**Article 28.2**
**Scope**

1. This Chapter shall apply to measures to prevent and combat bribery and corruption relating to any matter covered by this Agreement.

2. Each Party affirms its resolve to prevent and combat bribery and corruption in matters affecting international trade or investment.

3. Each Party recognises the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard.

4. Each Party recognises the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in matters affecting international trade or investment, including the United Nations, the OECD, the WTO, and the Financial Action Task Force, and commits to work jointly with the other Party to encourage and support appropriate initiatives to prevent and combat that bribery and corruption.

5. The Parties recognise that their respective competent anti-corruption authorities have established working relationships in many bilateral and multilateral forums, and that cooperation under this Agreement can enhance the Parties' joint efforts in those forums and help produce outcomes that prevent and combat bribery and corruption in matters affecting international trade or investment.

6. Each Party affirms its commitments in the Anti-Bribery Convention and the UNCAC.

7. The Parties recognise that the description of offences adopted or maintained in accordance with this Chapter, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law.

## Article 28.3
## Measures to Prevent and Combat Bribery and Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters affecting international trade or investment, when committed intentionally, by any person subject to its jurisdiction:

   (a) the promise, offering, or giving to a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties;

   (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties;

   (c) the promise, offering, or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

   (d) the aiding or abetting, or conspiracy in, the commission of any of the offences described in subparagraphs (a) to (c).

2. Each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in this Article:

   (a) the establishment of off-the-books accounts;

   (b) the making of off-the-books or inadequately identified transactions;

   (c) the recording of non-existent expenditure;

(d) the entry of liabilities with incorrect identification of their objects;

(e) the use of false documents; and

(f) the intentional destruction of bookkeeping documents earlier than foreseen by the law.

3. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as a criminal offence under its law, in matters affecting international trade or investment, when committed intentionally:

(a) the embezzlement, misappropriation, or another diversion[2] by a public official for the benefit of the public official or for the benefit of another person, of any property, public or private funds or securities, or any other thing of value that the public official has been able to access by virtue of the public official's position; and

(b) by any person subject to its jurisdiction, the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counselling the commission of an offence established in accordance with subparagraph (a).

4. Each Party shall adopt or maintain measures as may be necessary in accordance with its laws and regulations to establish as criminal offences, in matters affecting international trade or investment, when committed intentionally, by any person subject to its jurisdiction:

(a) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illegal origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of that person's action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of, or rights with respect to, property, knowing that such property is the proceeds of crime;

(c) the acquisition, possession, or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; and

(d) participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counselling the commission of any of the offences established in accordance with subparagraphs (a) to (c).

[2] For greater certainty, "diversion" means embezzlement or misappropriation that constitutes the criminal offences of theft or fraud under a Party's domestic law.

5. Each Party shall make the commission of an offence described in paragraphs 1 to 4 liable to sanctions that take into account the gravity of that offence.

6. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraphs 1 to 4. In particular, each Party shall ensure that legal persons held liable for offences described in paragraphs 1 to 4 are subject to effective, proportionate, and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.

7. Neither Party shall allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in paragraph 1.

8. Each Party shall adopt or maintain measures enabling the identification, tracing, freezing, seizure, and confiscation in both criminal and non-conviction-based proceedings of:

   (a) proceeds, including any property, derived from the offences described in paragraphs 1, 3, and 4; and

   (b) property, equipment, or other instrumentalities used in or destined for use in those offences.

9. The Parties recognise the harmful effects of facilitation payments. Each Party shall, in accordance with its laws and regulations:

   (a) encourage enterprises to prohibit or discourage the use of facilitation payments;

   (b) to the extent facilitation payments may be permitted, ensure the solicitation, payment, or acceptance of those payments are not used to secure a material advantage in matters affecting international trade or investment; and

   (c) take steps to raise global awareness of the harmful effects of facilitation payments, including through regional and multilateral initiatives, with a view to stopping the solicitation, payment, and acceptance of those payments.

10. Each Party shall ensure that any statute of limitations applicable to any criminal offences described in this Chapter allows an adequate period of time for the investigation and prosecution of the offence.

## Article 28.4
## Persons that Report Bribery or Corruption Offences

1. Each Party shall, as it considers appropriate, adopt or maintain measures to ensure that its competent authorities which are responsible for the measures under Article 28.3 (Measures to Prevent and Combat Bribery and Corruption), or the enforcement of those measures, are known to the public.

2. Each Party shall adopt or maintain publicly available procedures for a person to report to its competent authorities, including anonymously, any incident that may be considered to constitute an offence described in paragraphs 1, 3, or 4 of Article 28.3 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 2 of Article 28.3 (Measures to Prevent and Combat Bribery and Corruption).

3. Each Party shall adopt or maintain appropriate measures, in accordance with its laws and regulations, to protect against or provide remedy for discriminatory or disciplinary treatment of any person considered appropriate by the Party who, on reasonable belief, reports to the competent authorities any suspected incident that may be considered to constitute an offence described in paragraphs 1, 3, or 4 of Article 28.3 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 2 of Article 28.3 (Measures to Prevent and Combat Bribery and Corruption).[3]

## Article 28.5
## Promoting Integrity among Public Officials

1. To prevent and combat bribery and corruption in matters affecting international trade or investment, each Party should promote, among other things, integrity, honesty, and responsibility among its public officials. To this end, each Party shall endeavour, in accordance with the fundamental principles of its legal system, to adopt or maintain:

   (a) measures to provide adequate procedures for the selection and training of individuals for public positions considered by the Party to be especially vulnerable to corruption, and the rotation, if appropriate, of those individuals to other positions;

   (b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;

   (c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;

[3] For greater certainty, this paragraph is without prejudice to each Party's right to adopt or maintain additional requirements for the making of such a report provided these requirements do not have the effect of unjustifiably limiting a person's access to protection or remedy.

(d) measures that require senior and other appropriate public officials to make declarations to appropriate authorities regarding, among other things, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and

(e) measures to facilitate reporting by public officials of acts of bribery and corruption to competent authorities, if those acts come to their notice in the performance of their functions.

2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable, and proper performance of public functions, and measures providing for disciplinary or other procedures, if warranted, against a public official who violates the codes or standards established in accordance with this paragraph.

3. Each Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused or convicted of an offence described in this Chapter may, if appropriate, be removed, suspended, or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters affecting international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

## Article 28.6
## Participation of Private Sector and Civil Society

1. Each Party shall take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations, and community-based organisations, in preventing and combatting bribery and corruption in matters affecting international trade or investment and to raise public awareness regarding the existence, causes, and gravity of and the threat posed by that bribery and corruption. To this end, a Party may:

(a) undertake public information activities and public education programmes that contribute to non-tolerance of bribery and corruption;

(b) adopt or maintain measures to encourage professional associations and other non-governmental organisations, if appropriate, to

encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programmes, and codes and standards of conduct for preventing and detecting bribery and corruption;

(c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes, including those that contribute to preventing and detecting bribery and corruption; and

(d) adopt or maintain measures to respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning bribery and corruption,

in matters affecting international trade or investment.

2. Each Party shall endeavour to encourage private enterprises, taking into account their size and structure, to:

(a) adopt or maintain sufficient internal auditing controls and compliance programmes to assist in preventing and detecting acts of bribery and corruption in matters affecting international trade or investment; and

(b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

**Article 28.7**
**Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption**

1. In accordance with the fundamental principles of its legal system, neither Party shall fail to effectively enforce the measures adopted or maintained to comply with Articles 28.3 (Measures to Prevent and Combat Bribery and Corruption) to Article 28.5 (Promoting Integrity among Public Officials), through a sustained or recurring course of action or inaction after the date of entry into force of this Agreement as an encouragement for trade and investment.[4]

2. Each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise discretion with respect to the enforcement of its measures to prevent and combat bribery and corruption. Each Party retains the right to take *bona fide* decisions with regard to the allocation of its resources with respect to that enforcement.

[4] For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption law are subject to each Party's own domestic law and legal procedures.

3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the offences described in paragraphs 1, 3, and 4 of Article 28.3 (Measures to Prevent and Combat Bribery and Corruption) and the acts described in paragraph 2 of Article 28.3 (Measures to Prevent and Combat Bribery and Corruption).

**Article 28.8**
**Relation to Other Agreements**

Nothing in this Agreement affects the rights and obligations of the Parties under the Anti-Bribery Convention, the UNCAC, or the *United Nations Convention against Transnational Organized Crime* done at New York on 15 November 2000.

**Article 28.9**
**Cooperation, Consultation, and Dispute Settlement**

1. The Parties shall make every effort through dialogue, exchange of information, and cooperation to address any matter that might affect the operation or application of this Chapter.

2. Chapter 31 (Dispute Settlement), as modified by this Article, shall apply to disputes relating to a matter arising under this Chapter.

3. A Party may only have recourse to the procedures set out in this Article and Chapter 31 (Dispute Settlement) if it considers that a measure of the other Party is inconsistent with its obligations under this Chapter, or that the other Party has otherwise failed to carry out its obligations under this Chapter, in a manner affecting international trade or investment between the Parties.

4. Neither Party shall have recourse to dispute settlement under this Article or Chapter 31 (Dispute Settlement) for a matter arising under Article 28.7 (Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption).

# CHAPTER 29

# TRANSPARENCY

## Article 29.1
## Definitions

For the purposes of this Chapter:

**"administrative ruling of general application"** means an administrative ruling or interpretation that applies to all persons and factual situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct, but does not include:

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

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

**"consultation documentation"** means any documentation created by a Party for the purpose of seeking interested persons' comment on a proposal to adopt or amend a:

(a) law; or

(b) regulation,

of general application with respect to any matter covered by this Agreement.

## Article 29.2
## Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published, or otherwise made available, in a manner that enables interested persons and the other Party to become acquainted with them.

2. To the extent possible and appropriate, each Party shall:

(a) publish at an appropriate early stage its consultation documentation; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment or input on that consultation documentation.

3. To the extent possible, when introducing or changing the laws, regulations, or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations, or procedures, proposed or final in accordance with its legal system, are made publicly available and the date when they enter into force.

4. Each Party shall, with respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1:

   (a) promptly publish the regulation on an official website or other appropriate digital medium, or in an official journal of national circulation; and

   (b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

**Article 29.3**
**Administrative Proceedings**

1. With a view to administering in a consistent, impartial, and reasonable manner its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement, each Party shall ensure in its administrative proceedings applying those laws, regulations, procedures, or administrative rulings of general application to a particular person, good, or service of the other Party in specific cases that:

   (a) whenever possible, a person of the other Party that is directly affected by a proceeding is provided with reasonable notice, in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issue in question;

   (b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

   (c) its procedures are in accordance with its law.

## Article 29.4
## Review and Appeal[1]

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:

   (a) a reasonable opportunity to support or defend their respective positions; and

   (b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its law, that the decision referred to in subparagraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

## Article 29.5
## Provision of Information

1. If a Party considers that any proposed or actual measure may materially affect the operation of this Agreement, or otherwise substantially affect the other Party's interests under this Agreement, it shall, to the extent possible, inform the other Party of the proposed or actual measure.

2. At the request of a Party, the requested Party shall endeavour to provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement.

3. A Party shall convey any request or provide information referred to in paragraphs 1 and 2 to the other Party through its contact point.

4. The notification referred to in paragraph 1 shall be regarded as having been conveyed in accordance with paragraph 3 when the actual or proposed

[1] For greater certainty, review need not include merits (*de novo*) review, and may take the form of common law judicial review. The correction of final administrative actions may include a referral back to the body that took that action.

measure has been notified to the WTO in accordance with Article 2.12 (Import Licensing Procedures – National Treatment and Market Access for Goods), Article 5.15 (Transparency, Notification, and Information Exchange – Sanitary and Phytosanitary Measures), Article 7.9 (Transparency – Technical Barriers to Trade), Article 8.8 (Transparency – Trade Remedies), or Article 22.13 (Resource Efficient and Circular Economy – Environment).

5. Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

**Article 29.6**
**Accessible and Open Government**

To the extent possible, each Party shall endeavour to ensure that information published by its central level of government with respect to any matter covered by this Agreement is accessible in open, machine-readable format.

# CHAPTER 30

# INSTITUTIONAL PROVISIONS

## Article 30.1
## Establishment of the Joint Committee

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

## Article 30.2
## Functions of the Joint Committee

1. The Joint Committee shall:

   (a) consider any matters relating to the implementation of this Agreement;

   (b) review the general operation of this Agreement;

   (c) consider any proposal to amend this Agreement that is referred to it;

   (d) supervise the work of all subsidiary bodies established under this Agreement and oversee other activities conducted under this Agreement;

   (e) consider ways to further enhance sustainable and inclusive trade and investment between the Parties; and

   (f) consider any other matter that may affect the operation of this Agreement.

2. The Joint Committee may:

   (a) establish additional subsidiary bodies, refer matters to any subsidiary bodies, and consider matters raised by any subsidiary bodies established under this Agreement;

   (b) merge or dissolve any subsidiary bodies established under this Agreement in order to improve the functioning of this Agreement;

   (c) develop arrangements for the implementation of the Agreement;

   (d) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(e) adopt interpretations of this Agreement, which are binding on the Parties and subsidiary bodies established under this Agreement, including any panels established under Chapter 31 (Dispute Settlement);

(f) seek the advice of business, civil society groups, union groups, and Māori in the case of New Zealand, other interested parties, and members of the public on any matter falling within the Joint Committee's functions;

(g) consider and adopt, subject to completion of any necessary legal procedures by each Party, a modification to this Agreement of:

(i) Annex 2A (Schedule of Tariff Commitments);

(ii) Annex 3A (Product Specific Rules of Origin);

(iii) a Party's Schedule in Annex 16A (Government Procurement Schedules);

(iv) Annex 31A (Rules of Procedure) or Annex 31B (Code of Conduct);

(v) Appendix 7A-a (Oenological Practices Authorised Under the Laws and Regulations of New Zealand as Referred to in Subparagraph 18(b) of Section A of Annex 7A (Wine and Distilled Spirits)); or

(vi) Annex 22A (Environmental Goods List); and

(h) take such other action in the exercise of its functions as the Parties may agree.

**Article 30.3**
**General Review**

1. The Parties shall undertake a general review of the Agreement with a view to furthering its objectives, every seven years following the date of its entry into force, unless the Parties agree otherwise.

2. The conduct of general reviews shall normally coincide with regular meetings of the Joint Committee.

3. In conducting a review pursuant to paragraph 1, the Joint Committee shall take into account:

(a) the work of all subsidiary bodies established under this Agreement;

(b) relevant developments in international fora;

(c) input sought from business, civil society groups, union groups, and Māori in the case of New Zealand, other interested parties, and members of the public.

**Article 30.4**
**Decision-Making and Rules of Procedure of the Joint Committee**

1. The Joint Committee shall take decisions on any matter within its functions by mutual agreement.

2. The Joint Committee shall meet within one year of the date of entry into force of this Agreement and then annually, or as otherwise mutually agreed by the Parties.

3. Meetings of the Joint Committee shall be co-chaired by representatives of the Parties and hosted alternately. Any necessary administrative support for the meetings of the Joint Committee shall be provided alternately.

4. Each Party shall be responsible for the composition of its delegation.

5. The Joint Committee and any subsidiary body established under this Agreement shall carry out its work through whatever means are appropriate, which may include electronic mail or videoconferencing.

6. The Joint Committee and any subsidiary body established under this Agreement may establish rules of procedures for the conduct of its work.

**Article 30.5**
**Contact Points**

1. Each Party shall, within 30 days of the date of entry into force of this Agreement, designate an overall contact point to facilitate communications between the Parties on any matter relating to this Agreement and notify the other Party of the contact details of that contact point. Each Party shall promptly notify the other Party of any change to those contact details.

2. Each Party shall promptly notify the other Party, in writing, of any changes to its overall contact point or any other contact point.

3. On the request of a Party, the overall contact point of the other Party shall identify the office or official responsible for a matter and assist, as necessary, in facilitating communication with the requesting Party.

## Article 30.6
## Exchange of Information

Further to Article 2.16 (Data Sharing on Preference Utilisation – National Treatment and Market Access for Goods), the Parties shall endeavour to cooperate to facilitate the identification and exchange of other information relevant to the effective monitoring of the functioning of this Agreement. Such cooperation may include:

(a) ad hoc discussions between expert-level representatives of the Parties;

(b) entering into arrangements to exchange information identified pursuant to this paragraph; and

(c) determining methods for interpreting and analysing that information.

## Article 30.7
## Domestic Engagement

1. Both Parties recognise the importance of promoting greater engagement and participation from a range of domestic stakeholders in the development and implementation of its trade policy.

2. In addition to this Chapter, there are provisions in other Chapters of this Agreement that seek to engage a range of domestic stakeholders in the operation and implementation of this Agreement, including where appropriate by consulting them and seeking their views. These include:

(a) Chapter 22 (Environment);

(b) Chapter 23 (Trade and Labour);

(c) Chapter 24 (Small and Medium-Sized Enterprises);

(d) Chapter 25 (Trade and Gender Equality);

(e) Chapter 26 (Māori Trade and Economic Cooperation); and

(f) Chapter 27 (Trade and Development).

## Article 30.8
## Inclusive Trade Sub-Committee

1. For the purposes of the effective implementation and operation of Chapter 24 (Small and Medium-Sized Enterprises), Chapter 25 (Trade and Gender

Equality), Chapter 26 (Māori Trade and Economic Cooperation), and Chapter 27 (Trade and Development), an Inclusive Trade Sub-Committee established under Article 30.9 (Sub-Committees) shall be composed of representatives of each Party or their designees, and with Māori in the case of New Zealand.

2. The functions of the Sub-Committee shall include:

(a) monitoring and reviewing the implementation and operation of Chapter 26 (Māori Trade and Economic Cooperation), Chapter 27 (Trade and Development), and provisions in other Chapters of this Agreement, where appropriate, relating to trade and development, Chapter 24 (Small and Medium-Sized Enterprises), and Chapter 25 (Trade and Gender Equality), and provisions in other Chapters relating to the objectives of and commitments in Chapter 25 (Trade and Gender Equality);

(b) making a recommendation or referring matters to the Joint Committee that the Sub-Committee considers appropriate, including for future cooperation set out in this Article;

(c) with respect to Chapter 26 (Māori Trade and Economic Cooperation):

(i) providing a forum to facilitate discussions on cooperation activities in Chapter 26 (Māori Trade and Economic Cooperation), and the exchange of information on the lessons learned through such activities;

(ii) cooperating with other subsidiary bodies established under this Agreement, as appropriate, on issues that may be relevant to Chapter 26 (Māori Trade and Economic Cooperation Chapter);

(iii) considering input from relevant experts or representatives of relevant organisations to Sub-Committee meetings on issues relevant to Chapter 26 (Māori Trade and Economic Cooperation);

(iv) committee functions are to be carried out in a manner consistent with Te Tiriti o Waitangi/The Treaty of Waitangi in the case of New Zealand, and in a manner sensitive to tikanga Māori;[1]

(d) with respect to Chapter 27 (Trade and Development):

[1] "Tikanga Māori" refers to Māori protocols, customs, and normal practice.

(i) mutually determining, facilitating and monitoring cooperative activities under Article 27.2 (Cooperation – Trade and Development), and discussing any relevant follow up actions;

(ii) sharing the outcomes of any monitoring conducted under Chapter 27 (Trade and Development);

(iii) cooperating with other subsidiary bodies established under this Agreement, as appropriate, to contribute to the advancement of trade and development outcomes under this Agreement; and

(iv) considering any recommendations received from the contact points established under Article 27.4 (Contact Points – Trade and Development);

(e) with respect to Chapter 25 (Trade and Gender Equality),

(i) determining, facilitating, and monitoring the cooperative activities described in Article 25.5 (Cooperation – Trade and Gender Equality) including those which build the evidence base for interventions that address the barriers that may exist for women in international trade. The activities shall be carried out with the inclusive participation of women;

(ii) sharing the outcomes of any analysis, research, or monitoring conducted under Chapter 25 (Trade and Gender Equality);

(iii) cooperating with other subsidiary bodies established under this Agreement, including through joint meetings or by inviting any member of a body to a meeting of the Sub-Committee as the Sub-Committee considers appropriate, on issues relating to gender equality or women's economic empowerment, while avoiding duplication of other bodies;

(iv) facilitating communication with and the participation of civil society, workers, women business owners, and entrepreneurs, and, in the case of New Zealand, wāhine Māori,[2] in the activities of the Inclusive Trade Sub-Committee, and seeking advice from appropriately qualified experts and stakeholders; and

(v) encouraging a gender perspective through the integration of gender-related monitoring, considerations, and activities across the implementation of this Agreement, including

[2] For greater certainty, "wāhine Māori" has the meaning given in Article 25.1 (Māori Terminology – Trade and Gender Equality).

through cooperation with other subsidiary bodies established under this Agreement, where appropriate;

(f) with respect to Chapter 24 (Small and Medium-Sized Enterprises), consider any recommendations received from the contact points established under Article 24.5 (SME Contact Points – Small and Medium-Sized Enterprises); and

(g) performing any other functions as the Parties may decide.

3. The Sub-Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as mutually agreed by the Parties. The Sub-Committee shall be co-chaired by representatives of each Party and may meet physically or virtually as mutually agreed.

4. The Sub-Committee may, on agreement of the Parties, hold a meeting to consider issues arising out of, exclusively, Chapter 25 (Trade and Gender Equality) or Chapter 27 (Trade and Development). In this case, only the representatives of the Parties responsible for the implementation and operation of the relevant Chapter may attend the meeting.

5. Any decisions or reports of the Sub-Committee shall be adopted by mutual agreement of the representative of the Parties.

6. The Sub Committee shall report to the Joint Committee with respect to its activities under this Article.

**Article 30.9**
**Sub-Committees**

1. The following sub-committees are hereby established under the auspices of the Joint Committee:

(a) the Trade in Goods Sub-Committee, the functions of which are set out in Article 2.17 (Trade in Goods Sub-Committee – National Treatment and Market Access for Goods);

(b) the Environment and Climate Change Sub-Committee, the functions of which are set out in Article 22.20 (Institutional Arrangements – Environment);

(c) the Inclusive Trade Sub-Committee, the functions of which are set out in Article 30.8 (Inclusive Trade Sub-Committee);

(d) the Labour Sub-Committee, the functions of which are set out in Article 23.17 (Labour Sub-Committee – Trade and Labour);

(e) the Sanitary and Phytosanitary Measures Sub-Committee, the functions of which are set out in Article 5.18 (Sanitary and Phytosanitary Measures Sub-Committee – Sanitary and Phytosanitary Measures); and

(f) the Services and Investment Sub-Committee, the functions of which are set out in Article 9.14 (Services and Investment Sub-Committee – Cross-Border Trade in Services).

**Article 30.10**
**Working Groups**

1. The following working groups are hereby established under the auspices of the Joint Committee:

   (a) the Intellectual Property Working Group, the functions of which are set out in Article 17.14 (Intellectual Property Working Group – Intellectual Property); and

   (b) the Government Procurement Working Group, the functions of which are set out in Article 16.22 (Government Procurement Working Group – Government Procurement).

2. The following working group is hereby established under the auspices of the Sanitary and Phytosanitary Measures Sub-Committee:

   (a) the Animal Welfare Working Group, the functions of which are set out in Article 6.5 (Animal Welfare Working Group – Animal Welfare).

3. The following working groups are hereby established under the auspices of the Services and Investment Sub-Committee:

   (a) the Financial Services Working Group, the functions of which are set out in Article 11.16 (Institutional – Financial Services); and

   (b) the Professional Services Working Group, the functions of which are set out in Article 9A.9 (Professional Services Working Group – Professional Services and Recognition of Professional Qualifications).

4. The following working groups are hereby established under the auspices of the Trade in Goods Sub-Committee:

   (a) the Rules of Origin and Customs and Trade Facilitation Working Group, the functions of which are set out in Article 3.17 (Rules of

Origin and Customs and Trade Facilitation Working Group – Rules of Origin and Origin Procedures); and

(b) the Wine and Distilled Spirits Working Group, the functions of which are set out in Section C (General Provisions – Wine and Distilled Spirits).

## ANNEX 31A

## RULES OF PROCEDURE

### I. General Provision

1. In the event of an inconsistency between these Rules of Procedure and any provisions in Chapter 31 (Dispute Settlement), the provisions of Chapter 31 (Dispute Settlement) shall prevail to the extent of the inconsistency.

### II. Notifications

2. Any written submission, request, notice, or other document in a proceeding transmitted by:

   (a) the panel shall be sent to both Parties at the same time;

   (b) a Party to the panel shall be copied to the other Party at the same time; and

   (c) a Party to the other Party shall be copied to the panel at the same time.

3. The notification to a Party of any document under Chapter 31 (Dispute Settlement), these Rules of Procedure or the Code of Conduct shall be addressed to that Party's designated office.

4. Any notification referred to under Rules 2 and 3 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of its sending. Unless proven otherwise, an e-mail message shall be deemed to be received on the same date of its sending. The date of sending shall be determined according to the time zone in the capital city of the sending Party.

5. 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 officially or by force majeure closed, the document may be delivered on the next business day.

6. Minor errors of a clerical nature in any written submission, request, notice, 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.

## III. Organisational Meeting

7. Unless the Parties agree otherwise, they shall meet with the panel within seven days of the establishment of the panel in order to determine such matters that the Parties or the panel deem appropriate, including:

   (a) the remuneration and expenses that shall be paid to the arbitrators and their assistants, in accordance with Part XV (Remuneration and Payment of Expenses) below; and

   (b) the timetable for the proceeding, setting forth inter alia precise dates for the filing of submissions and the date of the oral hearing.

8. Unless the Parties agree otherwise, this meeting shall not be required to be in person and can be conducted by any means, including video-conference, tele-conference, or computer links.

## IV. Timetable

9. Unless otherwise agreed by the Parties, the panel may, in consultation with the Parties, modify any time period established pursuant to these Rules of Procedure and make such other procedural or administrative adjustments as may be required in the proceeding.

## V. Written Submissions

10. Subject to Rule 7(b), the complaining Party shall deliver its initial written submission to the panel no later than 20 days after the establishment of the panel. The responding Party shall deliver its written counter-submission no later than 28 days after the date of receipt of the initial written submission.

11. With the agreement of the panel, within 10 days of the conclusion of a hearing, each Party may deliver to the panel and the other Party a supplementary written submission responding to any matter that arose during the hearing.

## VI. Operation of the Panel

12. The chair of the panel shall preside at all of its meetings. The panel may delegate to the chair authority to make administrative and procedural decisions.

13. Except as otherwise provided in these Rules of Procedure, the panel may conduct its activities by any means, including e-mail, telephone, video-conference, facsimile transmissions, or computer links.

14. The panel's deliberations shall be confidential. Only arbitrators 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.

15. The drafting of any report or decision shall remain the exclusive responsibility of the panel and must not be delegated.

## VII. Hearings

16. In accordance with Rule 7, the chair shall fix the time of the hearing in consultation with the Parties and other members of the Panel. The chair shall notify the Parties in writing of the details of the hearing including the date, time, and location.[1] Unless a Party disagrees, the Panel may decide not to convene a hearing.

17. Unless the Parties agree otherwise, the hearing shall be hosted by the responding Party. The responding Party shall be responsible for the logistical administration of the hearing, in particular the organisation of the venue, unless otherwise agreed.

18. No later than five days before the date of a hearing, each Party shall deliver to the panel and the other Party a list of the names of their representatives, advisers, or other delegates who will be attending the hearing.

19. The panel shall conduct the hearing in the following manner, setting time limits to ensure that it affords comparable time to the complaining Party and responding Party:

    Argument:

    (a) Opening oral statement and argument of the complaining Party; and

    (b) Opening oral statement and argument of the responding Party;

    Rebuttal Argument:

    (a) Reply of the complaining Party; and

    (b) Counter-reply of the responding Party;

    Closing statement:

    (a) Closing oral statement of the complaining Party; and

[1] For greater certainty, hearings may be held in person or by virtual means.

(b) Closing oral statement of the responding Party.

20. Each Party shall make available to the panel and to the other Party written versions of their oral statements within 10 days of the conclusion of the hearing.

21. The panel may direct questions to a Party at any time during the hearing. The panel may request, on its own initiative or at the request of a Party, that a Party make available documents or other information relevant to the dispute that are within its control or it is able to obtain by reasonable means, and may draw adverse inferences from a failure to comply with such request.

22. 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. A Party may comment on the transcript and the panel may consider those comments.

23. The panel may convene additional hearings if the Parties so agree.

24. All arbitrators shall be present at all hearings.[2] If a replacement arbitrator has been selected 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.

25. Unless the Parties agree otherwise, all hearings of the panel shall be open for the public to observe,[3] except that the panel shall close the hearing for the duration of any discussion of confidential information. Attendance in the hearing room shall be limited to approved persons.

## VIII. Questions of the Panel

26. The panel may at any time during the proceeding address questions in writing to a Party or both Parties. In the event that the panel addresses questions to one Party only, the panel shall provide a copy of the written questions to the other Party.

27. A Party to whom the panel addresses questions shall deliver a copy of any reply to the other Party and to the panel in accordance with the timetable established by the panel. The other Party shall be given the opportunity to provide comments on the reply.

[2] Except where, in accordance with paragraph 7 of Article 31.7 (Composition of a Panel), a panel comprises only of the chair of the original panel.

[3] The expression "open for the public to observe" does not mean 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 or at a later date.

## IX. No *Ex Parte* Communications

28. The panel shall not meet or contact a Party in the absence of the other Party.

29. Neither Party shall meet or contact any arbitrator in relation to the dispute in the absence of the other Party.

30. No arbitrator shall discuss any aspect of the subject matter of the proceeding with a Party in the absence of the other Party or the other arbitrators.

## X. Amicus Curiae Submissions

31. The panel shall have the authority to accept and consider amicus curiae submissions from interested persons and non-governmental entities, unless the Parties agree otherwise.

32. Any such submissions shall:

    (a) be made within 14 days of the provision of public notice pursuant to Rule 36;

    (b) be concise and in no case longer than 15 typed pages, including any annexes; and

    (c) be directly relevant to the factual or legal issues under consideration by the panel.

33. The submission shall contain a description of the person, whether natural or legal, making the submission, including their nationality or place of establishment, the nature of their activities and the source of their financing, and specify the nature of their interest in the panel proceeding.

34. The panel shall promptly provide to the Parties for comment copies of any amicus curiae submissions it receives. Comments of a Party must be submitted to the panel within 10 days of receiving a copy of an amicus curiae submission from the panel.

35. The panel shall list in its report all the amicus curiae submissions that it has received but shall not be obliged to address the factual or legal arguments made in such submissions. The panel shall take into account any comments made by a Party pursuant to Rule 34.

36. To facilitate the submission of amicus curiae submissions, each Party shall, within five days of the date of the organisational meeting, provide public notice of:

    (a) the establishment of the panel;

(b) the opportunity for interested persons and non-governmental entities to submit amicus curiae submissions; and

(c) the procedures and requirements for making such submissions, consistent with Rule 32.

## XI. Technical Advice

37. On the request of a Party, or on its own initiative, the panel may seek information or technical advice from any expert that it deems appropriate. Any information or technical advice so obtained shall be submitted 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.

38. The panel shall consult the Parties to determine whether the information or technical advice should be sought, and from which expert it should be sought.

39. A Party may, after consulting with the other Party, designate a report obtained under Rule 37, or any part of it, as confidential information.

40. Any expert selected under Rule 37 shall be subject to the provisions of Section H (Responsibilities of Experts, Assistants, Staff, and ADR Providers) of the Code of Conduct.

## XII. Treatment of Confidential Information

41. Rules 42 to 45 and Appendix 31A-a (Confidential Information) shall apply to confidential information that a Party submits during consultations, proceedings, or procedures that involve good offices, conciliation, or mediation.

42. Each Party and its approved persons shall treat as confidential the information submitted by the other Party that the submitting Party has designated as confidential information. Each Party shall maintain the confidentiality of the panel's hearings to the extent that the panel holds the hearing in closed session under Rule 25.

43. After consulting the Parties, the panel may modify or waive any part of the procedures set out in Appendix 31A-a (Confidential Information) or establish additional procedures that it considers necessary to protect confidential information.

44. Where a Party submits a confidential version of its written submissions to the panel, it shall also, on the request of the other Party, provide a non-

confidential summary of the information contained in its submissions that could be disclosed to the public within 15 days of the conclusion of the hearing.

45. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public.

## XIII. Public Release of Documents

46. Subject to the protection of confidential information:

(a) a Party making a request pursuant to Article 31.5 (Consultations) or Article 31.6 (Establishment of a Panel) shall release a copy of the request to the public within seven days of making that request;

(b) each Party shall make its best efforts to release to the public any written submissions, written versions of oral statements, and written responses to requests or questions from the panel, as soon as possible after such documents are submitted to the panel and, if not already released, shall do so by the time the final report is issued to the Parties; and

(c) each Party shall release a copy of the final report to the public within 15 days after it is issued to the Parties.

47. No Party shall publicly disclose the contents of an interim report presented to the Parties pursuant to Article 31.12 (Reports of a Panel) or the contents of any comments made on an interim report.

## XIV. Replacement of Arbitrators

48. If an arbitrator withdraws or becomes unable to act, they shall notify the Parties and a replacement shall be appointed in accordance with Article 31.7 (Composition of a Panel). The replacement arbitrator shall have all the powers and duties of the original arbitrator.

49. The notification in Rule 48 shall be sent to the Parties' designated offices.

50. If a Party considers that an arbitrator should be replaced because they do not comply with the requirements of the Code of Conduct, that Party shall notify the other Party within seven days of the day it obtained sufficient evidence of the arbitrator's alleged failure to comply with the requirements of the Code of Conduct.

51. The Parties shall inform the arbitrator of the alleged failure and may request the arbitrator to take steps to rectify the failure. If the Parties agree, they may

remove the arbitrator and select a new arbitrator in accordance with Article 31.7 (Composition of a Panel).

52. If the Parties fail to agree on the need to replace an arbitrator other than the chair of the panel, a Party may refer this matter to the chair of the panel, whose decision shall be final. If the chair finds that the arbitrator does not comply with the requirements of the Code of Conduct, the new arbitrator shall be appointed in accordance with Article 31.7 (Composition of a Panel).

53. If the Parties fail to agree on the need to replace the chair of the panel, a Party may refer the matter to the Secretary-General of the Permanent Court of Arbitration, whose decision shall be final. If the Secretary-General of the Permanent Court of Arbitration finds that the chair does not comply with the requirements of the Code of Conduct, the new chair shall be appointed in accordance with Article 31.7 (Composition of a Panel).

54. The proceeding shall be suspended for the period of time taken to carry out the procedures in Rules 48 to 53.

## XV. Remuneration and Payment of Expenses

55. The remuneration and expenses of the arbitrators and their assistants shall be borne by the Parties in equal share.

56. Unless the Parties agree otherwise, remuneration for arbitrators shall be paid at the rate for non-governmental panellists used by the WTO on the date a Party makes a written request for the establishment of a panel under Article 31.6 (Establishment of a Panel).

57. Unless the Parties agree otherwise, the total remuneration for each arbitrator's assistant or assistants shall not exceed 50 per cent of the remuneration of that arbitrator.

58. 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 31.6 (Establishment of a Panel).

59. Each arbitrator 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.

60. If the panel seeks information or technical advice pursuant to Part XI (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.

61. If the Parties agree to undertake procedures listed under Article 31.20 (Good Offices, Conciliation, and Mediation), the amount and details of the remuneration and expenses an ADR provider is to receive shall be determined by the Parties and shall be borne by the Parties in equal share. ADR providers shall keep a record and render a final account to the Parties of all time devoted to and expenses incurred in connection with the procedures.

62. In case of resignation or removal of an arbitrator, assistant, expert, or ADR provider, 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 Rule 59, 60, or 61, as applicable.

## XVI. Time Periods

63. Where, by reason of the operation of Rule 5, the Parties receive the same document on a different date, the calculation of any time period which is dependent on the date of receipt shall be from the date the last Party received the document.

## APPENDIX 31A-a

## CONFIDENTIAL INFORMATION

1. An approved person shall take all necessary precautions to safeguard confidential information when a document containing the confidential information is in use or being stored. Each approved person must sign and submit to the panel the Declaration of Non-Disclosure set out in Appendix 31A-b (Declaration of Non-Disclosure).

2. Only approved persons may view or hear confidential information. No approved person who views or hears confidential information may disclose it, or allow it to be disclosed, to any individual other than another approved person.

3. An approved person who views or hears confidential information shall only use that information for the purposes of the proceeding.

4. The panel shall not disclose confidential information in its report, but may state conclusions drawn from that information in a way that does not disclose the confidential information.

## APPENDIX 31A-b

## DECLARATION OF NON-DISCLOSURE

1. I acknowledge having received a copy of the Rules of Procedure, which include rules governing the treatment of confidential information.

2. I acknowledge having read and understood the Rules of Procedure.

3. I agree to be bound by, and to adhere to, the Rules of Procedure and, accordingly, without limitation, to treat as confidential all confidential information that I may view or hear in accordance with the Rules of Procedure and to use that information solely for the purposes of the panel proceeding.

Declared on this ___ day of ____, 20____.
By:
Signature _____

Name _____

## ANNEX 31B

## CODE OF CONDUCT

### Section A
### Provision of Code of Conduct

1. The Parties shall provide this Code of Conduct and the Initial Disclosure Statement set out in Appendix 31B-a (Initial Disclosure Statement) to a candidate when they are requested to serve as an arbitrator under Article 31.7 (Composition of a Panel), an expert when they are requested to provide information or technical advice under Rule 38 of the Rules of Procedure, and an ADR provider when they are requested to provide their services under Article 31.20 (Good Offices, Conciliation, and Mediation).

### Section B
### Governing Principles

2. In order to preserve the integrity and impartiality of the dispute settlement process, each candidate and arbitrator shall:

   (a) avoid impropriety or the appearance of impropriety;

   (b) be independent and impartial;

   (c) avoid direct or indirect conflicts of interest; and

   (d) observe high standards of conduct.

### Section C
### Disclosure Obligations

3. Prior to confirmation of their appointment as an arbitrator in a dispute under this Agreement, a candidate requested to serve as an arbitrator 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 become aware of any such interests, relationships, and matters.

4. Without limiting paragraph 3, candidates shall disclose, at a minimum, the following interests, relationships, and matters:

   (a) any financial interest of the candidate in:

      (i) the proceeding or its outcome; and

(ii) an administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

(b) any financial interest of the candidate's employer, business partner, business associate, or family member in:

(i) the proceeding or in its outcome; and

(ii) an administrative proceeding, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

(c) 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

(d) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same matters.

5. 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' designated offices no later than five days after they have been contacted to serve as an arbitrator.

6. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 4 and shall disclose them promptly, in writing, to the Parties for their consideration. The obligation to disclose is a continuing obligation, which requires an arbitrator to disclose any such interests, relationships, and matters that may arise during any stages of the proceeding.

7. In the event of any uncertainty regarding whether an interest, relationship, or matter must be disclosed under paragraphs 3 to 6, a candidate or arbitrator should err in favour of disclosure.

## Section D
## Performance of Duties

8. Once appointed, an arbitrator shall be available to perform and shall perform their duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

9. An arbitrator shall consider only those issues raised in the proceeding and necessary to make a decision and shall not delegate the duty to decide to any other person.

10. An arbitrator shall take all appropriate steps to ensure that their assistants and staff are aware of this Code of Conduct and comply with paragraph 24 of Section H (Responsibilities of Experts, Assistants, Staff, and ADR Providers).

11. An arbitrator shall not engage in *ex parte* contact concerning the proceeding.

12. A candidate or arbitrator shall not communicate matters concerning actual or potential violations of this Code of Conduct, unless the communication is to the Parties or is necessary to ascertain whether that candidate or arbitrator has violated or may violate the Code of Conduct.

## Section E
## Independence and Impartiality of Arbitrators

13. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an appearance of impropriety or an apprehension of bias.

14. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, or loyalty to a Party.

15. An arbitrator 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 their duties.

16. An arbitrator shall not use their position on the panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence them. An arbitrator shall endeavour to prevent or discourage others from representing themselves as being in such a position.

17. An arbitrator shall not allow past or existing financial, business, professional, family, or social relationships or responsibilities to influence their conduct or judgment.

18. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.

## Section F
## Duties of Former Arbitrators

19. All former arbitrators shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision of the panel.

## Section G
## Maintenance of Confidentiality

20. An arbitrator or former arbitrator 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 another.

21. An arbitrator shall not disclose a panel report or parts thereof issued under Chapter 31 (Dispute Settlement) prior to release of the final report by the Parties. An arbitrator or former arbitrator shall not at any time disclose which arbitrators are associated with majority or minority opinions in a proceeding.

22. An arbitrator or former arbitrator shall not at any time disclose the deliberations of a panel, or any arbitrator's view.

23. An arbitrator shall not make a public statement regarding the merits of a pending proceeding.

## Section H
## Responsibilities of Experts, Assistants, Staff, and ADR Providers

24. Section B (Governing Principles), Section C (Disclosure Obligations), and Section G (Maintenance of Confidentiality) of this Code of Conduct shall also apply to experts, assistants, and staff, mutatis mutandis.

25. Section B (Governing Principles), Section C (Disclosure Obligations), paragraphs 9 to 12 of Section D (Performance of Duties), Section E (Independence and Impartiality of Arbitrators), Section F (Duties of Former Arbitrators), and Section G (Maintenance of Confidentiality) of this Code of Conduct shall also apply to ADR providers, mutatis mutandis.

## APPENDIX 31B-a

## INITIAL DISCLOSURE STATEMENT

1. I acknowledge having received a copy of the Code of Conduct for dispute settlement under Chapter 31 (Dispute Settlement) of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand.

2. I acknowledge having read and understood 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, domestic judicial proceeding, or 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, domestic judicial proceeding, or international dispute settlement proceeding that involves issues that may be decided in the proceeding are as follows:

   (e) My past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, are as follows:

   (f) The past or existing 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) are as follows:

Signed on this _____ day of _____, 20__.
By:
Signature_____
Name_____

# CHAPTER 31

# DISPUTE SETTLEMENT

## Article 31.1
## Definitions

For the purposes of this Chapter, including Annex 31A (Rules of Procedure) and Annex 31B (Code of Conduct):

**"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 31.20 (Good Offices, Conciliation, and Mediation);

**"approved person"** means an individual who is:

(a) an authorised representative of a Party designated in accordance with Rule 18 of the Rules of Procedure;

(b) an arbitrator;

(c) an assistant; or

(d) an expert;

**"arbitrator"** means a member of a panel appointed in accordance with Article 31.7 (Composition of a Panel);

**"assistant"** means a person who, under the terms of appointment and under the direction of an arbitrator or ADR provider, conducts research or provides assistance to that arbitrator or ADR provider;

**"candidate"** means an individual who is requested to serve as an arbitrator under Article 31.7 (Composition of a Panel);

**"Code of Conduct"** means the code of conduct referred to in Article 31.23 (Rules of Procedure and Code of Conduct) and set out in Annex 31B (Code of Conduct);

**"complaining Party"** means the Party that requests consultations under Article 31.5 (Consultations);

**"confidential information"** means information designated as such by a Party;

**"designated office"** means the office designated in accordance with Article 31.17 (Administration of the Dispute Settlement Procedure);

**"document"** includes any written matter submitted, delivered, or issued in the course of the panel proceeding, whether in paper or electronic form;

**"expert"** means an individual or body providing technical information or advice in accordance with Rule 37 of the Rules of Procedure;

**"family member"** means the partner of an arbitrator or candidate; or a parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece, or nephew of the arbitrator or candidate or partner of the arbitrator or candidate including whole and half blood relatives and step relatives; or the partner of such an individual. A family member also includes any resident of an arbitrator's or candidate's household whom the arbitrator or candidate treats as a member of their family;

**"information"** means information, however recorded or stored, including information contained in a paper document, electronic file, or oral information;

**"non-business day"** means, with regard to a Party, Saturday, Sunday, and any other day officially designated by that Party as a public holiday and notified to the other Party's designated office;

**"panel"** means a panel established under Article 31.6 (Establishment of a Panel);

**"proceeding"** means the proceeding of the panel, unless otherwise specified;

**"responding Party"** means the Party to which the request for consultations is made under Article 31.5 (Consultations);

**"Rules of Procedure"** means the rules of procedure referred to in Article 31.23 (Rules of Procedure and Code of Conduct) and set out in Annex 31A (Rules of Procedure); and

**"staff"** means, in respect of an arbitrator or ADR provider, natural persons under the direction and control of the arbitrator or ADR provider, other than assistants.

## Article 31.2
## Objective

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

## Article 31.3
## Cooperation

The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation, consultations, or

other means to arrive at a mutually satisfactory resolution of any matter that might affect its operation or application.

**Article 31.4**
**Scope**

1. 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 interpretation or application of this Agreement wherever a Party considers that:

   (a) an actual or proposed measure of the other Party is inconsistent with its obligations under this Agreement;

   (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or

   (c) any benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 9 (Cross-Border Trade in Services), or Chapter 16 (Government Procurement) is being nullified or impaired as a result of the application of any actual or proposed measure, whether or not that measure is consistent with this Agreement.

2. This Chapter shall apply subject to those special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

**Article 31.5**
**Consultations**

1. Each Party shall accord adequate opportunity for consultations with respect to any matter referred to in Article 31.4 (Scope). Any differences shall, as far as possible, be settled by consultation between the Parties in good faith, with a view to reaching a mutually agreed solution.

2. A Party may request consultations pursuant to paragraph 1 by delivering a written request to the other Party, setting out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and the legal basis for the complaint.

3. The responding Party shall reply to the request in writing within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

(a) 15 days after the date of receipt of the request for urgent matters; or

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

4. Unless the Parties agree otherwise, consultations shall be deemed concluded within:

(a) 30 days of the date of receipt of the request for consultations regarding urgent matters; or

(b) 60 days of the date of receipt of the request for consultations regarding all other matters.

5. The Parties shall make every effort to reach a mutually agreed solution of any matter through consultations. To this end, each Party shall:

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

(b) treat any information exchanged in the course of consultations which is designated by a Party as confidential or proprietary in nature, on the same basis as the Party providing the information; and

(c) 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.

6. Consultations may be held in person or by any technological means available to the Parties. If the consultations are held in person, they shall be held in the capital of the responding Party, unless the Parties agree otherwise.

7. Consultations, and in particular, positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of a Party in any further proceedings.

8. A Party may request the other Party to make available for the consultations personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

## Article 31.6
## Establishment of a Panel

1. The complaining Party may request the establishment of a panel to consider a dispute arising under this Agreement if:

   (a) the responding Party does not reply to a request for, or enter into, consultations within the time period specified under paragraph 3 of Article 31.5 (Consultations);

   (b) the Parties agree not to enter into consultations; or

   (c) the Parties fail to resolve the dispute through consultations within the time period specified in paragraph 4 of Article 31.5 (Consultations).

2. The request for establishment of a panel shall be made in writing to the responding Party. In the request, the complaining Party shall set out the reasons for the request sufficient to present the problem clearly, including by identifying:

   (a) the specific measure at issue;

   (b) the legal basis for the complaint, including the provisions of this Agreement alleged to have been breached;

   (c) any other relevant provisions;

   (d) whether there is a claim for nullification and impairment; and

   (e) the factual basis for the complaint.

3. Notwithstanding paragraphs 1 and 2, a panel cannot be established to review a proposed measure.

## Article 31.7
## Composition of a Panel

1. The panel shall be composed of three arbitrators.

2. Each Party shall appoint an arbitrator within 15 days of the receipt of the request to establish a panel, and shall at the same time nominate up to three candidates to serve as the third arbitrator who shall be the chair of the panel.

3. The Parties shall appoint by common agreement the chair within 30 days of the receipt of the request to establish a panel, taking into account the candidates nominated pursuant to paragraph 2.

4. The chair shall not be a national of, nor have his or her usual place of residence in, nor be employed by, a Party.

5. If all three members of the panel have not been appointed in accordance with paragraphs 2 and 3 within 30 days of receipt of the request to establish a panel, a Party may request the Secretary-General of the Permanent Court of Arbitration to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under paragraph 2 shall also be provided to the Secretary-General of the Permanent Court of Arbitration, and may be used in making the required appointments.

6. The date of establishment of the panel shall be the date on which the last arbitrator is appointed.

7. Where the original panel is reconvened for the purposes of Article 31.13 (Compliance with the Final Report), Article 31.14 (Compliance Review), Article 31.15 (Temporary Remedies in Case of Non-Compliance), or Article 31.16 (Compliance Review After the Adoption of Temporary Remedies), the panel may comprise only the chair of the original panel if the Parties so agree.

**Article 31.8**
**Qualifications of Arbitrators**

All arbitrators shall:

(a) have demonstrated expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be independent of, and not be affiliated with or take instructions from, a Party;

(c) serve in their individual capacities and not take instructions from any organisation or government with regards to matters related to the dispute; and

(d) comply with the Code of Conduct.

**Article 31.9**
**Functions of a Panel**

1. The function of a panel established pursuant to Article 31.6 (Establishment of a Panel) and Article 31.7 (Composition of a Panel) is to make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and to

make the findings and determinations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. A panel shall be established, perform its functions, and conduct its proceedings in a manner consistent with this Agreement and the Rules of Procedure.

3. A panel shall take its decisions by consensus. If a panel is unable to reach consensus it may take its decisions by majority vote. A panel shall not disclose which arbitrators are associated with majority or minority opinions.

**Article 31.10**
**Terms of Reference of a Panel**

1. Unless the Parties agree otherwise within 20 days of the date of establishment of a panel, the terms of reference of the panel shall be to:

   (a) examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 31.6 (Establishment of a Panel);

   (b) make findings and determinations, together with the reasons therefor; and

   (c) issue a written report in accordance with Article 31.12 (Reports of a Panel).

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period specified in paragraph 1.

**Article 31.11**
**Rules of Interpretation of a Panel**

1. The panel shall interpret this Agreement in accordance with the customary rules of treaty interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties* done at Vienna on 23 May 1969. The panel shall also consider relevant interpretations in panel and Appellate Body reports adopted by the Dispute Settlement Body of the WTO.

2. The findings and determinations of the panel cannot add to or diminish the rights and obligations provided in this Agreement.

**Article 31.12**
**Reports of a Panel**

1. The reports of the panel shall be drafted without the presence of the Parties.

2. The panel shall base its reports on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and on any information or advice it has obtained in accordance with Rule 37 of the Rules of Procedure.

3. The panel shall present to the Parties its initial report within 130 days of the date of establishment of the panel, or in cases of urgency, within 70 days of the date of establishment of the panel.

4. The initial report shall contain:

   (a) findings of fact;

   (b) the determination of the panel as to whether:

      (i) the measure at issue is inconsistent with obligations under this Agreement;

      (ii) a Party has otherwise failed to carry out its obligations under this Agreement; or

      (iii) a Party's measure is causing nullification or impairment;

   (c) any other determination requested in the terms of reference; and

   (d) the reasons for the findings and determinations.

5. In exceptional cases, 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 issue its report. The panel shall not exceed an additional period of 30 days.

6. A Party may submit written comments on the initial report to the panel within 16 days of receiving the initial report.

7. After considering any written comments from the Parties, the panel may modify its report and make any further examination it considers appropriate.

8. The panel shall present its final report to the Parties, which shall include any dissenting opinion, within 30 days of the date of presentation of the interim report.

9. If in its final report the panel finds that a Party's measure is inconsistent with this Agreement, or is causing nullification or impairment without being inconsistent with this Agreement, it shall include in its findings and determinations a requirement to remove the inconsistency or, in the latter case, to make a mutually satisfactory adjustment in respect of the nullification or impairment.[1]

10. The final report of the panel shall be final and binding on the Parties.

**Article 31.13**
**Compliance with the Final Report**

1. The responding Party shall take any measure necessary to comply promptly and in good faith with the final report pursuant to Article 31.12 (Reports of a Panel).

2. Where it is not practicable to comply immediately, the responding Party shall, within 30 days of the date of issuance of the final report, notify the complaining Party of the length of the reasonable period of time it requires to comply with the final report. The Parties shall endeavour to agree on the length of the reasonable period of time.

3. If the Parties are unable to agree on the reasonable period of time within 30 days of the date of issuance of the final report, the complaining Party may request the original panel[2] to determine the length of the reasonable period of time.

4. The panel shall notify its decision, together with the reasons therefor, to the Parties within 40 days of the date of the request.

5. The reasonable period of time, where determined by the panel, shall not exceed 15 months from the date of issuance of the final report to the Parties. However, that time may be shorter, depending upon the particular circumstances of the dispute. The length of the reasonable period of time may be extended by mutual agreement of the Parties.

**Article 31.14**
**Compliance Review**

1. The responding Party shall, no later than the date of expiry of the reasonable period of time determined pursuant to Article 31.13 (Compliance with the

[1] A Party shall not be obliged to withdraw the measure that the panel finds is causing the nullification or impairment.
[2] For greater certainty, references in this Chapter to the original panel shall include any replacement arbitrators that have been designated pursuant to Part XIV of the Rules of Procedure.

Final Report), notify the complaining Party of any measures taken to comply with the final report.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the final report, the complaining Party may request, no later than 20 days after the responding Party's notification under paragraph 1, the original panel to examine the matter.

3. The request referred to in paragraph 2 shall identify the issues with any measures taken to comply and the legal basis for the complaint, including, where relevant, the provisions of this Agreement alleged to have been breached and to be addressed by the panel, sufficient to present the problem clearly.

4. The panel shall provide its compliance report to the Parties no later than 90 days after the date of referral of the matter.

5. In exceptional cases, if the panel considers that it cannot provide its compliance report within the time period specified in paragraph 4, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. The panel shall not exceed an additional period of 30 days.

## Article 31.15
## Temporary Remedies in Case of Non-Compliance

1. If:

   (a) the responding Party fails to notify any measure taken to comply with the final report no later than the date of expiry of the reasonable period of time determined pursuant to Article 31.13 (Compliance with the Final Report);

   (b) the responding Party notifies the complaining Party in writing that it does not intend to comply with the final report, or that it is impracticable to do so within the reasonable period of time determined pursuant to Article 31.13 (Compliance with the Final Report); or

   (c) the panel finds, pursuant to Article 31.14 (Compliance Review), that compliance with the final report has not been achieved or that the measure taken to comply is inconsistent with this Agreement,

   the responding Party shall, if requested by the complaining Party, enter into consultations with the complaining Party with a view to agreeing on mutually acceptable compensation.

2. If, in any of the circumstances set out in subparagraphs 1(a) to 1(c), the complaining Party chooses not to request consultations or the Parties do not agree on compensation within 20 days of entering into consultations on compensation, the complaining Party may notify the responding Party in writing that it intends to suspend the application of concessions or other obligations under this Agreement.

3. A notification made pursuant to paragraph 2 shall specify the level of intended suspension of concessions or other obligations, which shall be equivalent to the level of nullification or impairment that is caused by the failure of the responding Party to comply with the final report.

4. In considering what concessions or other obligations to suspend under paragraph 2, the complaining Party shall apply the following principles and procedures:

   (a) the general principle is that the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that in which the panel has found an inconsistency with this Agreement or to have caused nullification or impairment;

   (b) if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may seek to suspend concessions or other obligations in other sectors. In the written notice referred to in paragraph 2, the complaining Party shall indicate the reasons on which its decision to suspend concessions or other obligations in a different sector is based; and

   (c) it shall only suspend concessions or other obligations that are subject to dispute settlement in accordance with Article 31.4 (Scope).

5. The complaining Party shall have the right to implement the suspension of concessions or other obligations 20 days after the date on which it provides notice under paragraph 2, unless the responding Party has requested the original panel to examine the matter pursuant to paragraphs 6 and 7.

6. If the responding Party considers that the intended level of suspension of concessions or other obligations is not equivalent to the nullification or impairment or that the complaining Party has failed to follow the principles and procedures set out in paragraph 4, it may request in writing, no later than 10 days after the date of receipt of the notification referred to in paragraph 2, the original panel to examine the matter. The panel shall notify its decision to the Parties no later than 90 days after the date of the request. In exceptional cases, if the panel considers that it cannot notify its decision within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its decision. The panel shall not exceed an additional period of 30 days. Concessions or other obligations shall not be

suspended until the panel has notified its decision. Any suspension of concessions or other obligations shall be consistent with the panel's decision.

7. The panel, acting pursuant to paragraph 6, shall not examine the nature of the concessions or other obligations to be suspended, but shall determine whether the level of that suspension is equivalent to the level of nullification or impairment. The panel may also determine if the proposed suspension of concessions or other obligations is allowed under this Agreement. However, if the matter referred pursuant to paragraph 6 includes a claim that the principles and procedures set forth in paragraph 4 have not been followed, the panel shall examine that claim.

8. Any compensation or suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the responding Party is found, pursuant to Article 31.16 (Compliance Review After the Adoption of Temporary Remedies), to have complied with the final report, or until the Parties have reached a mutually agreed solution. None of these measures is preferred to full compliance with the final report.

## Article 31.16
## Compliance Review After the Adoption of Temporary Remedies

1. On notification by the responding Party to the complaining Party of the measures taken to comply with the final report and the complaining Party confirming, within 30 days of the notification, that the measures taken achieve compliance:

   (a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 31.15 (Temporary Remedies in Case of Non-Compliance), the complaining Party shall terminate the suspension of concessions or other obligations no later than 30 days after the date the complaining Party confirms it agrees that the final report has been complied with; or

   (b) in a situation where mutually acceptable compensation has been agreed, the responding Party shall terminate the application of that compensation no later than 30 days after the date the complaining Party confirms it agrees that the final report has been complied with.

2. If the Parties do not reach an agreement on whether the measures notified in accordance with paragraph 1 achieve compliance with the final report or are consistent with this Agreement within 30 days of the date of notification by the responding Party of the measures taken to comply with the report, a Party may request in writing the original panel to examine the matter.

3. The panel shall notify its decision to the Parties within 90 days of the date of the request. In exceptional cases, if the panel considers that it cannot notify its decision within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its decision. The panel shall not exceed a further period of 30 days.

4. If the panel decides that the measures notified in accordance with paragraph 1 achieve compliance with the final report or are consistent with this Agreement, the suspension of concessions or other obligations, or the application of the compensation, shall be terminated no later than 30 days after the date of the decision. If the panel decides that the measures notified in accordance with paragraph 1 do not achieve compliance with the final report or are inconsistent with this Agreement, the suspension of concessions or other obligations, or the application of the compensation, may continue. Where relevant, the level of suspension of concessions or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

## Article 31.17
## Administration of the Dispute Settlement Procedure

1. Each Party shall:

   (a) designate an office that shall be the Party's point of contact, and which shall be responsible for providing administrative assistance to panels established under Article 31.6 (Establishment of a Panel); and

   (b) notify the other Party of the location of its designated office by the date of entry into force of this Agreement.

2. Notwithstanding paragraph 1, the Parties may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

## Article 31.18
## Choice of Forum

1. Subject to paragraph 3, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are party, including the WTO Agreement.

2. If a dispute regarding the same matter arises under this Agreement and under another international agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular matter referred to in paragraph 2, that Party shall not initiate dispute settlement proceedings in another forum with respect to that matter unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.

4. For the purposes of paragraph 3, the complaining Party shall be deemed to have selected the forum when it has requested the establishment of a panel under this Agreement, or the other international agreement or, where panel procedures are not provided for, when a Party commences a dispute under the dispute settlement procedures in the relevant international agreement.

## Article 31.19
## Cases of Urgency

1. Cases of urgency means those cases which concern goods that rapidly lose their quality or commercial value in a short period of time.

2. If the Parties disagree on whether a dispute concerns a case of urgency, on the request of a Party, the panel shall decide, within 15 days of the request, whether a dispute concerns a case of urgency.

## Article 31.20
## Good Offices, Conciliation, and Mediation

1. The Parties may at any time agree to voluntarily undertake good offices, conciliation, or mediation. These procedures may begin at any time[3] and may be terminated at any time by a Party.

2. If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the dispute proceeds for resolution before a panel.

3. Procedures that involve good offices, conciliation, or mediation and in particular positions taken by the Parties during these procedures shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.

## Article 31.21
## Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 31.4 (Scope).

[3] For greater certainty, this includes both before, during, and after a request for consultations is made pursuant to Article 31.5 (Consultations).

2. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party in writing of any measures taken to implement the mutually agreed solution.

## Article 31.22
## Suspension and Termination of Proceedings

1. On the joint request of the Parties, the panel shall suspend the proceedings at any time for a period agreed by the Parties not exceeding 18 consecutive months from the date of that agreement. In the event of that suspension, the relevant time periods shall be extended by the time period for which the panel proceedings were suspended.

2. The panel shall resume the proceedings at any time on the joint request of the Parties or at the end of the agreed suspension period on the written request of a Party. The request shall be notified to the panel, as well as to the other Party, where applicable.

3. If the panel proceedings have been suspended for more than 18 consecutive months, the authority of the panel shall lapse and the panel proceedings shall be terminated, unless the Parties agree otherwise.

4. The Parties may agree at any time to terminate the panel proceedings. The Parties shall jointly notify that agreement to the panel.

## Article 31.23
## Rules of Procedure and Code of Conduct

The proceedings provided for in this Chapter shall be conducted in accordance with the Rules of Procedure and the Code of Conduct, unless the Parties agree otherwise.

## Article 31.24
## Time Periods

Any time period referred to in this Chapter, the Rules of Procedure, or the Code of Conduct may be modified for a dispute by agreement of the Parties. The panel may at any time propose to the Parties to modify any time period, stating the reasons for the proposal.

**Article 31.25**
**Expenses**

Each Party shall bear the cost of its own participation in the proceeding. Remuneration and payment of expenses will be in accordance with the Rules of Procedure.

# CHAPTER 32

# GENERAL EXCEPTIONS AND GENERAL PROVISIONS

## Article 32.1
## General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Animal Welfare), Chapter 7 (Technical Barriers to Trade), Articles 14.5 (Market Access – Investment) to Article 14.9 (Senior Management and Boards of Directors – Investment), Chapter 15 (Digital Trade), and Chapter 19 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Domestic Regulation), Chapter 11 (Financial Services), Chapter 12 (Telecommunications), Chapter 13 (Temporary Entry of Business Persons), Articles 14.5 (Market Access – Investment) to Article 14.9 (Senior Management and Boards of Directors – Investment), Chapter 15 (Digital Trade), and Chapter 19 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b), and (c) of Article XIV of GATS including its footnotes are incorporated into and made part of this Agreement, *mutatis mutandis*.

3. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 and Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health and measures necessary to mitigate climate change, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.[1]

4. For the purposes of this Agreement, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods or services and investment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national works or specific sites of historical or archaeological value, or to support

[1] "non-living exhaustible natural resources" includes clean air and a global atmosphere with safe levels of greenhouse gases.

creative arts[2] of national value. This paragraph shall not apply to Chapter 17 (Intellectual Property).

5. Nothing in this Agreement shall be construed to prevent a Party from taking action, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO or is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which the Party taking action and the Party against which the action is taken are party.

**Article 32.2**
**Security Exceptions**

Nothing in this Agreement shall be construed to:

(a) require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests; or

(b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

**Article 32.3**
**Measures to Safeguard the Balance of Payments**

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 including the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, adopt restrictive import measures;

(b) in the case of services, in accordance with GATS, adopt or maintain restrictions on trade in services on which it has undertaken commitments, including on payments or transfers for transactions related to those commitments; and

[2] "creative arts" include ngā toi Māori (Māori arts), the performing arts – including theatre, dance, and music, haka (traditional Māori posture dance), waiata (song or chant) – visual arts and craft such as painting, sculpture, whakairo (carving), raranga (weaving), and tā moko (traditional Māori tattoo), literature, film and video, language arts, creative online content, indigenous traditional practice and contemporary-cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution, and interpretation of the arts; and the study and technical development of these art forms and activities.

(c) in the case of investments, adopt or maintain restrictions with regard to the transfer of funds related to investment, including those on capital account and the financial account.

2. Restrictions adopted or maintained under subparagraphs 1(b) or 1(c) shall:

(a) be consistent with the *Articles of Agreement of the International Monetary Fund* ("IMF") done at New Hampshire on 22 July 1944;

(b) avoid unnecessary damage to the commercial, economic, and financial interests of the other Party;

(c) not be more restrictive than necessary to deal with the circumstances described in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;

(e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-party; and

(f) not be used to avoid necessary macroeconomic adjustment.

3. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be promptly notified to the other Party. Such notification shall be made within 30 days of the date any new or changed restrictions are adopted.

4. The Party adopting or maintaining any restrictions under paragraph 1 shall commence consultations with the other Party within 45 days of the date of notification referred to in paragraph 3, in order to review the measures adopted or maintained by it.

5. The consultations pursuant to paragraph 4 shall address the compliance of any restrictive measures with paragraphs 1 and 2. The Parties shall accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves, balance of payments, and their conclusions shall take into account the assessment by the IMF of the balance of payments and the external financial situation of the Party concerned.

## Article 32.4
## Taxation Measures

1. For the purposes of this Article:

**"competent authorities"** means:

(a) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;

(b) for the United Kingdom, the Commissioners for Revenue and Customs or their authorised representative; or

any successor of these competent authorities as notified in writing to the other Party;

**"tax convention"** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

**"taxes and taxation measures"** include excise duties, but do not include:

(a) a customs duty as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions); or

(b) the measures listed in subparagraphs (b) and (c) of that definition.

2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

3. Nothing in this Agreement shall affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.

4. In the case of a tax convention between 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 competent authorities of the Parties. The competent authorities of the Parties shall have six months after the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If the competent authorities agree, the period may be extended by no more than a further 12 months. No procedures concerning the measure giving rise to the issue may be initiated under Chapter 31 (Dispute Settlement) until the expiry of the six month period, or any other period as may have been agreed by the competent authorities. Any panel established to consider a dispute related to a taxation measure shall accept as binding a determination of the competent authorities of the Parties made under this paragraph.

5. Notwithstanding paragraph 3:

(a) Article 2.3 (National Treatment – National Treatment and Market Access for Goods) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and

(b) Article 2.15 (Export Duties, Taxes, and Other Charges – National Treatment and Market Access for Goods) shall apply to taxation measures.

6. Subject to paragraph 3:

(a) Article 9.5 (National Treatment – Cross-Border Trade in Services) and Article 11.5 (National Treatment – Financial Services) shall apply to taxation measures on income, capital gains, the taxable capital of corporations, or on the value of an investment or property[3] (but not on the transfer of that investment or property), that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Article 9.5 (National Treatment – Cross-Border Trade in Services), Article 9.6 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services), Article 11.5 (National Treatment – Financial Services), Article 14.6 (National Treatment – Investment), and Article 14.7 (Most-Favoured-Nation Treatment – Investment) shall apply to all taxation measures, other than those on income, capital gains, the taxable capital of corporations, the value of an investment or property[4] (but not on the transfer of that investment or property), or taxes on estates, inheritances, gifts, and generation-skipping transfers.

7. But nothing in the Articles referred to in paragraph 6 shall apply to:

(a) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(b) a non-conforming provision of any existing taxation measure;

(c) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(d) an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

[3] This is without prejudice to the methodology used to determine the value of such investment or property under the respective law of each Party.
[4] This is without prejudice to the methodology used to determine the value of such investment or property under the respective law of each Party.

(e) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including any taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods, or services of the other Party;[5] or

(f) a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, pension plan, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits, on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over that trust, plan, fund, or other arrangement.

8. Subject to paragraph 3, and without prejudice to the rights and obligations of a Party under paragraph 5, Article 14.8 (Performance Requirements – Investment) shall apply to taxation measures.

9. Article 14.14 (Expropriation and Compensation – Investment) applies to taxation measures.

**Article 32.5**
**Treaty of Waitangi**

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods, trade in services, and investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 31 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 31.6 (Establishment of a Panel – Dispute Settlement) may be requested by the other Party to determine only whether any measure (referred to in paragraph 1) is inconsistent with its rights under this Agreement.

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

## Article 32.6
## The National Health Service of the United Kingdom and the New Zealand Health and Disability System

The Parties recall the exclusions and exceptions in this Agreement that are applicable to the National Health Service of the United Kingdom,[6] and to the New Zealand health and disability system, including as set out in the relevant provisions of this Chapter, of Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Domestic Regulation), Chapter 14 (Investment), Chapter 16 (Government Procurement), Chapter 17 (Intellectual Property), and of Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures) and Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures).

## Article 32.7
## Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information, the disclosure of which would be contrary to its laws and regulations or impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

## Article 32.8
## Confidentiality

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

[6] For greater certainty, the National Health Service of the United Kingdom includes the National Health Service in England, Scotland, and Wales, and Health and Social Care in Northern Ireland.

# CHAPTER 33

# FINAL PROVISIONS

## Article 33.1
## Annexes, Appendices, and Footnotes

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

## Article 33.2
## Amended or Successor International Agreements

Where international agreements[1] are referred to or incorporated into this Agreement, in whole or in part, they shall be understood to include amendments thereto or their successor agreements entering into force for both Parties on or after the date of signature of this Agreement. If any matter arises regarding the implementation or application of this Agreement as a result of those amendments or successor agreements, the Parties may, on request of either Party, consult with each other with a view to finding a mutually satisfactory solution to this matter as necessary.

## Article 33.3
## Amendments

The Parties may agree, in writing, to amend this Agreement. Any amendment shall enter into force on a date agreed by the Parties, following delivery of the latter of the Parties' notifications confirming completion of their respective applicable internal requirements for entry into force, unless the Parties agree otherwise.

## Article 33.4
## Termination

This Agreement may be terminated by either Party on giving six months' written notice to the other Party, unless the Parties agree otherwise.

[1] The international agreements referred to in or incorporated into this Agreement shall be understood to include their most recent amendments having entered into force for both Parties before the date of signature of this Agreement.

## Article 33.5
## Laws and Regulations and their Amendments

Where reference is made in the Agreement to laws or regulations of a Party, those laws or regulations shall be understood to include amendments thereto and successor laws or regulations, unless otherwise provided in the Agreement.

## Article 33.6
## Territorial Extension

1. At the time of entry into force of this Agreement, or any time thereafter, this Agreement, or specified provisions of it, may be extended to such territories for whose international relations the United Kingdom is responsible as the Parties may agree.

2. For greater certainty, an extension in accordance with paragraph 1 may include extension of further provisions of this Agreement to the Bailiwicks of Guernsey and Jersey and the Isle of Man, as well as any extension to any other territories for whose international relations the United Kingdom is responsible, including, but not limited to, Gibraltar.

## Article 33.7
## Territorial Disapplication

1. At any time after entry into force of this Agreement, the United Kingdom may give written notice to New Zealand that this Agreement, or specified provisions of it, shall no longer apply to a territory for whose international relations the United Kingdom is responsible.

2. If the United Kingdom gives notice in writing pursuant to this Article, the Parties shall hold consultations promptly to agree a mutually satisfactory solution. Notwithstanding such consultations, if notice in writing is given that this Agreement as a whole is no longer to apply to a territory for whose international relations the United Kingdom is responsible, the notification shall take effect 12 months after the date on which the United Kingdom has provided written notice to New Zealand, or on such other date as the Parties may agree. Any amendment to this Agreement required as a result of the Agreement, or specified provisions of it, no longer applying to a territory for whose international relations the United Kingdom is responsible shall be made in accordance with Article 33.3 (Amendments).

## Article 33.8
## Entry into Force

Entry into force of this Agreement shall be subject to the completion of the necessary domestic procedures of each of the Parties. This Agreement shall enter into force on such date as the Parties may agree in writing, following delivery of the latter of the Parties' written notifications confirming completion of their respective applicable legal requirements and procedures for entry into force.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at on this day of 2022
in the English language.

**For the Government of the United Kingdom of Great Britain and Northern Ireland:**

**For the Government of New Zealand:**

# ANNEX I

## CROSS-BORDER TRADE IN SERVICES AND INVESTMENT NON-CONFORMING MEASURES

### Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 14.10 (Non-Conforming Measures – Investment), a Party's existing non-conforming measures that are not subject to some or all of the obligations imposed by:

   (a) Article 9.5 (National Treatment – Cross-Border Trade in Services) or Article 14.6 (National Treatment – Investment);

   (b) Article 9.6 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services) or Article 14.7 (Most-Favoured-Nation Treatment – Investment);

   (c) Article 9.4 (Market Access – Cross-Border Trade in Services) or Article 14.5 (Market Access – Investment);

   (d) Article 9.7 (Local Presence – Cross-Border Trade in Services);

   (e) Article 14.8 (Performance Requirements – Investment); or

   (f) Article 14.9 (Senior Management and Boards of Directors – Investment).

2. Each Schedule entry sets out the following elements:

   (a) **"Sector"** refers to the sector for which the entry is made;

   (b) **"Sub-Sector"**, where referenced, refers to the specific sub-sector for which the entry is made;

   (c) **"Industry Classification"**, where referenced, refers to the activity covered by the entry, according to the CPC, ISIC Rev. 3.1, or as expressly otherwise described in that entry:

      (i) **"ISIC Rev. 3.1"** means the *International Standard Industrial Classification of All Economic Activities* (Statistical Papers, Series M No. 4, ISIC Rev. 3.1, Statistical Office of the United Nations, New York, 2002); and

(ii) **"CPC"** means the *Provisional Central Product Classification* (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) **"Obligations Concerned"** specifies the obligations referred to in paragraph 1 that, pursuant to Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 14.10 (Non-Conforming Measures – Investment), do not apply to the listed measure or measures as indicated in the introductory note for each Party's Schedule;

(e) **"Level of Government"**, where referenced, indicates the level of government maintaining the listed measures;

(f) **"Measures"** identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the "Measures" element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) **"Description"**, as indicated in the introductory note for each Party's Schedule, either sets out the non-conforming measure or provides a general non-binding description of the measure for which the entry is made.

3. For greater certainty, if a Party adopts a new measure at a level of government different to the level of government originally specified in an entry, and this new measure effectively replaces (within the territory to which it applies) the non-conforming aspect of the original measure cited in the "Measures" element, the new measure shall be deemed to constitute "amendment" to the original measure within the meaning of subparagraph 1(c) of Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) and subparagraph 1(c) of Article 14.10 (Non-Conforming Measures – Investment).

4. The list of entries below does not include measures relating to qualification requirements and procedures, technical standards, authorisation requirements, and licensing requirements and procedures where they do not constitute a limitation within the meaning of Article 9.4 (Market Access – Cross-Border Trade in Services), Article 9.5 (National Treatment – Cross-Border Trade in Services), Article 9.7 (Local Presence – Cross-Border Trade in Services), Article 14.5 (Market Access – Investment), or Article 14.6 (National Treatment – Investment). These measures may include, in particular, the need to obtain a licence, to satisfy universal service

obligations, to have recognised qualifications in regulated sectors, to have completed a recognised period of training, to pass specific examinations, including language examinations, to fulfil a membership requirement of a particular profession, such as membership in a professional organisation, to have a local agent for service, or to maintain a local address, or any non-discriminatory requirements that certain activities may not be carried out in protected zones or areas. While not listed, such measures continue to apply.

5. For greater certainty, non-discriminatory measures do not constitute a market access limitation within the meaning of Article 9.4 (Market Access – Cross-Border Trade in Services) or Article 14.5 (Market Access – Investment) for any measure:

   (a) requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation, and telecommunications;

   (b) restricting the concentration of ownership to ensure fair competition;

   (c) seeking to ensure the conservation and protection of natural resources and the environment (including with respect to climate change), including a limitation on the availability, number, and scope of concessions granted, and the imposition of a moratorium or ban;

   (d) limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectra and frequencies; or

   (e) requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practise a certain profession such as lawyers or accountants.

6. A Party's entry for a requirement to have a local presence in the territory of that Party is made against Article 9.7 (Local Presence – Cross-Border Trade in Services), and not against Article 9.4 (Market Access – Cross-Border Trade in Services)or Article 9.5 (National Treatment – Cross-Border Trade in Services).

# ANNEX I

## CROSS-BORDER TRADE IN SERVICES AND INVESTMENT NON-CONFORMING MEASURES

### Schedule of New Zealand

### Introductory Notes

1. **"Description"** sets out the non-conforming measure to which the entry applies.

In accordance with Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 14.10 (Non-Conforming Measures – Investment), the Articles of this Agreement specified in the "Obligations Concerned" element of an entry do not apply to the laws, regulations, rules, procedures, decisions, administrative actions, practices, or other measures identified in the "Description" element of that entry.

**Entry No. I-1**

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|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Investment)<br>Market Access (Investment) |
| **Measures** | *Companies Act 1993*<br>*Financial Reporting Act 2013* |
| **Description** | <u>Investment</u><br><br>1. Consistent with New Zealand's financial reporting regime established under the *Companies Act 1993* and *Financial Reporting Act 2013*, the following types of entities are required to prepare financial statements that comply with generally accepted accounting practice, and have those statements audited and registered with the Registrar of Companies (unless exceptions to any of those requirements apply):<br><br>(a) any body corporate that is incorporated outside New Zealand ("overseas company") that carries on business in New Zealand within the meaning of the *Companies Act 1993* and which is "large";[1]<br><br>(b) any "large" New Zealand company in which shares that in aggregate carry the right to exercise or control the exercise of 25 per cent or more of the voting power at a meeting of the company are held by:[2] |

[1] An overseas company or subsidiary of an overseas company is "large" in respect of an accounting period if at least one of the following applies:

(a) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ$20 million; or

(b) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ$10 million.

An audit report is required unless the New Zealand business of that overseas company is not "large" and the law where the company is incorporated does not require an audit.

[2] A New Zealand company is "large" in respect of an accounting period if at least one of the following paragraphs applies:

(a) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ$60 million; or

(b) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ$30 million.

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| | (i) a subsidiary of a body corporate incorporated outside New Zealand;<br><br>(ii) a body corporate incorporated outside New Zealand; or<br><br>(iii) a person not ordinarily resident in New Zealand; or<br><br>(c) any "large" company incorporated in New Zealand which is a subsidiary of an overseas company.[3]<br><br>2. If a company is required to prepare financial statements and if they have one or more subsidiaries, they must, instead of preparing financial statements in respect of themselves, prepare group financial statements that comply with generally accepted accounting practice in relation to that group. This obligation does not apply if:<br><br>(a) that Company (A) is itself a subsidiary of a body corporate (B), where body corporate (B) is:<br><br>(i) incorporated in New Zealand; or<br><br>(ii) registered or deemed to be registered under Part 18 of the *Companies Act 1993*; and<br><br>(b) group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed; and<br><br>(c) a copy of the group financial statements referred to in subparagraph (b) and a copy of the auditor's report on those statements are |

[3] An overseas company or subsidiary of an overseas company is "large" in respect of an accounting period if at least one of the following applies:

(a) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ$20 million; or

(b) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ$10 million.

An audit report is required unless the New Zealand business of that overseas company is not "large" and the law where the company is incorporated does not require an audit.

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| | delivered for registration under the *Companies Act 1993* or for lodgement under another Act.<br><br>3. If an overseas company is required to prepare:<br><br>(a) financial statements under the *Companies Act 1993* it must also, if its New Zealand business meets the asset and revenue thresholds that apply in respect of "large" overseas companies, prepare, in addition to the financial statements of the large overseas company itself, financial statements for its New Zealand business prepared as if that business were conducted by a company formed and registered in New Zealand; and<br><br>(b) group financial statements under the *Companies Act 1993*, and if the group's New Zealand business meets the asset and revenue thresholds that apply in respect of "large" overseas companies, the group financial statements that are prepared must include, in addition to the financial statements of the group, financial statements for the group's New Zealand business prepared as if the members of the group were companies formed and registered in New Zealand. |

**Entry No. I-2**

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| **Sector** | Agriculture, including services incidental to agriculture |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Market Access (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment) |
| **Measures** | *Dairy Industry Restructuring Act 2001* |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>The *Dairy Industry Restructuring Act 2001* ("DIRA") and Regulations provide for the management of a national database for herd testing data. The DIRA:<br><br>(a) provides for the New Zealand government to determine arrangements for the database to be managed by another dairy industry entity. In doing so the New Zealand government may:<br><br>(i) take into account the nationality and residency of the entity, persons that own or control the entity, and the senior management and board of directors of the entity; and<br><br>(ii) restrict who may hold shares in the entity, including on the basis of nationality;<br><br>(b) requires the transfer of data by those engaged in herd testing of dairy cattle to the Livestock Improvement Corporation or successor entity;<br><br>(c) establishes rules regarding access to the database and that access may be denied on the basis that the database's intended use could be "harmful to the New Zealand dairy industry", which may take into account the |

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| | nationality or residency of the person seeking access. |

**Entry No. I-3**

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| **Sector** | Communication Services<br>Telecommunications |
| **Obligations Concerned** | National Treatment (Investment)<br>Senior Management and Boards of Directors (Investment) |
| **Measures** | *Constitution of Chorus Limited* |
| **Description** | <u>Investment</u><br><br>The Constitution of Chorus Limited requires New Zealand government approval for the shareholding of any single overseas entity to exceed 49.9 per cent.<br><br>At least half of the Board directors are required to be New Zealand citizens. |

**Entry No. I-4**

| | |
|---|---|
| **Sector** | Agriculture, including services incidental to agriculture |
| **Obligations Concerned** | Senior Management and Boards of Directors (Investment)<br>Market Access (Investment) |
| **Measures** | *Primary Products Marketing Act 1953* |
| **Description** | <u>Investment</u><br><br>Under the *Primary Products Marketing Act 1953*, the New Zealand Government may impose regulations to enable the establishment of statutory marketing authorities with monopoly marketing and acquisition powers (or lesser powers) for "primary products", being products derived from beekeeping, fruit growing, hop growing, deer farming or game deer, or goats, being the fur bristles or fibres grown by the goat.<br><br>Regulations may be issued under the *Primary Products Marketing Act 1953* concerning a broad range of the marketing authority's functions, powers, and activities. In particular, regulations may require that board members or personnel be nationals of or resident in New Zealand. |

**Entry No. I-5**

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|---|---|
| **Sector** | Air Transportation |
| **Obligations Concerned** | National Treatment (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Investment)<br>Performance Requirements (Investment) |
| **Measures** | *Civil Aviation Act 1990*<br>Ministerial Guidelines |
| **Description** | Investment<br><br>Only a licensed air transport enterprise may provide international scheduled air services as a New Zealand international airline. Licences to provide international scheduled air services as a New Zealand international airline are subject to certain conditions to ensure compliance with New Zealand's air services agreements. Such conditions may include requirements that an airline is substantially owned and effectively controlled by New Zealand nationals, has its principal place of business in New Zealand, or is subject to the effective regulatory control of the New Zealand Civil Aviation Authority. |

**Entry No. I-6**

| | |
|---|---|
| **Sector** | Air Transportation |
| **Obligations Concerned** | National Treatment (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Performance Requirements (Investment) |
| **Measures** | Constitution of Air New Zealand Limited |
| **Description** | <u>Investment</u><br><br>No one foreign national may hold more than 10 per cent of shares that confer voting rights in Air New Zealand unless they have the permission of the Kiwi Shareholder.[4] In addition:<br><br>(a) at least three members of the Board of Directors must be ordinarily resident in New Zealand;<br><br>(b) more than half of the Board of Directors must be New Zealand citizens;<br><br>(c) the Chairperson of the Board of Directors must be a New Zealand citizen; and<br><br>(d) the location of the Head Office of Air New Zealand, and its principal place of business, shall be in New Zealand. |

[4] The Kiwi Share in Air New Zealand is a single NZ$1 special rights convertible preference share issued to the Crown. The Kiwi Shareholder is Her Majesty the Queen in Right of New Zealand.

**Entry No. I-7**

| | |
|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Investment)<br>Market Access (Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment) |
| **Measures** | *Overseas Investment Act 2005*<br>*Fisheries Act 1996*<br>*Overseas Investment Regulations 2005* |
| **Description** | <u>Investment</u><br><br>Consistent with New Zealand's overseas investment regime as set out in the relevant provisions of the *Overseas Investment Act 2005*, the *Fisheries Act 1996,* and the *Overseas Investment Regulations 2005*, the following investment activities require prior approval from the New Zealand Government:<br><br>(a) acquisition or control by non-government sources of 25 per cent or more of any class of shares[5] or voting power[6] in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$200 million;<br><br>(b) commencement of business operations or acquisition of an existing business by non-government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$200 million;<br><br>(c) acquisition or control by government sources of 25 per cent or more of any class of shares[7] |

[5] For greater certainty, the term "shares" includes shares and other types of securities.
[6] For greater certainty, "voting power" includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.
[7] For greater certainty, the term "shares" includes shares and other types of securities.

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| | or voting power[8] in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$100 million;<br><br>(d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$100 million;<br><br>(e) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and<br><br>(f) any transaction, regardless of dollar value, that would result in an overseas investment in fishing quota.<br><br>Overseas investors must comply with the criteria set out in the overseas investment regime and any conditions specified by the regulator and the relevant Minister or Ministers.<br><br>This entry should be read in conjunction with Entry No II-6. |

[8] For greater certainty, "voting power" includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

**Entry No. I-8**

| | |
|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | Performance Requirements (Investment) |
| **Measures** | *Income Tax Act 2007*<br>*Goods and Services Tax Act 1985*<br>*Estate and Gift Duties Act 1968*<br>*Stamp and Cheque Duties Act 1971*<br>*Gaming Duties Act 1971*<br>*Tax Administration Act 1994* |
| **Description** | Investment<br><br>Any existing non-conforming taxation measures. |

**ANNEX I**

**CROSS-BORDER TRADE IN SERVICES AND INVESTMENT NON-CONFORMING MEASURES**

**Schedule of the United Kingdom**

**Contents**

## Introductory Notes

1. **"Description"** provides a general non-binding description of the measure for which the entry is made.

2. **"Obligations Concerned"** specifies the obligations referred to in paragraph 1 of Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) and paragraph 1 of Article 14.10 (Non-Conforming Measures – Investment) that do not apply to the measures listed in the "Measures" element.

3. In the interpretation of an entry, all elements of the entry shall be considered. An entry shall be interpreted in the light of the relevant obligations against which the entry is taken. The "Measures" element shall prevail over other elements.

4. For the avoidance of doubt, and recalling:

   (a) subparagraph 3(b) of Article 9.3 (Scope – Cross-Border Trade in Services) and paragraph 5 of Article 14.10 (Non-Conforming Measures – Investment) relating to the exclusion of government procurement; and

   (b) subparagraph 3(d) of Article 9.3 (Scope – Cross-Border Trade in Services) and paragraph 6 of Article 14.10 (Non-Conforming Measures – Investment) relating to the exclusion of subsidies or grants provided by a Party,

   in relation to Research and Development ("R&D") services, Chapter 9 (Cross-Border Trade in Services) and Chapter 14 (Investment) shall not interfere with the ability of the United Kingdom to grant exclusive rights or authorisations, for publicly funded R&D services, to nationals of the United Kingdom or enterprises of the United Kingdom having their registered office, central administration, or principal place of business in the United Kingdom.

**Entry No. I-1– Health, Social, and Education Services**

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|---|---|
| Sector | Health, social, and education services |
| Obligations Concerned | Market Access<br>National Treatment<br>Senior Management and Boards of Directors |
| Level of Government | Central and Regional |
| Description | Investment<br><br>The United Kingdom, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity providing health, social, or education services (CPC 93, 92), may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests and assets to control any resulting enterprise, by investors of New Zealand or their enterprises. With respect to such a sale or other disposition, the United Kingdom may adopt or maintain any measure relating to the nationality or residency of senior management or members of the boards of directors, as well as any measure limiting the number of suppliers.<br><br>For the purposes of this entry:<br><br>(a) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of the sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality or residency requirements, or imposes limitations on the numbers of suppliers as described in this entry, shall be deemed to be an existing measure; and<br><br>(b) "state enterprise" means an enterprise owned or controlled through ownership interests by the United Kingdom and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity. |
| Measures | As set out in the Description element as indicated above. |

**Entry No. I-2– Professional services (legal services)**

| | |
|---|---|
| Sector - Sub-Sector | Professional services - legal services |
| Industry Classification | Part of CPC 861 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence |
| Level of Government | Central and Regional |
| Description | Investment and Cross-Border Trade in Services<br><br>Residency (commercial presence) may be required by the relevant professional or regulatory body for the provision of some United Kingdom domestic legal services. Non-discriminatory legal form requirements apply.<br><br>Residency may be required by the relevant professional or regulatory body for the provision of certain United Kingdom domestic legal services in relation to immigration. |
| Measures | For England and Wales, the *Solicitors Act 1974, the Administration of Justice Act 1985* and the *Legal Services Act 2007.*<br><br>For Scotland, the *Solicitors (Scotland) Act 1980* and the *Legal Services (Scotland) Act 2010.*<br><br>For Northern Ireland, the *Solicitors (Northern Ireland) Order 1976.*<br><br>For the United Kingdom, the *Immigration and Asylum Act 1999.*<br><br>In addition, the measures applicable in England and Wales, Scotland, or Northern Ireland include any requirements set by professional and regulatory bodies. |

**Entry No. I-3– Professional services (intellectual property agents)**

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|---|---|
| Sector - Sub-Sector | Professional services - intellectual property agents |
| Obligations Concerned | Local Presence<br>Most-Favoured-Nation Treatment |
| Level of Government | Central |
| Description | Cross-Border Trade in Services<br><br>Local presence is required for the provision of intellectual property agency services. |
| Measures | *Copyright, Designs and Patents Act 1988.* |

**Entry No. I-4– Professional services (veterinary services)**

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|---|---|
| Sector - Sub-Sector | Professional services - veterinary services |
| Industry Classification | CPC 932 |
| Obligations Concerned | Market Access<br>Local Presence |
| Level of Government | Central |
| Description | Cross-Border Trade in Services<br><br>Only members of the Royal College of Veterinary Surgeons ("RCVS") may provide veterinary services in the United Kingdom. RCVS guidelines may require physical presence for the provision of veterinary services. |
| Measures | *Veterinary Surgeons Act 1966.* |

**Entry No. I-5– Business services**

| | |
|---|---|
| Sector - Sub-Sector | Business services - rental or leasing services without operators and other business services |
| Industry Classification | Part of CPC 831 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Most-Favoured-Nation Treatment |
| Level of Government | Central |
| Description | Investment and Cross-Border Trade in Services<br><br>For rental or leasing of aircraft without crew (dry lease) aircraft used by an air carrier of the United Kingdom are subject to applicable aircraft registration requirements. A dry lease agreement to which a United Kingdom carrier is a party shall be subject to requirements in the national law on aviation safety, such as prior approval and other conditions applicable to the use of third countries' registered aircraft. To be registered, aircraft may be required to be owned either by natural persons meeting specific nationality criteria or by enterprises meeting specific criteria regarding ownership of capital and control (CPC 83104).<br><br>With respect to computer reservation system ("CRS") services, where the United Kingdom air carriers are not accorded, by CRS services suppliers operating outside the United Kingdom, equivalent (meaning non-discriminatory) treatment to that provided in the United Kingdom, or where United Kingdom CRS services suppliers are not accorded, by non-United Kingdom air carriers, equivalent treatment to that provided in the United Kingdom, measures may be taken to accord equivalent discriminatory treatment, respectively, to the non-United Kingdom air carriers by the CRS services suppliers operating in the United Kingdom, or to the non-United Kingdom CRS services suppliers by United Kingdom air carriers. |
| Measures | *Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast)* as retained in United Kingdom law by the *European Union (Withdrawal) Act 2018* and as amended by the *Operation of Air Services (Amendment etc.) (EU Exit) Regulations (S.I. 2018/1392)*. |

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| | *Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89* as retained in United Kingdom law by the *European Union (Withdrawal) Act 2018* and as amended by the *Computer Reservation Systems (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1080)*. |

**Entry No. I-6– Communication services**

| | |
|---|---|
| Sector - Sub-Sector | Communication services - postal and courier services |
| Industry Classification | Part of CPC 71235, part of 73210, part of 751 |
| Obligations Concerned | Market Access |
| Level of Government | Central |
| Description | Investment and Cross-Border Trade in Services<br><br>The organisation of the siting of letter boxes on the public highway, the issuing of postage stamps, and the provision of the registered mail service used in the course of judicial or administrative procedures may be restricted. For greater certainty, postal operators may be subject to particular universal service obligations or a financial contribution to a compensation fund. |
| Measures | *Postal Services Act 2011*<br>*Postal Services Act 2000* |

**Entry No. I-7– Transport services and services auxiliary to transport services**

| | |
|---|---|
| Sector - Sub-Sector | Transport services - auxiliary services for water transport, auxiliary services to rail transport, road transport and services auxiliary to road transport, services auxiliary to air transport services |
| Obligations Concerned | Market Access<br>Local Presence<br>Senior Management and Boards of Directors |
| Level of Government | Central and Regional |
| Description | **(a) Services auxiliary to air transport services**<br><br>With respect to Investment – Market Access and Cross-Border Trade in Services – Market Access:<br><br>The level of openness of groundhandling services depends on the size of airport. The number of suppliers in each airport may be limited. For big airports, this limit may not be less than two suppliers.<br><br>Measures:<br>*The Airports (Groundhandling) Regulations 1997 (S.I. 1997/2389)*.<br><br>**(b) Supporting services for all modes of transport**<br><br>With respect to Cross-Border Trade in Services – Local Presence:<br><br>Customs services, including customs clearance services and services relating to use of temporary storage facilities or customs warehouses, may only be provided by persons established in the United Kingdom. For the avoidance of doubt, this includes United Kingdom residents, persons with a permanent place of business in the United Kingdom or a registered office in the United Kingdom.<br><br>Measures:<br>*Taxation (Cross-Border Trade) Act 2018*.<br>*Customs and Excise Management Act 1979*.<br><br>**(c) Auxiliary services for water transport**<br><br>With respect to Investment – Market Access and Cross-Border Trade in Services – Market Access: |

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| | For port services, the managing body of a port or the competent authority, may limit the number of providers of port services for a given port service.<br><br>Measures:<br>*Regulation (EU) 2017/352 of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports, Article 6* as retained in United Kingdom law by the *European Union (Withdrawal) Act 2018* and as amended by the *Pilotage and Port Services (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/671).*<br><br>*Port Services Regulations 2019.*<br><br>**(d) Road transport and Services auxiliary to road transport**<br><br><u>With respect to Investment – Senior Management and Boards of Directors:</u><br><br>Transport Managers within the Road Haulage sector may be required to be resident in the United Kingdom.<br><br>Measures:<br>*Goods Vehicles (Licensing of Operators) Act 1995.*<br><br>*Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC* as retained in United Kingdom law by the *European Union (Withdrawal) Act 2018* and as amended by the *Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/708).* |

**Entry No. I-8– Energy related activities**

| | |
|---|---|
| Sector - Sub-Sector | Energy related activities - mining and quarrying |
| Industry Classification | ISIC Rev 3.1 11 |
| Obligations Concerned | Market Access |
| Level of Government | Central and Regional |
| Description | Investment and Cross-Border Trade in Services<br><br>A licence is necessary to undertake exploration and production activities, both onshore and offshore. But mining and quarrying services may be provided to that licence holder without restriction.<br><br>This entry applies to production licences issued with respect to both onshore and offshore activities. To be a Licensee, a company must have a place of business within the United Kingdom. That means either:<br><br>(a) a staffed presence in the United Kingdom;<br><br>(b) registration of a United Kingdom company at Companies House; or<br><br>(c) registration of a United Kingdom branch of a foreign company at Companies House.<br><br>To be a party to a licence that covers a producing field, a company must either:<br><br>(a) be registered at Companies House as a United Kingdom company; or<br><br>(b) carry on its business through a fixed place of business in the United Kingdom as defined in section 148 of the *Finance Act 2003* (which normally requires a staffed presence).<br><br>This entry does not cover the provision of mining and quarrying services to the licence holder. Those services may be provided without restriction, provided that the holder of the production licence meets the criteria above. |
| Measures | *Petroleum Act 1998.* |

## ANNEX II

## CROSS-BORDER TRADE IN SERVICES AND INVESTMENT NON-CONFORMING MEASURES

### Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 14.10 (Non-Conforming Measures – Investment), the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

   (a) Article 9.5 (National Treatment – Cross-Border Trade in Services) or Article 14.6 (National Treatment – Investment);

   (b) Article 9.6 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services) or Article 14.7 (Most-Favoured-Nation Treatment – Investment);

   (c) Article 9.4 (Market Access – Cross-Border Trade in Services) or Article 14.5 (Market Access – Investment);

   (d) Article 9.7 (Local Presence – Cross-Border Trade in Services);

   (e) Article 14.8 (Performance Requirements – Investment); or

   (f) Article 14.9 (Senior Management and Boards of Directors – Investment).

2. Each Schedule entry sets out the following elements:

   (a) **"Sector"** refers to the sector for which the entry is made;

   (b) **"Sub-Sector"**, where referenced, refers to the specific sub-sector for which the entry is made;

   (c) **"Industry Classification"**, where referenced, refers to the activity covered by the entry, according to the CPC, ISIC Rev. 3.1, or as expressly otherwise described in that entry:

      (i) **"ISIC Rev. 3.1"** means the *International Standard Industrial Classification of All Economic Activities* (Statistical Papers, Series M No. 4, ISIC Rev. 3.1, Statistical Office of the United Nations, New York, 2002); and

(ii) **"CPC"** means the *Provisional Central Product Classification* (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) **"Obligations Concerned"** specifies the obligations referred to in paragraph 1 that, pursuant to Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 14.10 (Non-Conforming Measures – Investment), do not apply to the sectors, sub-sectors, or activities listed in the entry;

(e) **"Description"** sets out the scope or nature of the sectors, sub-sectors, or activities covered by the entry to which the reservation applies; and

(f) **"Existing Measures"**, where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, sub-sectors, or activities covered by the entry.

3. In accordance with Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) and Article 14.10 (Non-Conforming Measures – Investment), the Articles specified in the "Obligations Concerned" element of an entry do not apply to the sectors, sub-sectors, and activities identified in the "Description" element of that entry.

4. In the event of an inconsistency in relation to the interpretation of a Schedule entry, the "Description" element shall prevail to the extent of the inconsistency.

5. The list of entries below does not include measures relating to qualification requirements and procedures, technical standards, authorisation requirements, and licensing requirements and procedures where they do not constitute a limitation within the meaning of Article 9.4 (Market Access – Cross-Border Trade in Services), Article 9.5 (National Treatment – Cross-Border Trade in Services), Article 9.7 (Local Presence – Cross-Border Trade in Services), Article 14.5 (Market Access – Investment), or Article 14.6 (National Treatment – Investment). These measures may include, in particular, the need to obtain a licence, to satisfy universal service obligations, to have recognised qualifications in regulated sectors, to have completed a recognised period of training, to pass specific examinations, including language examinations, to fulfil a membership requirement of a particular profession, such as membership in a professional organisation, to have a local agent for service, or to maintain a local address, or any non-discriminatory requirements that certain activities may not be carried out in protected zones or areas. While not listed, such measures continue to apply.

6. For greater certainty, non-discriminatory measures do not constitute a market access limitation within the meaning of Article 9.4 (Market Access – Cross-

Border Trade in Services) or Article 14.5 (Market Access – Investment) for any measure:

(a) requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation, and telecommunications;

(b) restricting the concentration of ownership to ensure fair competition;

(c) seeking to ensure the conservation and protection of natural resources and the environment (including with respect to climate change), including a limitation on the availability, number, and scope of concessions granted, and the imposition of a moratorium or ban;

(d) limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectra and frequencies; or

(e) requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practise a certain profession such as lawyers or accountants.

7. A Party's entry for a requirement to have a local presence in the territory of that Party is made against Article 9.7 (Local Presence – Cross-Border Trade in Services), and not against Article 9.4 (Market Access – Cross-Border Trade in Services) or Article 9.5 (National Treatment – Cross-Border Trade in Services).

8. With respect to computer services, any of the following services shall be considered as "computer and related services", regardless of whether they are delivered via a network, including the Internet:

(a) consulting, adaptation, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;

(b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), as well as consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management, or use of or for computer programmes;

(c) data processing, data storage, data hosting, or database services;

(d) maintenance and repair services for office machinery and equipment, including computers; and

(e) training services for staff of clients, related to computer programmes, computers, or computer systems, and not elsewhere classified.

For greater certainty, services enabled by computer and related services, other than those listed in subparagraphs (a) to (e), shall not be regarded as "computer and related services" in themselves.

9. With respect to Annex II entries on Most-Favoured-Nation Treatment relating to bilateral or multilateral international agreements, the absence of language regarding the scope of the reservation for differential treatment resulting from an amendment of those bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement is without prejudice to each Party's respective interpretation of the scope of that reservation.

# ANNEX II

## CROSS-BORDER TRADE IN SERVICES AND INVESTMENT NON-CONFORMING MEASURES

### Schedule of New Zealand

**Entry No. II-1**

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|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Most-Favoured-Nation Treatment (Cross-Border Trade in Services)<br>Local Presence (Cross-Border Trade in Services)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure with respect to:<br><br>(a) the provision of public law enforcement and correctional services; and<br><br>(b) the following, to the extent that they are social services established for a public purpose:<br><br>(i) childcare;<br><br>(ii) health;<br><br>(iii) income security and insurance;<br><br>(iv) public education;<br><br>(v) public housing;<br><br>(vi) public training;<br><br>(vii) public transport; |

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| | (viii) public utilities;<br>(ix) refuse disposal;<br>(x) sanitation;<br>(xi) waste water management;<br>(xii) sewage;<br>(xiii) waste management;<br>(xiv) social security and insurance; and<br>(xv) social welfare. |

**Entry No. II-2**

| | |
|---|---|
| **Sector** | Financial Services |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Local Presence (Cross-Border Trade in Services)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure with respect to the supply of:<br><br>(a) compulsory social insurance for personal injury caused by accident, work related gradual process disease and infection, and treatment injury; and<br><br>(b) disaster insurance for residential property for replacement cover up to a defined statutory maximum. |
| **Existing Measures** | *Accident Compensation Act 2001*<br>*Earthquake Commission Act 1993* |

**Entry No. II-3**

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|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Local Presence (Cross-Border Trade in Services)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure with respect to water, including the allocation, collection, treatment, and distribution of drinking water. |

**Entry No. II-4**

| | |
|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Local Presence (Cross-Border Trade in Services)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt and maintain any measure solely as part of the act of devolving a service that is provided in the exercise of governmental authority at the date of entry into force of this Agreement. Such measures may include:<br><br>(a) restricting the number of service suppliers;<br><br>(b) allowing an enterprise, wholly or majority owned by the Government of New Zealand, to be the sole service supplier or one amongst a limited number of service suppliers;<br><br>(c) imposing restrictions on the composition of senior management and boards of directors;<br><br>(d) requiring local presence; and<br><br>(e) specifying the juridical form of the service supplier. |

**Entry No. II-5**

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|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>Where the New Zealand Government wholly owns or has effective control over an enterprise, then New Zealand reserves the right to adopt or maintain any measures regarding the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals. |

**Entry No. II-6**

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| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Investment)<br>Market Access (Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment) |
| **Description** | <u>Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure that sets out the approval criteria to be applied to the categories of overseas investment that require approval under New Zealand's overseas investment regime.<br><br>For the purposes of transparency, those categories, as set out in Entry No. I-7 are:<br><br>(a) acquisition or control by non-government sources of 25 per cent or more of any class of shares[1] or voting power[2] in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$200 million;<br><br>(b) commencement of business operations or acquisition of an existing business by non-government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$200 million;<br><br>(c) acquisition or control by government sources of 25 per cent or more of any class of shares[3] or voting power[4] in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$100 million; |

[1] For greater certainty, the term "shares" includes shares and other types of securities.
[2] For greater certainty, "voting power" includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.
[3] For greater certainty, the term "shares" includes shares and other types of securities.
[4] For greater certainty, "voting power" includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

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| | (d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$100 million;<br><br>(e) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and<br><br>(f) any transaction, regardless of dollar value, that would result in an overseas investment in fishing quota. |
| **Existing Measures** | *Overseas Investment Act 2005*<br>*Fisheries Act 1996*<br>*Overseas Investment Regulations 2005* |

**Entry No. II-7**

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|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to a Party or a non-party under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.<br><br>New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to a Party or a non-party under any international agreement in force or signed after the date of entry into force of this Agreement involving:<br><br>(a) aviation;<br><br>(b) fisheries; and<br><br>(c) maritime matters. |

**Entry No. II-8**

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|---|---|
| **Sector** | All Sectors |
| **Obligations** Concerned | Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure taken as part of a wider process of economic integration or trade liberalisation between the parties to the *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA) or the *Pacific Agreement on Closer Economic Relations* (PACER) that accords differential treatment to a non-party.[5] |

[5] For the avoidance of doubt, this includes any measure adopted or maintained under any existing or future protocol to the agreements.

**Entry No. II-9**

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| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Local Presence (Cross-Border Trade in Services ) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure regarding the control, management, or use of:<br><br>(a) protected areas, being areas established under and subject to the control of legislation, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation, and scenery preservation; or<br><br>(b) species owned under enactments by the Crown or that are protected by or under an enactment. |
| **Existing Measures** | *Conservation Act 1987* and the enactments listed in: schedule 1 of the *Conservation Act 1987*;<br>*Resource Management Act 1991*;<br>*Local Government Act 1974*. |

**Entry No. II-10**

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|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure including nationality or residency measures in relation to:<br><br>(a) animal welfare; and<br><br>(b) the preservation of plant, animal and human life and health; including in particular:<br><br>(i) food safety of domestic and exported foods;<br><br>(ii) animal feeds;<br><br>(iii) food standards;<br><br>(iv) biosecurity;<br><br>(v) biodiversity; and<br><br>(vi) certification of the plant or animal health status of goods.<br><br>Nothing in this reservation shall be construed to derogate from the obligations of Chapter 5 (Sanitary and Phytosanitary Measures), or the obligations of the *Agreement on the Application of Sanitary and Phytosanitary Measures* in Annex 1A to the WTO Agreement or the Sanitary Agreement.<br><br>Nothing in this reservation shall be construed to derogate from the obligations of Chapter 7 (Technical Barriers to Trade), or the obligations of the *Agreement* |

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| | *on Technical Barriers to Trade* in Annex 1A to the WTO Agreement.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-11**

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|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to maintain or adopt any measure made by or under an enactment in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil, and margins of such internal waters), territorial sea, the Exclusive Economic Zone, and the continental shelf, including for the issuance of maritime concessions in the continental shelf. |
| **Existing Measures** | *Resource Management Act 1991*<br>*Marine and Coastal Area (Takutai Moana) Act 2011*<br>*Continental Shelf Act 1964*<br>*Crown Minerals Act 1991*<br>*EEZ and Continental Shelf (Environmental Effects) Act 2012* |

**Entry No. II-12**

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|---|---|
| **Sector** | Business Services<br>Fire Services |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure with respect to the provision of fire prevention and firefighting services, excluding aerial firefighting services.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |
| **Existing Measures** | *Fire and Emergency New Zealand Act 2017* |

**Entry No. II-13**

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|---|---|
| **Sector** | Business Services<br>Research and Development |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure with respect to:<br><br>(a) research and development services carried out by state funded tertiary institutions or by Crown Research Institutes when such research is conducted for a public purpose; or<br><br>(b) research and experimental development services on physical sciences, chemistry, biology, engineering and technology, agricultural sciences, medical, pharmaceutical, and other natural sciences, i.e. CPC 8510. |

**Entry No. II-14**

| | |
|---|---|
| **Sector** | Business Services<br>Technical Testing and Analysis Services |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measures in respect of:<br><br>(a) composition and purity testing and analysis services (CPC 86761);<br><br>(b) inspection services (CPC 86764);<br><br>(c) other technical testing and analysis services (CPC 86769);<br><br>(d) geological, geophysical, and other scientific prospecting services (CPC 86751); and<br><br>(e) drug testing services. |

**Entry No. II-15**

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|---|---|
| **Sector** | Business Services<br>Fisheries and aquaculture<br>Services related to fisheries and aquaculture |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Local Presence (Cross-Border Trade in Services)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to control the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to New Zealand ports (port privileges) consistent with the provisions of the United Nations Convention on the Law of the Sea. |
| **Existing Measures** | *Fisheries Act 1996*<br>*Aquaculture Reform Act 2004* |

**Entry No. II-16**

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|---|---|
| **Sector** | Business Services<br>Energy<br>Manufacturing<br>Wholesale trade<br>Retail |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Local Presence (Cross-Border Trade in Services)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt any measure in order to prohibit, regulate, manage, or control the production, use, distribution, or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so. |

**Entry No. II-17**

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|---|---|
| **Sector** | Communication Services<br>Audio-visual and other Services |
| **Obligations concernedConcerned** | Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under preferential co-production arrangements, confers national treatment on works covered by such arrangements. |
| **Existing Measures** | For greater transparency, section 18 of the *New Zealand Film Commission Act 1978* limits Commission funding to films with a "significant NewZealand content". This criterion is deemed to be satisfied if made pursuant to a co-production agreement or arrangement with the partner country in question. |

**Entry No. II-18**

| | |
|---|---|
| **Sector** | Communication Services<br>Audio-visual and other Services |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Market Access (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure with respect to the promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films. |

**Entry No. II-19**

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|---|---|
| **Sector** | Agriculture, including services incidental to agriculture |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measures with respect to:<br><br>(a) the holding of shares in the co-operative dairy company arising from the amalgamation authorised under the *Dairy Industry Restructuring Act 2001* (or any successor body); and<br><br>(b) the disposition of assets of that company or its successor bodies. |
| **Existing Measures** | *Dairy Industry Restructuring Act 2001* |

**Entry No. II-20**

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|---|---|
| **Sector** | Agriculture, including services incidental to agriculture |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measures with respect to the export marketing of fresh kiwifruit to all markets other than Australia. |
| **Existing Measures** | *Kiwifruit Industry Restructuring Act 1999* and Regulations |

**Entry No. II-21**

| | |
|---|---|
| **Sector** | Agriculture, including services incidental to agriculture |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure with respect to:<br><br>(a) specifying the terms and conditions for the establishment and operation of any government endorsed allocation scheme for the rights to the distribution of export products falling within the HS categories covered by the *WTO Agreement on Agriculture* in Annex 1A to the WTO Agreement ("Agriculture Agreement") to markets where tariff quotas, country-specific preferences or other measures of similar effect are in force; and<br><br>(b) the allocation of distribution rights to wholesale trade service suppliers pursuant to the establishment or operation of such an allocation scheme.<br><br>This entry is not intended to have the effect of prohibiting all investment in the provision of wholesale trade and distribution services relating to goods in the HS chapters covered by the Agriculture Agrement. The entry applies in respect of investment to the extent that the services sectors specified in this reservation are a subset of agricultural products subject to tariff quotas, country-specific preferences, or other measures of similar effect. |

**Entry No. II-22**

| | |
|---|---|
| **Sector** | Agriculture, including services incidental to agriculture |
| **Obligations Concerned** | Senior Management and Boards of Directors (Investment)<br>Market Access (Investment) |
| **Description** | <u>Investment</u><br><br>New Zealand reserves the right to maintain or adopt any measure necessary to give effect to the establishment or the implementation of mandatory marketing plans (also referred to as "export marketing strategies") for the export marketing of products derived from:<br><br>(a) agriculture;<br><br>(b) beekeeping;<br><br>(c) horticulture;<br><br>(d) arboriculture;<br><br>(e) arable farming; and<br><br>(f) the farming of animals,<br><br>where there is support within the relevant industry that a mandatory collective marketing plan should be adopted or activated.<br><br>For greater certainty, mandatory marketing plans, in the context of this reservation exclude measures limiting the number of market participants or limiting the volume of exports.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |
| **Existing Measures** | *New Zealand Horticulture Export Authority Act 1987* |

**Entry No. II-23**

| | |
|---|---|
| **Sector** | Health and Social services |
| **Obligations Concerned** | Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure with respect to all services suppliers and investors for the supply of adoption services.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |
| **Existing Measures:** | *Adoption Act 1955*<br>*Adoption (Inter-country) Act 1997* |

**Entry No. II-24**

| | |
|---|---|
| **Sector** | Recreation, cultural, and sporting |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure with respect to gambling, betting, and prostitution services. |
| **Existing Measures** | *Gambling Act 2003 and Regulations*<br>*Prostitution Reform Act 2003*<br>*Racing Act 2003*<br>*Racing (Harm Prevention and Minimisation) Regulations 2004*<br>*Racing (New Zealand Greyhound Racing Association Incorporated) Order 2009* |

**Entry No. II-25**

| | |
|---|---|
| **Sector** | Recreation, cultural, and sporting<br>Library, archive, museum, and other cultural services |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Local Presence (Cross-Border Trade in Services)<br>Performance Requirements (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measures in respect of:<br><br>(a) cultural heritage of national value; including ethnological, archaeological, historical, literary, artistic, scientific, or technological heritage, as well as collections that are documented, preserved, and exhibited by museums, galleries, libraries, archives, and other heritage collecting institutions;<br><br>(b) public archives;<br><br>(c) library and museum services; and<br><br>(d) services for the preservation of historical or sacred sites or historical buildings. |

**Entry No. II-26**

| | |
|---|---|
| **Sector** | Transport<br>Maritime Services |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment)<br>Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure with respect to:<br><br>(a) the carriage by sea of passengers or cargo between a port located in New Zealand and another port located in New Zealand and traffic originating and terminating in the same port in New Zealand (maritime cabotage), with the exception of the movement of empty containers. For greater certainty, maritime cabotage includes feeder services;<br><br>(b) the establishment of registered companies for the purpose of operating a fleet under the New Zealand flag; and<br><br>(c) the registration of vessels in New Zealand. |

**Entry No. II-27**

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|---|---|
| **Sector** | Distribution Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure for public health or social policy purposes with respect to wholesale and retail trade services of tobacco products and alcoholic beverages. |

**Entry No. II-28**

| | |
|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | National Treatment (Investment)<br>Performance Requirements (Investment) |
| **Description** | <u>Investment</u><br><br>New Zealand reserves the right to adopt or maintain any taxation measure with respect to the sale, purchase, or transfer of residential property (including interests that arise via leases, financing, and profit sharing arrangements, and acquisition of interests in enterprises that own residential property).<br><br>For greater certainty, residential property does not include non-residential commercial real estate. |

**Entry No. II-29**

| | |
|---|---|
| **Sector** | All Sectors |
| **Obligations Concerned** | Senior Management and Board of Directors (Investment) |
| **Description** | Investment<br><br>New Zealand reserves the right to adopt or maintain any measure that requires a member of the senior management to be resident in New Zealand.<br><br>New Zealand reserves the right to adopt or maintain any measure to require:<br><br>(a) one member of the Board of Directors to be a New Zealand national or resident in New Zealand; or<br><br>(b) a minority of the Board of Directors to be a New Zealand national or resident in New Zealand, where that requirement would not materially impair the ability of the investor to exercise control over its enterprise, provided that the requirement is for the purpose of securing compliance with laws or regulations that are not inconsistent with this Agreement. |
| **Existing Measures** | *Companies Act 1993*<br>*Limited Partnerships Act 2008* |

**Entry No. II-30**

| | |
|---|---|
| **Sector** | Communication Services<br>Postal and Courier Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment |
| | New Zealand reserves the right to adopt or maintain any measure that would impose on postal operators additional conditions for operation in the market or de-registration where operators engage in anti-competitive behaviour.<br><br>New Zealand reserves the right to adopt or maintain any measure that would allow it to restrict the issue of postage stamps bearing the words "New Zealand".[6]<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

[6] The issue of stamps bearing the words "New Zealand" to Universal Postal Union designated operators except where the words "New Zealand" form part of the name of the operator issuing the stamps.

**Entry No. II-31**

| | |
|---|---|
| **Sector** | Distribution Services<br>Commission agents' services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure in respect of sectors not falling within the following CPC Codes:<br><br>(a) CPC 62113-62115;<br><br>(b) CPC 62117-62118;<br><br>(c) CPC 62111 except for 02961-02693 (ovine wool);<br><br>(d) CPC 62112 except for CPC 21111, 21112, 21115, 21116 and 21119 (edible offals of bovine and ovine origin) and 02961-02963 (ovine wool); and<br><br>(e) CPC 62116 except for 2613-2615 (ovine wool).<br><br>In respect of sectors falling within the following CPC codes:<br><br>(a) CPC 62111 only in respect of 02961-02693 (ovine wool);<br><br>(b) CPC 62112 only in respect of CPC 21111, 21112, 21115, 21116 and 21119 (edible offals of bovine and ovine origin) and 02961-02963 (ovine wool); and<br><br>(c) CPC 62116 only in respect of 2613-2615 (ovine wool).<br><br>New Zealand reserves the right to adopt or maintain any measure regarding export distribution that relates to: |

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| | (a) the allocation of distribution rights related to exports of products to export markets where tariff quotas, country specific preferences, and other measures of similar effect are found which places limitations on the numbers of services suppliers, total value of services transactions, or numbers of services operations; and<br><br>(b) mandatory export marketing strategies where there is support within the relevant industry. These export marketing strategies do not include measures limiting the number of market participants or limiting the volume of exports.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-32**

| | |
|---|---|
| **Sector** | Distribution Services<br>Wholesale trade services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure in respect of sectors not falling within the following CPC codes:<br><br>(a) CPC 6223-6226, and 6228;<br><br>(b) CPC 6221 except for 02961-02963 (ovine wool);<br><br>(c) CPC 6222 except for CPC 21111, 21112, 21115, 21116 and 21119 (edible offals of ovine and bovine origin); and<br><br>(d) CPC 62277 except for 2613-2615 (ovine wool).<br><br>In respect of sectors falling within the following CPC codes:<br><br>(a) CPC 6221 only in respect of 02961-02963 (ovine wool);<br><br>(b) CPC 6222 only in respect of CPC 21111, 21112, 21115, 21116 and 21119 (edible offals of ovine and bovine origin); and<br><br>(c) CPC 62277 only in respect of 2613-2615 (ovine wool).<br><br>New Zealand reserves the right to adopt or maintain any measure regarding export distribution that relates to:<br><br>(a) the allocation of distribution rights related to exports of products to export markets where tariff quotas, country specific preferences, and other measures of similar effect are found which places limitations on the numbers of services suppliers, total value of services |

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| | transactions, or numbers of services operations; and<br><br>(b) mandatory export marketing strategies where there is support within the relevant industry. These export marketing strategies do not include measures limiting the number of market participants or limiting the volume of exports.<br><br>The reservation with respect to Market Access (Investment) is only relates to the supply of a service via commercial presence. |

**Entry No. II-33**

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| **Sector** | Air and Maritime Transport<br>Selling and marketing of air and maritime transport services |
| **Obligations Concerned** | Market Access (Cross Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure with respect to products covered under CPC 01, 02, 211, 213-216, 22, 2399 and 261 (except for marketing and sales relating to CPC 21111, 21112, 21115, 21116 and 21119 (edible offals of bovine and ovine origin), CPC 2613 and 2615 (ovine wool), and CPC 02961 – 02963 (ovine wool)).<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-34**

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| **Sector** | Maritime Transport<br>International Transport |
| **Obligations Concerned** | Market Access (Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure with respect to the establishment of a registered company for the purpose of operating a fleet under the New Zealand flag. This reservation relates to services covered under CPC Code 7211 (passenger transportation, except cabotage) and 7212 (freight transportation, except cabotage).<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-35**

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| **Sector** | Environmental Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure with respect to:<br><br>(a) noise and vibration abatement services;<br><br>(b) remediation and clean-up of soil and water;<br><br>(c) rotection of ambient air and climate;<br><br>(d) protection of biodiversity and landscape; and<br><br>(e) other environmental and ancillary services.<br><br>Except for consultancy services and services contracted by private industry.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-36**

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| **Sector** | Professional Services |
| **Obligations Concerned** | Market Access (Cross-border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure in relation to the following sub-sectors:<br><br>(a) auctioneering services;<br><br>(b) insolvency and receivership services;<br><br>(c) map-making services;<br><br>(d) franchising services;<br><br>(e) patent agent services;<br><br>(f) trademark agent services;<br><br>(g) quantity surveying and services;<br><br>(h) scientific and technical consulting services;<br><br>(i) printing and publishing services; and<br><br>(j) research and development on social sciences and humanities.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-37**

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| **Sector** | Business Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure in relation to the following sub-sectors:<br><br>(a) leasing or rental services concerning containers;<br><br>(b) licensing of intellectual property, including trade marks;<br><br>(c) licensing of research and development products;<br><br>(d) licensing of entertainment, literary, or artistic originals;<br><br>(e) mineral exploration and evaluation;<br><br>(f) security system services;<br><br>(g) guard services;<br><br>(h) investigation service;<br><br>(i) security consulting services;<br><br>(j) armoured car services; and<br><br>(k) other security services.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-38**

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| **Sector** | Maintenance and Repair Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure in relation to maintenance and repair services for:<br><br>(a) fabricated metal products, machinery, and equipment;<br><br>(b) other machinery and equipment;<br><br>(c) electrical household appliances;<br><br>(d) telecommunication equipment and apparatus;<br><br>(e) medical, precision, and optical instruments;<br><br>(f) consumer electronics;<br><br>(g) commercial and industrial machinery;<br><br>(h) elevators and escalators; and<br><br>(i) other equipment.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-39**

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| **Sector** | Health Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure in relation to the following sub-sectors:<br><br>(a) private health and social services; and<br><br>(b) services provided by midwives, nurses, physiotherapists, and para-medical personnel.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-40**

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| **Sector** | Recreational, Cultural, and Sporting Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure in relation to recreational, cultural, and sporting services.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-41**

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| **Sector** | Transport Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure in relation to the following sub-sectors:<br><br>(a) pilotage and berthing services;<br><br>(b) rental of vessels with crew for maritime transport services;<br><br>(c) pushing and towing services (maritime);<br><br>(d) local water transport services of passengers;<br><br>(e) rental services of water vessels with operator;<br><br>(f) cross-border supply of maritime container handling services[7] from the territory of the United Kingdom into the territory of New Zealand. This reservation does not apply to<br><br>(i) transhipment (board to board or via the quay); and<br><br>(ii) the use of on board cargo handling equipment;<br><br>(g) maintenance and repair of vessels;<br><br>(h) vessel salvage and refloating services;<br><br>(i) internal waterways transport; |

[7] Maritime Container Handling Services means: activities exercised by stevedoring companies, including terminal operators, but not including the direct activities of dockers when this workforce is organised independently of the stevedoring or terminal operator companies. The activities include the organisation and supervision of:

(a) the loading/discharging of containers to/from a ship:
(b) the lashing/unlashing of containers; and
(c) the reception/delivery and safekeeping of containers before shipment or after discharge.

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| | (j) supporting services for internal waterway transport;<br><br>(k) control, inspection, and surveillance of airport and heliports;<br><br>(l) space transport services of passengers;<br><br>(m) space transport services of freight;<br><br>(n) supporting services for space transport;<br><br>(o) supporting services for rail transport services;<br><br>(p) road transport services for mail;<br><br>(q) maintenance and repair of road transport equipment;<br><br>(r) parking lot services;<br><br>(s) supporting services for road transport services;<br><br>(t) supply of desalinated water to ships berthed at ports or in territorial waters; and<br><br>(u) shipbuilding and repairing, and marine engine services.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-42**

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| **Sector** | Utilities Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure in relation to the following sub-sectors:<br><br>(a) energy services;<br><br>(b) oil and other hydrocarbon services;<br><br>(c) services supporting the petroleum industry;<br><br>(d) services related to oil and gas resources;<br><br>(e) services incidental to energy distribution; and<br><br>(f) electricity, gas, and water distribution (on own account).<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-43**

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| **Sector** | Other Services |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services and Investment) |
| **Description** | <u>Cross-Border Trade in Services and Investment</u><br><br>New Zealand reserves the right to adopt or maintain any measure in relation to the following sub-sectors:<br><br>(a) handicraft industries;<br><br>(b) market research and public opinion polling services;<br><br>(c) packaging services;<br><br>(d) cemeteries and cremation services;<br><br>(e) jewellery design;<br><br>(f) support services to aquaculture;<br><br>(g) services provided to extraterritorial organisations and bodies;<br><br>(h) domestic services;<br><br>(i) cosmetic treatment, manicuring and pedicuring services;<br><br>(j) hairdressing and barbers services;<br><br>(k) beauty and physical well-being services;<br><br>(l) grant giving services;<br><br>(m) services provided by youth organisations;<br><br>(n) other civic betterment and community facility support services;<br><br>(o) weather forecasting and meteorological services;<br><br>(p) services furnished by political organisations; |

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| | (q) services furnished by other membership organisations;<br><br>(r) services furnished by trade unions;<br><br>(s) services furnished by professional organisations;<br><br>(t) services furnished by environmental advocacy groups;<br><br>(u) other special group advocacy services;<br><br>(v) services furnished by human rights organisations;<br><br>(w) services furnished by business, employers and professional organisations;<br><br>(x) specialty design services (except interior design services);<br><br>(y) design originals; and<br><br>(z) combined office administration services.<br><br>The reservation with respect to Market Access (Investment) only relates to the supply of a service via commercial presence. |

**Entry No. II-44**

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| **Sector** | Other services not included elsewhere |
| **Obligations Concerned** | National Treatment (Cross-Border Trade in Services and Investment)<br>Local Presence (Cross-Border Trade in Services and Investment)<br>Market Access (Cross-Border Trade in Services and Investment)<br>Performance Requirements (Investment)<br>Senior Management and Boards of Directors (Investment) |
| **Description** | Cross-Border Trade in Services and Investment<br><br>New Zealand reserves the right to adopt or maintain any measure with respect to the provision of new services other than those classified in the CPC. |

**Entry No. II-45**

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| **Sector** | All sectors – Presence of Natural Persons |
| **Obligations Concerned** | Market Access (Cross-Border Trade in Services) |
| **Description** | Cross-Border Trade in Services<br><br>New Zealand reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, subject to the provisions of Chapter 13 (Temporary Entry of Business Persons), that is not inconsistent with New Zealand's obligations under the GATS. |

**ANNEX II**

**CROSS-BORDER TRADE IN SERVICES AND INVESTMENT NON-CONFORMING MEASURES**

**Schedule of the United Kingdom**

**Contents**

## Introductory Notes

For the avoidance of doubt, and recalling:

(a) subparagraph 3(b) of Article 9.3 (Scope – Cross-Border Trade in Services) and paragraph 5 of Article 14.10 (Non-Conforming Measures – Investment) relating to the exclusion of government procurement; and

(b) subparagraph 3(d) of Article 9.3 (Scope – Cross-Border Trade in Services) and paragraph 6 of Article 14.10 (Non-Conforming Measures – Investment) relating to the exclusion of subsidies or grants provided by a Party,

in relation to Research and Development ("R&D") services, Chapter 9 (Cross-Border Trade in Services) and Chapter 14 (Investment) shall not interfere with the ability of the United Kingdom to grant exclusive rights or authorisations, for publicly funded R&D services, to nationals of the United Kingdom or enterprises of the United Kingdom having their registered office, central administration, or principal place of business in the United Kingdom.

**Entry No. II-1– All sectors**

| Sector | All sectors |
|---|---|
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Most-Favoured-Nation Treatment<br>Senior Management and Boards of Directors<br>Performance Requirements |
| Description | The United Kingdom reserves the right to adopt or maintain any measure with respect to the following:<br><br>**(a) Public utilities**<br><br>With respect to Investment – Market Access:<br><br>Services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators.<br><br>Public utilities exist in sectors such as related scientific and technical consulting services, R&D services on social sciences and humanities, technical testing and analysis services, environmental services, health services, transport services and services auxiliary to all modes of transport. Exclusive rights on those services are often granted to private operators, for instance operators with concessions from public authorities, subject to specific service obligations. Given that public utilities often also exist at the sub-central level, detailed and exhaustive sector-specific scheduling is not practical. This sub-entry (a) does not apply to telecommunications and to computer and related services.<br><br>**(b) Most-Favoured-Nation Treatment**<br><br>With respect to Investment – Most-Favoured-Nation Treatment and Cross-Border Trade in Services – Most-Favoured-Nation Treatment:<br><br>According differential treatment pursuant to any international investment treaty or other trade agreement in force or signed prior to the date of entry into force of this Agreement. |

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| | According differential treatment to a country pursuant to any existing or future bilateral or multilateral agreement which:<br><br>(i) creates an internal market in services and investment;<br><br>(ii) grants the right of establishment; or<br><br>(iii) requires the approximation of legislation in one or more economic sectors.<br><br>An internal market on services and investment means an area without internal frontiers in which the free movement of services, capital and persons is ensured.<br><br>The right of establishment means an obligation to abolish in substance all barriers to establishment among the parties to the regional economic integration agreement by the date of entry into force of that agreement. The right of establishment shall include the right of nationals of the parties to the regional economic integration agreement to set up and operate enterprises under the same conditions provided for nationals under the law of the country where that establishment takes place.<br><br>The approximation of legislation means:<br><br>(i) the alignment of the legislation of one or more of the parties to the regional economic integration agreement with the legislation of the other party or parties to that agreement; or<br><br>(ii) the incorporation of common legislation into the law of the parties to the regional economic integration agreement.<br><br>Such alignment or incorporation shall take place, and shall be deemed to have taken place, only at the time that it has been enacted in the law of the party or parties to the regional economic integration agreement.<br><br>According differential treatment relating to the right of establishment to nationals or enterprises through existing or future bilateral agreements between the United Kingdom and any of the following countries or |

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| | principalities: Andorra, Monaco, San Marino, and the Vatican City State.<br><br>According differential treatment to a third country pursuant to existing or future agreements relating to air services or to related services in support of air services.<br><br>**(c) Arms, ammunitions, and war material**<br><br>With respect to Investment – Market Access, National Treatment, Most-Favoured-Nation Treatment, Senior Management and Boards of Directors, Performance Requirements and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence, Most-Favoured-Nation Treatment:<br><br>Production or distribution of, or trade in, arms, munitions, and war material. War material is limited to any product which is solely intended and made for military use in connection with the conduct of war or defence activities.<br><br>**(d) Presence of natural persons**<br><br>With respect to Cross-Border Trade in Services – Market Access:<br><br>The supply of a service by the presence of natural persons, subject to the provisions of Chapter 13 (Temporary Entry of Business Persons), that is not inconsistent with the United Kingdom's obligations under the GATS.<br><br>**(e) Residential property**<br><br>With respect to Investment – National Treatment, Performance Requirements and Cross-Border Trade in Services – National Treatment:<br><br>Taxation related to the sale, purchase, or transfer of residential property (including interests that arise via leases, financing and profit-sharing arrangements, and acquisition of interests in enterprises that own residential property). |

**Entry No. II-2– Professional services (legal services and auditing services)**

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| Sector - Sub-Sector | Professional services - legal services and auditing services |
| Industry Classification | Part of CPC 861, part of 862, part of 87902 |
| Obligations Concerned | Market Access<br>Local Presence<br>National Treatment<br>Senior Management and Boards of Directors |
| Description | Investment and Cross-Border Trade in Services<br><br>**(a) Legal services (part of CPC 861, part of 87902).**<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the supply of legal advisory and legal authorisation, documentation, and certification services provided by legal professionals entrusted with public functions, such as notaries, and with respect to services provided by bailiffs.<br><br>**(b) Auditing services (CPC – 86211, 86212 other than accounting and bookkeeping services)**<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the cross-border supply of auditing services.<br><br>Existing measures:<br>*Companies Act 2006* |

**Entry No. II-3– Professional services (health related and retail of pharmaceuticals)**

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|---|---|
| Sector | Health related professional services and retail sales of pharmaceutical, medical and orthopaedic goods, other services provided by pharmacists |
| Industry Classification | CPC 63211, 85201, 9312, 9319 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence |
| Description | **(a) Medical and dental services; services provided by midwives, nurses, physiotherapists, psychologists, and paramedical personnel (CPC 63211, 85201, 9312, 9319)**<br><br>With respect to Investment – Market Access:<br><br>Establishment for doctors under the National Health Service is subject to medical manpower planning (CPC 93121, 93122).<br><br>With respect to Cross-Border Trade in Services – Market Access, National Treatment, Local Presence<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the supply of all health-related professional services, including the services provided by professionals such as medical doctors, dentists, midwives, nurses, physiotherapists, paramedical personnel, and psychologists, (part of CPC 85201, CPC 9312, part of 93191).<br><br>**(b) Retail sales of pharmaceutical, medical, and orthopaedic goods, other services provided by pharmacists (CPC 63211)**<br><br>With respect to Investment – Market Access and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence:<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the supply of cross-border retail sales of pharmaceuticals and of medical and orthopaedic goods, and other services provided by pharmacists. Establishment in the United Kingdom is required for the retail of |

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| | pharmaceuticals and specific medical goods to the general public in the United Kingdom. |

**Entry No. II-4– Business services (collection agency services and credit reporting services)**

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| Sector - Sub-Sector | Business Services - collection agency services, credit reporting services |
| Industry Classification | CPC 87901, 87902 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence |
| Description | Cross-Border Trade in Services<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the supply of collection agency services and credit reporting services. |

**Entry No. II-5– Business services (placement services)**

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| Sector - Sub-Sector | Business services - placement services |
| Industry Classification | CPC 87202, 87204, 87205, 87206, 87209 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Senior Management and Boards of Directors |
| Description | Investment and Cross-Border Trade in Services<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the following:<br><br>(a) The supply of placement services of domestic help personnel, other commercial or industrial workers, nursing and other personnel (CPC 87204, 87205, 87206, 87209).<br><br>(b) Requiring establishment for, and the prohibition of cross-border supply of, placement services of office support personnel and other workers. |

**Entry No. II-6– Business services (investigation services)**

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| Sector - Sub-Sector | Business services - investigation services |
| Industry Classification | CPC 87301 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Performance Requirements<br>Senior Management and Boards of Directors |
| Description | Investment and Cross-Border Trade in Services<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the supply of investigation services (CPC 87301). |

**Entry No. II-7– Business services (other business services)**

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| Sector | Business services – other business services |
| Industry Classification | CPC 86764, 86769, 8868 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence |
| Description | Cross-Border Trade in Services<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the cross-border supply of maintenance and repair services in relation to the following:<br><br>(a) rail transport equipment;<br><br>(b) internal waterways transport vessels;<br><br>(c) maritime vessels;<br><br>(d) aircraft and parts thereof (part of CPC 86764, CPC 86769, CPC 8868).<br><br>Only recognised organisations authorised by the United Kingdom may carry out statutory surveys and certification of ships on behalf of the United Kingdom. Establishment may be required. |
| Existing measures: | *Regulation (EC) No 391/2009 of the European Parliament and the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations* as retained in United Kingdom law by the *European Union (Withdrawal) Act 2018*, and as amended by the *Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019* |

**Entry No. II-8– Education services**

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| Sector | Education services |
| Industry Classification | CPC 92 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Senior Management and Boards of Directors<br>Performance Requirements |
| Description | Investment and Cross-Border Trade in Services<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the following:<br><br>(a) All educational services which receive public funding or State support in any form and are therefore not considered to be privately funded. Where the supply of privately funded education services by a foreign provider is permitted, participation of private operators in the education system may be subject to concession allocated on a non-discriminatory basis.<br><br>(b) The supply of privately funded other education services, which means other than those classified as being primary, secondary, higher, and adult education services (CPC 929). |

**Entry No. II-9– Health and social services**

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| Sector | Health and social services |
| Industry Classification | CPC 931 (other than 9312, part of 93191), CPC 933 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Senior Management and Boards of Directors<br>Performance Requirements |
| Description | The United Kingdom reserves the right to adopt or maintain any measure with respect to the following:<br><br>**(a) Health services – including hospital, ambulance, residential health services (CPC 931 other than 9312, part of 93191)**<br><br><u>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Performance Requirements:</u><br><br>(i) the supply of all health services which receive public funding or State support in any form, and are therefore not considered to be privately funded;<br><br>(ii) all privately funded health services other than hospital services;<br><br>(iii) the participation of private operators in the privately funded health network may be subject to concession on a non-discriminatory basis. An economic needs test may apply. Main criteria: number of and impact on existing establishments, transport infrastructure, population density, geographic spread, and creation of new employment.<br><br>**(b) Health and social services, including pension insurance (CPC 931 other than 9312, part of 93191)**<br><br><u>With respect to Cross-Border Trade in Services – Market Access, National Treatment, Local Presence:</u><br><br>The cross-border supply of health services, the cross-border supply of social services, as well as activities or services forming part of a public retirement plan or statutory system of social security. |

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| | Sub-entries (a) and (b) do not relate to the supply of any health-related professional services, including the services provided by professionals such as medical doctors, dentists, midwives, nurses, physiotherapists, paramedics, and psychologists, which are covered by other entries.<br><br>**(c) Social services, including pension insurance**<br><br><u>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Performance Requirements:</u><br><br>(i) the supply of all social services which receive public funding or State support in any form, and are therefore not considered to be privately funded, and activities or services forming part of a public retirement plan or statutory system of social security;<br><br>(ii) the supply of privately funded social services other than services relating to convalescent and rest houses and old people's homes;<br><br>(iii) the participation of private operators in the privately funded social network may be subject to concession on a non-discriminatory basis. An economic needs test may apply. Main criteria: number of and impact on existing establishments, transport infrastructure, population density, geographic spread, and creation of new employment. |

**Entry No. II-10– Recreational, cultural, and sporting services**

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|---|---|
| Sector | Recreational, cultural, and sporting services |
| Industry Classification | CPC 963, 9619, 964 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Senior Management and Boards of Directors<br>Performance Requirements |
| Description | Investment and Cross-Border Trade in Services<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the following:<br><br>(a) The supply of library, archive, museum, and other cultural services (CPC 963).<br><br>(b) The cross-border supply of entertainment services, including theatre, live bands, circus, and discotheque services (CPC 9619, 964 other than 96492).<br><br>(c) The supply of gambling activities, which involve wagering a stake with pecuniary value in games of chance, including, in particular, lotteries, scratch cards, gambling services offered in casinos, gambling arcades or licensed premises, betting services, bingo services and gambling services operated by and for the benefit of charities or non-profit-making organisations (CPC 96492). |

**Entry No. II-11– Transport services and auxiliary transport services**

| Sector | Transport services |
|---|---|
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Most-Favoured-Nation Treatment<br>Performance Requirements<br>Senior Management and Boards of Directors |
| Description | The United Kingdom reserves the right to adopt or maintain any measure with respect to the following:<br><br>**(a) Maritime transport and any other commercial activity undertaken from a ship**<br><br>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Performance Requirements and Cross-Border Trade in Services – Market Access, Local Presence, National Treatment:<br><br>The nationality of the crew on a seagoing or non-seagoing vessel.<br><br>With respect to Investment – Market Access, National Treatment, Most-favoured-nation treatment, Senior Management and Boards of Directors:<br><br>For the purposes of registering a vessel and operating a fleet under the flag of the United Kingdom (all commercial marine activity undertaken from a seagoing ship, including fishing, aquaculture, and services incidental to fishing; international passenger and freight transportation (CPC 721), and services auxiliary to maritime transport).<br><br>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Most-Favoured-Nation Treatment Performance Requirements and Cross-Border Trade in Services- Market Access, Local Presence, National Treatment, Most-Favoured-Nation Treatment<br><br>The supply of maritime cabotage services<br><br>Maritime cabotage services cover: |

(i) transportation of passengers or goods between a port or point located in the United Kingdom and another port or point located in the United Kingdom, including on its continental shelf as provided in the UN Convention on the Law of the Sea, and

(ii) traffic originating and terminating in the same port or point located in the United Kingdom.

For greater certainty, this entry applies to related traffic in support of offshore activities.

**(b) Auxiliary services to maritime transport**

With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence:

The supply of pilotage and berthing services.

Only vessels flying the flag of the United Kingdom may provide pushing and towing services (CPC 7214).

**(c) Inland waterways transport and auxiliary services to inland waterways transport**

With respect to Investment – Market Access, National Treatment, Most-Favoured-Nation Treatment, Senior Management and Boards of Directors, Performance Requirements and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence, Most-Favoured-Nation Treatment:

Inland waterways passenger and freight transportation (CPC 722), and services auxiliary to inland waterways transportation.

For greater certainty, this entry also covers the supply of cabotage transport on inland waterways (CPC 722).

**(d) Rail transport and auxiliary services to rail transport**

With respect to Investment – Market Access, National Treatment and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence:

Railway passenger transportation (CPC 7111).

With respect to Investment – Market Access and Cross-Border Trade in Services – Market Access, Local Presence:

Railway freight transportation (CPC 7112).

**(e) Road transport (passenger transportation, freight transportation, international truck transport services) and services auxiliary to road transport**

With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence:

(i) to require establishment and to limit the cross-border supply of road transport services (CPC 712).

(ii) an economic needs test may apply to taxi services in the United Kingdom setting a limit on the number of service suppliers. Main criterion: Local demand as provided in applicable laws (CPC 71221).

Existing measures:
*Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC* as retained in United Kingdom law by the *European Union (Withdrawal) Act 2018* and as amended by the *Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019;*

*Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market* as retained in United Kingdom law by *the European Union (Withdrawal) Act 2018* and as amended by the *Licensing of Operators and*

*International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019; and*

*Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006* as retained in United Kingdom law by the *European Union (Withdrawal) Act 2018* and as amended by the *Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019.*

**(f) Space transport and rental of space craft**

With respect to Investment – Market Access, National Treatment, Performance Requirements, Senior Management and Boards of Directors and Cross-Border Trade in Services – Market Access, National Treatment, Local Presence:

Transportation services via space and the rental of space craft (CPC 733, part of 734).

**(g) Air Traffic Management and Air Traffic Control**

With respect to Investment – Market Access, National Treatment and Senior Management and Boards of Directors:

(i) NATS Holdings Ltd and its successors.

(ii) the exercise of statutory powers and the discharge of statutory functions and duties in relation to Air Traffic Management and Air Traffic Control.

Existing measures:

*Transport Act 2000*

**(h) Most-favoured-nation exemptions**

With respect to Investment – Most-Favoured-Nation Treatment, and Cross-Border Trade in Services – Most-Favoured-Nation Treatment:

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| | Road and rail transport<br><br>To accord differential treatment to a country pursuant to existing or future agreements relating to international road haulage (including combined transport – road or rail) and passenger transport, concluded between the United Kingdom and a third country (CPC 7111, 7112, 7121, 7122, 7123). That treatment may:<br><br>(i) reserve or limit the supply of the relevant transport services between the contracting parties or across the territory of the contracting parties to vehicles registered in each contracting party; or<br><br>(ii) provide for tax exemptions for those vehicles.<br><br>**(i) Air services.**<br><br><u>With respect to Investment – Market Access, National Treatment, Senior Management and Boards of Directors, Most-Favoured-Nation Treatment, Performance Requirements:</u><br><br>Air carriers and airports. |

**Entry No. II-12– Fishing and water**

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| Sector | Fishing, aquaculture, services incidental to fishing; collection, purification, and distribution of water |
| Industry Classification | ISIC Rev. 3.1 0501, 0502, 41, CPC 882 |
| Obligations Concerned | Market Access<br>National Treatment<br>Local Presence<br>Most-Favoured-Nation Treatment<br>Performance Requirements<br>Senior Management and Boards of Directors |
| Description | Investment and Cross-Border Trade in Services<br><br>**(a) Fishing, aquaculture, and services incidental to fishing (ISIC Rev. 3.1 0501, 0502, CPC 882)**<br><br>The United Kingdom reserves the right to adopt or maintain any measure, in particular within the framework of United Kingdom's fisheries policy, and of fishing agreements with a third country, with respect to access to and use of the biological resources and fishing grounds situated in the maritime waters coming under the sovereignty or jurisdiction of the United Kingdom.<br><br>The United Kingdom reserves the right to adopt or maintain any measure:<br><br>(i) to the effect that the fishing activity of fishing vessels flying its flag must have an economic link (to the extent and according to the terms specified in the measure) with the United Kingdom; and<br><br>(ii) relating to fishing vessels' eligibility to use United Kingdom's fishing opportunities by reference to the nationality of the owner or owners of vessels or place of incorporation of a company.<br><br>The United Kingdom reserves the right to adopt or maintain any measure:<br><br>(i) regulating the landing of catches performed in the quotas allocated to vessels of New Zealand or of a designated third country in United Kingdom's ports; |

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| | (ii) determining a minimum size for a company in order to preserve both artisanal and coastal fishing vessels;<br><br>(iii) according differential treatment pursuant to existing or future international agreements relating to fisheries;<br><br>(iv) with regard to the nationality of the crew of a fishing vessel flying the flag of the United Kingdom; or<br><br>(v) with respect to the establishment of marine or inland aquaculture facilities.<br><br>Existing measures:<br><br>*Fisheries Act 2020*<br><br>**(b) Collection, purification, and distribution of water**<br><br><u>With respect to Investment – Market Access, National treatment and Cross-Border Trade in Services – Market Access, Local Presence, National Treatment:</u><br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to activities, including services relating to the collection, purification, and distribution of water to household, industrial, commercial, or other users, including the supply of drinking water, and water management. |

**Entry No. II-13– Energy related activities**

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| Sector | Production of energy and related services |
| Industry Classification | ISIC Rev. 3.1 401, 402, CPC 7131, 887 (other than advisory and consultancy services) |
| Obligations Concerned | Market Access<br>Local Presence<br>National Treatment<br>Performance Requirements<br>Senior Management and Boards of Directors |
| Description | Investment and Cross-Border Trade in Services<br><br>The United Kingdom reserves the right to adopt or maintain any measure where the United Kingdom permits foreign ownership of a gas or electricity transmission system, or an oil and gas pipeline transport system, with respect to enterprises of New Zealand controlled by natural persons or enterprises of a third country which accounts for more than five per cent of the United Kingdom's oil, natural gas, or electricity imports, in order to guarantee the security of the energy supply of the United Kingdom. This entry does not apply to advisory and consultancy services provided as services incidental to energy distribution. |

**Entry No. II-14– Other services not included elsewhere**

| Sector | Other services not included elsewhere |
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| Obligations Concerned | Market Access<br>Local Presence<br>National Treatment<br>Performance Requirements<br>Senior Management and Boards of Directors |
| Description | Investment and Cross-Border Trade in Services<br><br>The United Kingdom reserves the right to adopt or maintain any measure with respect to the provision of new services other than those classified in the CPC. |