Protocol to Amend the Agreement between New Zealand and Singapore on a Closer Economic Partnership

The Government of New Zealand and the Government of the Republic of Singapore (the Parties),

REAFFIRMING their longstanding friendship and growing trade and investment relationship;

RECALLING the *Agreement between New Zealand and Singapore on a Closer Economic Partnership* done at Singapore on 14 November 2000, and which entered into force on 1 January 2001, with subsequent amendments (the Agreement);

RECOGNISING that the strengthening of their trade and economic relationship through the establishment of an Enhanced Partnership between the Parties will produce mutual benefits for the Parties;

DETERMINED as part of this Enhanced Partnership to deepen their trade and economic relationship through an upgrade of the Agreement;

BUILDING on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral agreements and arrangements to which they are party;

COMMITTED to the Asia-Pacific Economic Cooperation (APEC) goals and principles and to furthering the Parties' economic leadership in the Asia Pacific region, in particular by seeking to reduce barriers to trade and investment in the region;

CONFIRMING their shared commitment to facilitating trade and investment and reducing the costs for business;

RECOGNISING the role regulatory cooperation can play in facilitating trade by reducing the impact of differences in domestic regulatory settings;

SEEKING to facilitate regional trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their traders;

CONFIDENT that an improved and modern framework of rules for investment will promote and facilitate investment between the Parties;

RECOGNISING the increasing role of electronic commerce, the economic growth opportunities it provides, and the importance of frameworks that provide certainty for businesses, protection for consumers and build trust in cross-border electronic commerce;

REAFFIRMING their commitment to the APEC Principles to Enhance Competition and Regulatory Reform with a view to enhancing economic efficiency through the bolstering of competition in markets, the curtailing of anti-competitive activities and the promotion of consumer protection;

REAFFIRMING the importance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality,

indigenous rights, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving their right to regulate in the public interest; and

DESIRING to further economic integration and trade liberalisation between the Parties,

HAVE AGREED to amend the Agreement in accordance with Article 82 of the Agreement, as follows:

Article 1: Amendment of the Agreement

The Parties agree to amend the Agreement by replacing Parts 1 to 11 and Annexes 1 to 4 of the Agreement with the text set out in the Appendix to this Protocol.

Article 2: Entry into Force

The Parties shall notify each other in writing upon the completion of their respective domestic legal procedures required for the entry into force of this Protocol. This Protocol shall enter into force on the date specified in such exchange of notes.

IN WITNESS whereof the undersigned, being duly authorised by their respective governments, have signed this Protocol.

DONE in duplicate at Singapore this 17th day of May 2019.

For New Zealand:	For the Republic of Singapore:
Hon Damien O'Connor	**S Iswaran**
Minister of State for Trade and Export Growth	**Minister-in-Charge of Trade Relations**

APPENDIX

CHAPTER 1

OBJECTIVES AND GENERAL DEFINITIONS

Article 1.1: Objectives

The objectives of New Zealand and Singapore in concluding this Agreement are:

(a) to strengthen their bilateral relationship through the establishment of a closer economic partnership;

(b) to liberalise bilateral trade in goods and services and to establish a framework conducive to bilateral investments;

(c) to support the wider liberalisation process in APEC and in particular the efforts of all APEC economies to meet the Bogor goals of free and open trade and investment by 2010 at the latest for industrialised economies and 2020 at the latest for developing economies;

(d) to support the World Trade Organization (WTO) in its efforts to create a predictable, freer and more open global trading environment;

(e) to improve the efficiency and competitiveness of their goods and services sectors and expand trade and investment between each other;

(f) to establish a framework of transparent rules to govern trade and investment between them; and

(g) to encourage, promote and protect the flow of investment between the Parties.

Article 1.2: General Definitions

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

APEC means Asia-Pacific Economic Cooperation;

customs administration means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and, where applicable, policies, and has for each Party the following meaning:

(a) for New Zealand, the New Zealand Customs Services; and

(b) for Singapore, Singapore Customs.

customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any 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 the GATT 1994;

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

(c) antidumping or countervailing duty;

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

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 any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

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

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

goods means any merchandise, product, article or material;

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 as adopted and implemented by the Parties in their respective laws;

Joint Commission means the Singapore - New Zealand Closer Economic Partnership Joint Commission established under Article 15.1 (Joint Commission);

national means a "natural person who has the nationality of a Party" according to the following definitions, or a permanent resident of a Party:

(a) for New Zealand, a natural person who is a citizen as defined in the Citizenship Act 1977, as amended from time to time, or any successor legislation;

(b) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws;

originating good or **originating material** means a good or material that qualifies as originating in accordance with Chapter 3 (Rules of Origin);

person means a natural person or an enterprise;

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

Protocol means the *Protocol to Amend the Agreement between New Zealand and Singapore on a Closer Economic Partnership* done at Singapore on 17 May 2019;

remanufactured good means a good that is entirely or partially composed of recovered materials and:

(a) has a similar life expectancy and performs the same as or similar to such a good when new; and

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

Revised Agreement on Government Procurement means *the Agreement on Government Procurement* in Annex 4 of the WTO Agreement as amended by *the Protocol Amending the Agreement on Government Procurement* done at Geneva on 30 March 2012;

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; and

(b) for Singapore, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in Annex 1C to the WTO Agreement;[1] and

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

[1] For greater certainty, a reference in this Agreement to the 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

TRADE IN GOODS

Article 2.1: Definitions

For the purposes of this Chapter:

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

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, that are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

Agreement on Agriculture means the *Agreement on Agriculture*, set out in Annex 1A to the WTO Agreement;

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

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

consumed means, with respect to a good:

(a) actually consumed; or

(b) further processed or manufactured:

(i) so as to result in a substantial change in the value, form or use of the good; or

(ii) in the production of another good;

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession or representation in the territory of that Party of goods of the other Party;

duty-free means free of customs duty;

export subsidy means a subsidy as defined in Article 3 of the SCM Agreement and includes export subsidies listed in Article 9 of the Agreement on Agriculture;

goods admitted for sports purposes means sports requisites admitted into the territory of the importing Party for use in sports contests, demonstrations or training in the territory of that Party;

goods intended for display or demonstration includes their component parts, ancillary apparatuses and accessories;

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

Import Licensing Agreement means the *Agreement on Import Licensing Procedures*, set out in Annex 1A to the WTO Agreement;

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

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 a waiver of customs duties or an import licence be substituted for imported goods;

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

(d) a person benefiting from a waiver of customs duties or a requirement for an import licence produce goods or supply services in the territory of the Party that grants the waiver of customs duties or 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;

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;

Safeguards Agreement means the *Agreement on Safeguards*, set out in Annex 1A to the WTO Agreement; and

SCM Agreement means the *Agreement on Subsidies and Countervailing Measures*, set out in Annex 1A to the WTO Agreement.

Article 2.2: Scope

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

Article 2.3: National Treatment on Internal Taxation and Regulation

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

Article 2.4: Customs Duties

1. Each Party shall eliminate all customs duties on originating goods of the other Party at the date of entry into force of this Agreement and such customs duties shall remain free after that date.

2. Each Parties shall classify goods traded between the Parties in conformity with the Harmonized System.

Article 2.5: Waiver of Customs Duties

1. Neither Party shall adopt any new waiver of a customs duty, or expand with respect to an existing recipient or extend to any new recipient the application of an existing waiver of a

customs duty, that is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.

2. Neither Party shall, explicitly or implicitly, condition the continuation of any existing waiver of a customs duty on the fulfilment of a performance requirement.

Article 2.6: Customs Value

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

Article 2.7: Goods Re-entered after Repair and Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or has increased the value of the good.

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

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

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

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

Article 2.8: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

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

(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 duty-free temporary admission for the following goods, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry pursuant to the laws and regulations of the importing Party;

(b) goods intended for display or demonstration;

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

(d) goods admitted for sports purposes.

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.

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

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

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

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

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

(e) be exported on the departure of the national referred to in subparagraph (a), or within any other period reasonably related to the purpose of the temporary admission that the Party may establish, or within one year, unless extended;

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

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

4. Each Party shall grant duty-free temporary admission for containers and pallets regardless of their origin, that are in use or to be used in the shipment of goods in international traffic.

(a) For the purposes of this paragraph, **container** means an article of transport equipment that is: fully or partially enclosed to constitute a compartment intended for containing goods; substantial and has an internal volume of one cubic metre or more; of a permanent character and accordingly strong enough to be suitable for repeated use; used in significant numbers in international traffic; specially designed to facilitate the carriage of goods by more than one mode of transport without intermediate reloading; and designed both for ready handling, particularly when being transferred from one mode of transport to another, and to be easy to fill and to empty, but does not include vehicles, accessories or spare parts of vehicles or packaging.

(b) For the purposes of this paragraph, **pallet** means a small, portable platform, which consists of two decks separated by bearers or a single deck supported by feet, on which goods can be moved, stacked, and stored, and which is designed essentially for handling by means of fork lift trucks, pallet trucks, or other jacking devices.

5. 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 and regulations.

6. Each Party shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, those procedures shall provide that when a good admitted under this Article accompanies a national of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national.

7. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than the port through which it was admitted.

8. Each Party shall, in accordance with its laws and regulations, provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good was destroyed within the period fixed for temporary admission, including any lawful extension.

9. Subject to Chapter 7 (Investment) and Chapter 8 (Services):

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

(b) neither Party shall require any security or impose any penalty or charge solely by reason of any difference between the customs port of entry and the customs port of departure of a container;

(c) neither Party shall condition the release of any obligation, including any security, that it imposes in respect of the entry of a container into its territory on the exit of that container through any particular customs port of departure; and

(d) neither Party shall require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes such container to the territory of the other Party.

Article 2.10: Import and Export Restrictions

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

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(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 the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. For greater certainty, paragraph 1 shall apply to the importation of commercial cryptographic goods.

4. For the purposes of paragraph 3, **commercial cryptographic goods** means any good implementing or incorporating cryptography, if the good is not designed or modified specifically for government use and is sold or otherwise made available to the public.

5. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent that Party from:

(a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or

(b) requiring, as a condition for exporting the good of that Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

6. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, it shall, on the request of the other Party, consult with the other Party with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in that other Party.

7. Neither Party shall, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

8. For greater certainty, paragraph 7 does not prevent a Party from requiring a person referred to in that paragraph to designate a point of contact for the purposes of facilitating communications between its regulatory authorities and that person.

Article 2.11: Remanufactured Goods

1. For greater certainty, Article 2.10.1 shall apply to prohibitions and restrictions on the importation of remanufactured goods.

2. If a Party adopts or maintains measures prohibiting or restricting the importation of used goods, it shall not apply those measures to remanufactured goods.[1]

Article 2.12: Import Licensing

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after the Protocol enters into force for a Party, that Party shall notify the other Party of its existing import licensing procedures, if any. The notice shall include the

[1] For greater certainty, subject to its obligations under this Agreement and the WTO Agreement, a Party may require that remanufactured goods:

(a) be identified as such for distribution or sale in its territory; and

(b) meet all applicable technical requirements that apply to equivalent goods in new condition.

information specified in Article 5.2 of the Import Licensing Agreement and any information required under paragraph 6.

3. A Party shall be deemed to be in compliance with paragraph 2 with respect to an existing import licensing procedure if:

(a) it has notified that procedure to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement together with the information specified in Article 5.2 of that agreement;

(b) in the most recent annual submission, due before the date of entry into force of the Protocol for that Party, to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement, it has provided, with respect to that procedure, the information requested in that questionnaire; and

(c) it has included in either the notice described in subparagraph (a) or the annual submission described in subparagraph (b) any information required to be notified to the other Party under paragraph 6.

4. Each Party shall comply with Article 1.4(a) of the Import Licensing Agreement with respect to any new or modified import licensing procedure. Each Party shall also publish on an official government website any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement.

5. Each Party shall notify the other Party of any new import licensing procedures it adopts and any modifications it makes to its existing import licensing procedures, if possible, no later than 60 days before the new procedure or modification takes effect. In no case shall a Party provide the notification later than 60 days after the date of its publication. The notification shall include any information required under paragraph 6. A Party shall be deemed to be in compliance with this obligation if it notifies a new import licensing procedure or a modification to an existing import licensing procedure to the WTO Committee on Import Licensing in accordance with Article 5.1, Article 5.2 or Article 5.3 of the Import Licensing Agreement and includes in its notification any information required to be notified to the other Party under paragraph 6.

6. (a) A notice under paragraph 2, paragraph 3 or paragraph 5 shall state if, under any import licensing procedure that is a subject of the notice:

(i) the terms of an import licence for any product limit the permissible end users of the product; or

(ii) the Party imposes any of the following conditions on eligibility for obtaining a licence to import any product:

(A) membership in an industry association;

(B) approval by an industry association of the request for an import licence;

(C) a history of importing the product or similar products;

(D) minimum importer or end user production capacity;

(E) minimum importer or end user registered capital; or

(F) a contractual or other relationship between the importer and a distributor in the Party's territory.

(b) A notice that states, under subparagraph (a), that there is a limitation on permissible end users or a licence-eligibility condition shall:

(i) list all products for which the end-user limitation or licence eligibility condition applies; and

(ii) describe the end-user limitation or licence-eligibility condition.

7. Each Party shall respond within 60 days to a reasonable enquiry from the other Party concerning its licensing rules and its procedures for the submission of an application for an import licence, including the eligibility of persons, firms and institutions to make an application, the administrative body or bodies to be approached and the list of products subject to the licensing requirement.

8. If a Party denies an import licence application with respect to a good of the other Party, it shall, on request of the applicant and within a reasonable period after receiving the request, provide the applicant with a written explanation of the reason for the denial.

9. Neither Party shall apply an import licensing procedure to a good of the other Party unless it has, with respect to that procedure, met the requirements of paragraph 2 or paragraph 4, as applicable.

Article 2.13: Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than export taxes, customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and antidumping 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 of imports or exports for fiscal purposes.

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

3. Each Party shall make publicly available online a current list of the fees and charges it imposes in connection with importation or exportation.

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

5. Each Party shall periodically review its fees and charges, with a view to reducing their number and diversity if practicable.

Article 2.14: Export Duties

A Party shall not adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.[2]

Article 2.15: Non-tariff Measures

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

2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1 and that they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

Article 2.16: Subsidies and Countervailing Measures

1. Each Party shall prohibit export subsidies on all goods, including agricultural goods.

2. If either Party grants or maintains any subsidy which operates to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the other Party to the extent and nature of the subsidisation, of the estimated effect of the subsidisation on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidisation necessary. In any case in which it is determined that serious prejudice to the interests of the other Party is caused or threatened by any subsidisation, the Party granting the subsidy shall, upon request, discuss with the other Party the possibility of limiting the subsidisation. This paragraph shall be applied in conjunction with the relevant applicable provisions of the GATT 1994 and the SCM Agreement.

[2] For greater certainty, this Article shall not apply to fees, charges, formalities and requirements on the exportation of goods imposed consistent with Article VIII of GATT 1994.

3. The Parties reaffirm their commitment to abide by the SCM Agreement in respect of actionable subsidies.

4. Each Party shall seek to avoid causing adverse effects to the interests of the other Party in terms of Article 5 of the SCM Agreement.

Article 2.17: Anti-Dumping Measures

1. Both Parties are Members of the AD Agreement. For the purposes of trade between the Parties, the following changes are agreed in terms of implementation of the AD Agreement in order to bring greater discipline to anti-dumping investigations and to minimise the opportunities to use anti-dumping in an arbitrary or protectionist manner:

(a) the *de minimis* dumping margin of two per cent expressed as a percentage of the export price below which no anti-dumping duties can be imposed provided for in Article 5.8 of the AD Agreement is raised to five per cent;

(b) the new *de minimis* margin of five per cent established in sub-paragraph (a) is applied not only in new cases but also in refund and review cases;

(c) the maximum volume of dumped imports from the exporting Party which shall normally be regarded as negligible under Article 5.8 of the AD Agreement is increased from three per cent to five per cent of imports of the like product in the importing Party. Existing cumulation provisions under Article 5.8 continue to apply;

(d) the time frame to be used for determining the volume of dumped imports under the preceding sub-paragraphs shall be representative of the imports of both dumped and non-dumped goods for a reasonable period. Such reasonable period shall normally be at least 12 months;

(e) the period for review or termination of anti-dumping duties provided for in Article 11.3 of the AD Agreement is reduced from five years to three years.

2. Notification procedures shall be as follows:

(a) immediately following the acceptance of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of goods from the other Party, the Party that has accepted the properly documented application shall immediately inform the other Party;

(b) if a Party considers that, in accordance with Article 5 of the AD Agreement, there is sufficient evidence to justify the initiation of an anti-dumping investigation, it shall give written notice to the other Party in accordance with

Article 12.1 of the AD Agreement and observe the requirements of Article 17.2 of the AD Agreement concerning consultations.

Article 2.18: Safeguard Measures

No Party shall initiate or take any safeguard measure within the meaning of the Safeguards Agreement against the goods of the other Party from the date of entry into force of this Agreement.

Article 2.19: Publication and Administration of Trade Regulations

Article X of the GATT 1994 is incorporated into and shall form part of this Agreement, *mutatis mutandis*.

CHAPTER 3

RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A: Rules of Origin

Article 3.1: Definitions

For the purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

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

Generally Accepted Accounting Principles means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

material means a good that is used in the production of another good;

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

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

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

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

recovered material means a material in the form of one or more individual parts that results from:

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

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

transaction value means the price actually paid or payable for the good when sold for export to the country of importation or other value determined in accordance with the Customs Valuation Agreement; and

value of the good means the transaction value of the good excluding any costs incurred in the international shipment of the good.

Article 3.2: Originating Goods

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 by one or more producers as established in Article 3.3;

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

(c) produced entirely in the territory of one or both of the Parties by one or more producers using non-originating materials provided the good satisfies all applicable requirements of Annex 3.1,

and the good satisfies all other applicable requirements of this Chapter.

Article 3.3: Wholly Obtained or Produced Goods

Each Party shall provide that for the purposes of Article 3.2, a good is wholly obtained or produced entirely in the territory of one or both of the Parties if it is:

(a) a plant or plant good, grown, cultivated, harvested, picked or gathered there;

(b) a live animal born and raised there;

(c) a good obtained from a live animal there;

(d) an animal obtained by hunting, trapping, fishing, gathering or capturing there;

(e) a good obtained from aquaculture there;

(f) a mineral or other naturally occurring substance, not included in subparagraphs (a) to (e), extracted or taken from there;

(g) fish, shellfish and other marine life taken from the high seas, by vessels that are entitled to fly the flag of that Party;

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

(i) a good other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties and beyond areas over which non-Parties exercise jurisdiction provided that Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;

(j) 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

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

Article 3.4: Treatment of Recovered Materials Used in Production of a Remanufactured Good

1. Each Party shall provide that a recovered material derived in the territory of one or both of the Parties is treated as originating when it is used in the production of, and incorporated into, a remanufactured good.

2. For greater certainty:

(a) a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2; and

(b) a recovered material that is not used or incorporated in the production of a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2.

Article 3.5: Regional Value Content

1. Each Party shall provide that a regional value content requirement specified in this Chapter to determine whether a good is originating, is calculated as follows:

(a) Build-down Method: Based on Value of Non-Originating Materials

$$RVC = \frac{\text{Value of the Good} - VNM}{\text{Value of the Good}} \times 100$$

or

(b) Build-up Method: Based on Value of Originating Materials

$$RVC = \frac{VOM}{\text{Value of the Good}} \times 100$$

where:

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

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

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

2. Each Party shall provide that all costs considered for the calculation of regional value content are recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of a Party where the good is produced.

Article 3.6: 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 a 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 good meets a regional value content requirement:

(a) the value of processing of the non-originating materials undertaken in the territory of one or both of the Parties; 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.

Article 3.7: Value of Materials Used in Production

Each Party shall provide that for the purposes of this Chapter, the value of a material is:

(a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, 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 territory of 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; or

(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 3.8: 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 3.7:

(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 one or both of the 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.

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 within the territories of the Parties 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 of the 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. If the cost or expense listed in paragraph 1 or paragraph 2 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost.

Article 3.9: Accumulation

1. Each Party shall provide that an originating good or material of one of the Parties that is used in the production of another good in the territory of the other Party is considered as originating in the territory of the other Party.

2. Each Party shall provide that production undertaken on a non-originating material in the territory of one or both of the Parties by one or more producers may contribute toward the originating content of a good for the purposes of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

3. Subject to paragraph 4, if each Party has a trade agreement that, as contemplated by the WTO Agreement, concerns the establishment of a free trade area with the same non-Party, the territory of that non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for the purposes of determining whether a good is an originating good under this Agreement.

4. A Party shall apply paragraph 3 only once provisions with effect equivalent to those of paragraph 3 are in force between each Party and the non-Party with which each Party has separately concluded a free trade agreement. If such provisions in force between a Party and the non-Party apply to only certain goods or under certain conditions, the other Party may limit the application of paragraph 3 to those goods and under those conditions and as otherwise set out in this Agreement.

Article 3.10: *De Minimis*

1. Each Party shall provide that a good that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 3.1 for the good is nonetheless an originating good if:

(a) the value of all those materials does not exceed 10 per cent of the value of the good, as defined under Article 3.5, and the good meets all the other applicable requirements of this Chapter; or

(b) for a good classified in Chapters 50 through 63 of the Harmonized System, the total weight of all such materials does not exceed 10 per cent of the total weight of the good, or the total value of all such materials does not exceed 10 per cent of the value of the good.

2. Paragraph 1 applies only when using a non-originating material in the production of another good.

Article 3.11: Fungible Goods or Materials

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 of the person that selected the inventory management method.

Article 3.12: Accessories, Spare Parts, Tools and Instructional or Other Information Materials

1. Each Party shall provide that:

(a) in determining whether a good is wholly obtained or satisfies a process or change in tariff classification requirement as set out in Annex 3.1, accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be disregarded; or

(b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be 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 a good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article, accessories, spare parts, tools and instructional or other information materials are covered when:

(a) the accessories, spare parts, tools and instructional or other information materials are classified with, delivered with but not invoiced separately from the good; and

(b) the types, quantities and value of the accessories, spare parts, tools and instructional or other information materials are customary for that good.

Article 3.13: Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 3.1 or whether the good is wholly obtained or produced.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

Article 3.14: Packing Materials and Containers for Shipment

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

Article 3.15: 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 3.16: Sets of Goods

Sets, as defined in General Interpretative Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating products. When a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the originating products is not less than 40 percent of the value of the set.

Article 3.17: Transit and Transhipment

1. Each Party shall provide that an originating good retains its originating status if the good has been transported to the importing Party without passing through the territory of a non-Party.

2. Each Party shall provide that if an originating good is transported through the territory of one or more non-Parties, the good retains its originating status provided that the good does not undergo any operation outside the territories of the Parties other than: unloading; reloading; separation from a bulk shipment; storing; labelling 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.

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 certification of origin completed by the exporter, producer or importer or an authorised representative of the exporter, producer or importer.[1]

2. Each Party shall provide that the certification of origin shall include a signed statement attesting to the origin of the goods.

[1] This article does not prevent Parties adopting or maintaining laws and regulations governing the issuance of certificates of origin.

3. Unless such information already appears on the export invoice or other entry documentation, the certification shall also include:

(a) a full description of the good(s) sufficient to relate it to the good(s) covered by the certification;

(b) six digit Harmonized System Code for the respective good(s);

(c) the exporter's name and address;

(d) the producer's name(s) if known (if the producer is not the exporter);

(e) the importer's name(s) in respect of imported goods, if known;

(f) the rule of origin under which the declarant claims the good(s) qualifies;

(g) date of the origin declaration; and

(h) in the case of a blanket declaration issued for multiple shipments, the period that the origin declaration covers.

4. The declaration or certificate of origin shall be in writing, including electronic format, and be completed in English.

5. An importer, exporter or producer, or a person acting on their behalf, may use the guidance template provided in Annex 3.2 to certify the goods.

6. Each Party shall provide that a certification of origin may apply to:

(a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the certification of origin, but not exceeding 12 months.

7. Each Party shall provide that a certification of origin is valid for one year after the date that it was either issued or signed, or for such longer period specified by the laws and regulations of the importing Party.

8. Each Party shall allow an importer to submit a certification of origin in English.

Article 3.19: Basis of a Self-Certification of Origin

1. Each Party shall provide that if a producer certifies the origin of a good, the certification of origin is completed on the basis of the producer having information that the good is originating.

2. Each Party shall provide that if the exporter is not the producer of the good, a certification of origin may be completed by the exporter of the good on the basis of:

(a) the exporter having information that the good is originating; or

(b) reasonable reliance on the producer's information that the good is originating.

3. Each Party shall provide that a certification of origin may be completed by the importer of the good on the basis of:

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

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

4. Each Party shall provide that a certification of origin may be completed by an authorised representative of a producer, exporter or importer of the good on the basis of:

(a) the authorised representative having documentation that the good is originating; or

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

5. For greater certainty, nothing in paragraph 1 or paragraph 2 shall be construed to allow a Party to require an exporter or producer to complete a certification of origin or provide a certification of origin to another person.

Article 3.20: Discrepancies

Each Party shall provide that it shall not reject a certification of origin due to minor errors or discrepancies in the certification of origin.

Article 3.21: Waiver of Certification of Origin

Neither Party shall require a certification of origin if:

(a) the customs value of the importation does not exceed US$1,000 or the equivalent amount in the importing Party's currency or any higher amount as the importing Party may establish; or

(b) it is for an importation of a good for which the importing Party has waived the requirement for a certification of origin,

provided that the importation does not form part of a series of importations carried out or planned for the purposes of evading compliance with the importing Party's laws and regulations governing claims for preferential tariff treatment under this Agreement.

Article 3.22: Obligations Relating to Importation

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purposes of claiming preferential tariff treatment, the importer shall:

(a) make a declaration[2] that the good qualifies as an originating good; and

(b) provide a copy of the certification of origin to the importing Party if required by the Party.

2. Each Party shall provide that, if the importer has reason to believe that the certification of origin is based on incorrect information that could affect the accuracy or validity of the certification of origin, the importer shall correct the importation document and pay any customs duty and, if applicable, penalties owed.

3. No importing Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer, on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the Party's laws and regulations.

Article 3.23: Obligations Relating to Exportation

Each Party shall provide that an exporter or a producer, or their authorised representative, that has completed and signed a certification of origin, shall, on request, provide a copy of the certification of origin and such other documents to its customs administration, if required by the Party's laws and regulations.

Article 3.24: Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain, for a period of no less than five years from the date of importation of the good:

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

[2] A Party shall specify its declaration requirements in its laws, regulations or administrative procedures that are published or otherwise made available in a manner as to enable interested persons to become acquainted with them.

(b) all records necessary to demonstrate that the good is originating and qualified for preferential tariff treatment, if the claim was based on a certification of origin completed by the importer.

2. Each Party shall provide that a producer or exporter in its territory that provides a certification of origin shall maintain, for a period of no less than five years from the date the certification of origin was issued, all records necessary to demonstrate that a good for which the exporter or producer provided a certification of origin is originating. Each Party shall make available information on types of records that may be used to demonstrate that a good is originating.

3. Each Party shall provide that an importer, exporter or producer in its territory may choose to maintain the records specified in paragraph 1 and paragraph 2 in any medium that allows for prompt retrieval, including electronic, optical, magnetic or written form in accordance with that Party's law.

Article 3.25: Verification of Origin

1. For the purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good, the customs administration of the importing Party may conduct a verification action by means of:

(a) written requests for information from the importer;

(b) written requests for information from the exporter or producer of the exporting Party;

(c) requests that the customs administration of the exporting Party assist in verifying the origin of the good; or

(d) verification visits to the premises of the exporter or the producer in the territory of the other Party to observe the facilities and the production processes of the good and to review the records referring to origin, including accounting records.

2. For the purposes of paragraph 1(a) and paragraph 1(b), the customs administration shall allow the importer, exporter, or producer a period of 60 days from the date of the written request to respond. During this period the importer, exporter, or producer may request, in writing, an extension not exceeding 30 days.

3. For the purposes of this Article and Article 3.26, all the information requested by the importing Party and responded to by the exporting Party shall be communicated in English.

4. The customs administration of the importing Party shall complete any action under paragraph 1 to verify eligibility for preferential tariff treatment within the period specified in the laws, regulations or administrative procedures of the importing Party. On completion of

the verification action, the customs administration shall provide written advice to the exporting customs administration and the importer, exporter or producer of its decision as well as the legal basis and findings of fact on which the decision was made within 90 days.

5. Where a verification visit was undertaken, the customs administration shall also provide advice of the decision to the exporting Party.

Article 3.26: Verification Visit

1. Prior to conducting a verification visit under Article 3.25.1(d), the customs administration of the importing Party shall:

(a) make a written request to the exporter or producer to conduct a verification visit of their premises; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

2. An exporter or producer should provide its written consent to a proposed verification visit within 30 days of the receipt of notification in accordance with paragraph 1(a).

3. The written request referred to in paragraph 1(a) shall include:

(a) the identity of the customs administration issuing the request;

(b) the name of the exporter of the good in the exporting Party to whom the request is addressed;

(c) the date the written request is made;

(d) the proposed date and place of the visit;

(e) the objective and scope of the proposed visit, including specific reference to the good that is the subject of the verification referred to in the certificate of origin; and

(f) the names and titles of the officials of the customs administration of the importing Party who will participate in the visit.

4. The customs administration of the importing Party shall notify the customs administration of the exporting Party when it requests a verification visit in accordance with this Article.

5. Officials of the customs administration of the exporting Party may participate in the verification visit as observers.

Article 3.27: Determinations on Claims for Preferential Tariff Treatment

1. Except as otherwise provided in paragraph 2, each Party shall grant a claim for preferential tariff treatment made on or after the date of entry into force of the Protocol.

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

(a) it determines that the good does not qualify for preferential treatment;

(b) pursuant to a verification under Article 3.25, it has not received sufficient information to determine that the good qualifies as originating;

(c) the exporter, producer or importer fails to respond to a written request for information in accordance with Article 3.25;

(d) after receipt of a written notification for a verification visit, the exporter or producer does not provide its written consent in accordance with Article 3.25; or

(e) the importer, exporter or producer fails to comply with the requirements of this Chapter.

3. If an importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination.

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

Article 3.28: Refunds and Claims for Preferential Tariff Treatment after Importation

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) provide a copy of the certification of origin; and

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

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

Article 3.29: Penalties

A Party may establish or maintain appropriate penalties for violations of its laws and regulations related to this Chapter.

Article 3.30: Confidentiality

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

Section C: Other Matters

Article 3.31: Consultation on Rules of Origin and Origin Procedures

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

2. The Parties shall consult to discuss possible amendments or modifications to this Chapter, taking into account developments in technology, production processes or other related matters.

3. Prior to the entry into force of an amended version of the Harmonized System, the Parties shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Objectives

The objectives of this Chapter are to:

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

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

(c) simplify customs procedures of the Parties and harmonise them to the extent possible with relevant international standards;

(d) promote co-operation between the customs authorities of the Parties; and

(e) facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

Article 4.2: Scope

This Chapter shall apply to customs procedures required for goods traded between the Parties, in accordance with their laws and regulations.

Article 4.3: Customs Procedures and Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent, and facilitate trade, including through the expeditious clearance of goods.

2. Subject to each Party's applicable laws and regulations, each customs administration shall publish all its laws, regulations, and trade-related guidelines, procedures and administrative rulings, either online or in print form.

3. Customs procedures of each Party shall, if possible and to the extent permitted by its customs laws and regulations, conform with the standards and recommended practices of the World Customs Organisation and the WTO.

4. The customs administration of each Party shall review its customs procedures with a view to their simplification, to facilitate trade.

5. Each Party shall, in a manner consistent with its laws and regulations, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit.

Article 4.4: Customs Cooperation

Each Party shall, in accordance with its laws and regulations, cooperate with the other Party through information sharing and other activities as appropriate, to achieve compliance with their respective laws and regulations that pertain to:

(a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment and verification procedures;

(b) the implementation, application and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports or exports;

(d) investigation and prevention of customs offences, including duty evasion and smuggling; and

(e) other customs matters as the Parties may decide.

Article 4.5: Advance Rulings

1. Each Party shall issue an advance ruling to any person with respect to:

(a) tariff classification of a product;

(b) origin of goods; and

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

2. On receipt of all necessary information, each Party shall issue an advanced ruling:

(a) with respect to tariff classification, as expeditiously as possible, and in no case later than 40 days or in such shorter time as specified in its laws and regulations;

(b) with respect to origin and valuation, as expeditiously as possible, and in no case later than 150 days or in such shorter time as specified in its laws and regulations.

3. The customs administration of each Party shall establish a validity period for an advance ruling for three years from the date of its issuance.

4. The issuing Party may modify or revoke an advance ruling if:

(a) the ruling was 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;

(d) any of the conditions to which the Customs ruling was made subject cease to be met or complied with; or

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

5. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date.

6. When each 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.

Article 4.6: Single Window and Use of Automated System

1. Each Party shall establish or maintain a single window, enabling traders to submit documentation or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation or data, the results shall be notified to the applicants through the single window in a timely manner.

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 and to allow collection of payment electronically upon approval of the customs declaration.

Article 4.7: Rapid Release of Goods

1. Each Party shall adopt or maintain procedures that:

   (a) provide for the release of goods within a period of time no greater than that required to ensure compliance with its laws and regulations;

   (b) provide, in normal circumstances, for goods to be released within 24 hours of arrival;

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

   (d) allow the release of imported goods prior to the final determination by its customs administration of the applicable duties and taxes, provided the good is otherwise eligible for release from customs.

2. Notwithstanding paragraph 1(d) above, each Party may require importers to provide security as a condition for the release of goods if such security is required to ensure that obligations arising from the importation of the goods will be fulfilled.

3. If a Party allows for the release of goods conditioned on a security, 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 shall be discharged as soon as possible after its customs authorities are satisfied that the obligations arising from the importation of the goods have been fulfilled; and

   (c) allow:

      (i) importers to provide security such as bank guarantees, bonds, or other non-cash financial instruments covering multiple entries; and

      (ii) importers to provide security in any other forms specified by its customs administration.

Article 4.8: Expedited Shipments

Each Party shall adopt or maintain expedited customs procedures for express consignments, while maintaining appropriate control and customs selection. These procedures shall:

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

(b) allow the submission of a single document covering all of the goods in the shipment by an express shipment service, through, if possible, electronic means;

(c) minimise, to the extent possible, the documentation required for the release of express shipments; and

(d) provide, in normal circumstances, for an express shipment to be released within four hours of the submission of necessary customs documentation.

Article 4.9: Perishable Goods

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Party shall:

(a) provide for the release of perishable goods under normal circumstances in the shortest time possible; and

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

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

3. 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 are approved or designated by its relevant authorities.

4. 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 4.10: Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration 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 a disguised restriction on international trade.

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

Article 4.11: Review and Appeal

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

(a) administrative review of the determination, independent[1] of the employee or office that issued the determination; and

(b) judicial review of the determination.

2. Each Party shall ensure that a customs authority that conducts a review under paragraph 1 notifies the parties to the matter in writing of its decision and the reasons for the decision. A Party may require a request as a condition for providing the reasons for a decision in the review.

[1] The level of administrative review may include any authority supervising the customs administration.

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Definitions

1. For the purposes of this Chapter:

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

WTO SPS Committee means the Committee on Sanitary and Phytosanitary Measures established
under Article 12 of the SPS Agreement.

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

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

Article 5.2: Objectives

The objectives of this Chapter are to:

(a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by the OIE, the IPPC and *the Codex Alimentarius Commission*;

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

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

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

Article 5.3: Scope

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

2. Nothing in this Chapter or any implementing arrangement under this Chapter shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

Article 5.4: Committee to Consider Sanitary and Phytosanitary Matters

Matters relating to the implementation of this Chapter shall be considered by the competent authorities of the Parties through the Committee on Biosecurity, Food and Primary Products established under Article 15.3 (Committee on Biosecurity, Food and Primary Products).

Article 5.5: Competent Authorities and Contact Points

1. The competent authorities responsible for the implementation of the measures referred to in this Chapter are listed in the Arrangement between New Zealand and Singapore on Competent Authorities and Contact Points (Implementing Arrangement 1). The contact points that have the responsibilities relating to notification are also set out in Implementing Arrangement 1.

2. The Parties shall inform each other of any significant changes in the structure and organisation of its competent authorities or contact points. The Committee on Biosecurity, Food and Primary Products shall amend Implementing Arrangement 1 to reflect such changes.

Article 5.6: Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise that adaptation to regional conditions, including regionalisation, zoning and compartmentalisation, is an important means to facilitate trade.

2. The Parties shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. The Parties may cooperate on the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.

4. When an importing Party receives a request for a determination of regional conditions from an exporting Party and determines that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time.

5. When an importing Party commences an assessment of a request for a determination of regional conditions under paragraph 4, that Party shall promptly, on request of the exporting Party, explain its process for making the determination of regional conditions.

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment of the exporting Party's request for a determination of regional conditions.

7. When an importing Party recognises specific regional conditions of an exporting Party, the importing Party shall communicate to the exporting Party in writing and implement the decision-within a reasonable period of time.

8. When the Parties are involved in a particular determination they may also decide in advance the risk management measures that will apply to trade between them in the event of a change in the status.

9. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognise pest- or disease-free areas, or areas of low pest and disease prevalence, the importing Party shall provide the exporting Party with the rationale for its determination.

10. If there is an incident that results in the importing Party modifying or revoking the determination recognising regional conditions, on request of the exporting Party, the Parties shall cooperate to assess whether the determination can be reinstated.

11. The Arrangement between New Zealand and Singapore on the Recognition of the Equivalence of Foreign Disease and Pest Control and Zoning Measures as They Apply to Trade (Implementing Arrangement 2) lists those areas or parts of each Party's territory that are free of certain diseases or pests and recognises the ability for the exporting party to continue to provide assurances should an incursion occur.

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

13. The Parties may agree to list additional diseases or pests in Implementing Arrangement 2, in accordance with the criteria set out in this Article and any additional criteria agreed.

Article 5.7: Equivalence

1. The Parties acknowledge that recognition of the equivalence of sanitary and phytosanitary measures is an important means to facilitate trade. Further to Article 4 of the SPS Agreement, the Parties shall apply equivalence to a group of measures or to measures on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures or measures 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.

2. On request of the exporting Party, the importing Party shall 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.

3. When an importing Party receives a request for an equivalence assessment and determines that the information provided by the exporting Party is sufficient, it shall initiate the equivalence assessment within a reasonable period of time.

4. When an importing Party commences an equivalence assessment, that Party shall promptly, on request of the exporting Party, explain its equivalence process and plan for making the equivalence determination and, if the determination results in recognition, for enabling trade.

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

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

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

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

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

6. The importing Party shall accept the sanitary or phytosanitary measure of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection or has the same effect in achieving the objective as the importing Party’s measure.

7. When an importing Party recognises the equivalence of an exporting Party’s specific sanitary or phytosanitary measure, group of measures or measures on a systems-wide basis, the importing Party shall communicate to the exporting Party in writing. The recognition shall be applied to the trade between the Parties without undue delay and shall be recorded in the Arrangement between New Zealand and Singapore on Recognition of Measures and Status (Implementing Arrangement 3) within a reasonable period of time.

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

9. Where equivalence has not been recognised or where an application is pending, trade shall take place under the conditions required by the importing Party to meet its appropriate level of protection. The exporting Party may agree to meet the importing Party's conditions, without affecting the result of the process of determining equivalence.

10. Implementing Arrangement 3 may list:

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

(b) actions to enable the assessment of equivalence to be completed in accordance with the process set out in this Article, and by any agreed dates, or as specified by the importing Party; or

(c) the specific guarantees related to recognition of special status provided for in Implementing Arrangement 2; and

(d) may also list those sectors, or parts of sectors, for which the Parties apply differing sanitary or phytosanitary measures and have not concluded the determination provided for in paragraph 7.

Article 5.8: Science and Risk Analysis

1. The Parties recognise the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific principles.

2. Each Party shall ensure that its sanitary and phytosanitary measures either conform to the relevant international standards, guidelines or recommendations or, if its sanitary and phytosanitary measures do not conform to international standards, guidelines or recommendations, ensure they are based on a risk assessment.

3. Each Party shall:

(a) ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate against the other Party where identical or similar conditions prevail, including between its own territory and that of the other Party; and

(b) conduct its risk analysis in a manner that is documented and that provides the other Party opportunity to comment.

4. Each Party shall ensure that each risk assessment it conducts is appropriate to the circumstances of the risk at issue and takes into account reasonably available and relevant scientific data, including qualitative and quantitative information.

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

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

(b) consider risk management options that are not more trade restrictive than required, including the option of facilitating trade by not taking any measure

to achieve the level of protection that the Party has determined to be appropriate; and

(c) select a risk management option that is not more trade restrictive than required to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility.

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress of a specific risk analysis request, and of any delay that may occur during the process.

7. If the importing Party, as a result of a risk analysis, adopts a sanitary or phytosanitary measure that allows trade to commence or resume, the importing Party shall implement the measure within a reasonable period of time.

8. Without prejudice to Article 5.13, no Party shall stop the importation of a good of another Party solely for the reason that the importing Party is undertaking a review of its sanitary or phytosanitary measure, if the importing Party permitted the importation of that good of the other Party when the review was initiated.

Article 5.9: Verification

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

(a) reviews of the inspection and audit programmes; and

(b) on-site checks.

2. An audit shall be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.

3. Each Party shall also have the right to carry out import checks for the purposes of implementing sanitary and phytosanitary measures on consignments on importation, consistent with Article 5.10, the results of which form part of the verification process.

4. In undertaking an audit, a Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

5. Prior to the commencement of an audit, the importing Party and exporting Party involved shall discuss the rationale and decide: the objectives and scope of the audit; the criteria or requirements against which the exporting Party will be assessed; and the itinerary and procedures for conducting the audit.

6. The auditing Party shall provide the audited Party the opportunity to comment on the findings of the audit and take any such comments into account before the auditing Party

makes its conclusions and takes any action. The auditing Party shall provide a report setting out its conclusions in writing to the audited Party within a reasonable period of time.

7. A decision or action taken by the auditing Party as a result of the audit shall be supported by objective evidence and data that can be verified, taking into account the auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party. This objective evidence and data shall be provided to the audited Party on request.

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

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

10. With the consent of the other Party, a Party may:

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

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

Article 5.10: Import Checks

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

2. The basis for determining the nature and frequency of import checks, including the factors it considers to determine the risks associated with importations, shall be made available on request. The Parties may amend the frequencies, within their responsibilities, as appropriate, as a result of experience gained through import checks, or as a result of other actions or consultations provided for in this Chapter.

3. The importing Party shall notify the other Party in a timely manner of any amendment to the frequency of import checks in the event of change in the import risk. On request, an explanation regarding amendments shall be given or consultations shall be undertaken.

4. The importing Party shall provide to the other Party, on request, information regarding the analytical methods, quality controls, sampling procedures and facilities that the importing Party uses to test a good. The importing Party shall ensure that any testing is conducted using appropriate and validated methods in a facility that operates under a quality assurance programme that is consistent with international laboratory standards. The importing Party shall maintain physical or electronic documentation regarding the identification, collection, sampling, transportation and storage of the test sample, and the analytical methods used on the test sample.

5. In the event that the import checks reveal non-conformity with the relevant standards or requirements, the action taken by the importing Party should be based on an assessment of the risk involved. For example, except as otherwise provided in this Chapter, an importing Party shall not suspend trade between it and another Party on the basis of a single consignment. Wherever possible, the importer or their representative shall be given access to the consignment and the opportunity to contribute any relevant information to assist the importing Party in taking a final decision.

6. An importing Party shall ensure that its final decision in response to a finding of non-conformity with the importing Party's sanitary or phytosanitary measure, is limited to what is reasonable and necessary, and is rationally related to the available science.

7. If an importing Party prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check, the importing Party shall provide a notification about the adverse result to at least one of the following: the importer or its agent; the exporter; or the manufacturer; as well as the exporting Party if appropriate.

8. When the importing Party provides a notification pursuant to paragraph 7, it shall:

(a) include:

(i) the reason for the prohibition or restriction;

(ii) the legal basis or authorisation for the action; and

(iii) information on the status of the affected goods and, if appropriate, on their disposition;

(b) do so in a manner consistent with its laws, regulations and requirements as soon as possible and no later than seven working days after the date of the decision to prohibit or restrict, unless the good is seized by a customs administration; and

(c) if the notification has not already been provided through another channel, transmit the notification by electronic means, if practicable.

9. An importing Party that prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check shall provide an opportunity for a review of the decision and consider any relevant information submitted to assist in the review. The review request and information should be submitted to the importing Party within a reasonable period of time.

10. Unless there is a clearly identified risk in holding that consignment, the consignment shall not be destroyed without affording an opportunity to the exporter or their representative to take back the consignment.

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

12. On request, an importing Party shall provide to the exporting Party available information on goods from the exporting Party that were found not to conform to a sanitary or phytosanitary measure of the importing Party, and, on request, make itself available for discussions within a reasonable period of time in order to resolve the matter.

Article 5.11: Certification

1. The Parties recognise that assurances with respect to sanitary or phytosanitary requirements may be provided through means other than certificates and that different systems may be capable of meeting the same sanitary or phytosanitary objective.

2. If an importing Party requires certification for trade in a good, the Party shall ensure that the certification requirement is applied, in meeting the Party's sanitary or phytosanitary objectives, only to the extent necessary to protect human, animal or plant life or health.

3. In applying certification requirements, an importing Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

4. An importing Party shall limit attestations and information it requires on the certificates to essential information that is related to the sanitary or phytosanitary objectives of the importing Party.

5. An importing Party should provide to another Party, on request, the rationale for any attestations or information that the importing Party requires to be included on a certificate.

6. The Parties may agree to work cooperatively to develop model certificates to accompany specific goods traded between the Parties, including where equivalence has been recognised.

7. The Parties shall work together cooperatively to facilitate the implementation of electronic certification and other technologies to facilitate trade.

8. The Parties shall cooperate to facilitate the onward certification of goods exported for storage or further processing in each other's territory prior to re-export.

Article 5.12: Transparency

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

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

(b) scientific findings of importance with respect to food safety, diseases or pests which have not been discussed between the Parties without delay; and

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

2. The Parties shall notify proposed sanitary or phytosanitary measures or changes to existing measures that may have an effect on the trade of the other Party, including any that conform to international standards, guidelines or recommendations, by using the notification system in Annex B of the SPS Agreement.

3. Unless urgent problems of health protection arise or threaten to arise, or the measure is of a trade facilitating nature, a Party shall normally allow a period of at least 60 days, for the other Party to provide written comments after it makes a notification under paragraph 2. A Party shall consider reasonable requests from the other Party to extend the comment period. In cases of serious and immediate concern with respect to human, animal or plant life or health, immediate oral notification shall be made to the contact points and written confirmation should follow within 24 hours.

4. The Party shall make available to the public, for example on a website, the proposed sanitary or phytosanitary measure notified under paragraph 3, the legal basis for the measure, and the written comments or a summary of the written comments that the Party has received from the public on the measure.

5. When a Party proposes to adopt a sanitary or phytosanitary measure it shall, on request by the other Party, discuss any scientific or trade concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the measure's objectives.

6. Each Party shall publish notices of final sanitary or phytosanitary measures, for example on a website.

7. When a Party has serious concerns regarding a risk to human, animal or plant life or health, consultations regarding the situation shall, on request, take place as soon as possible, and in any case within 10 working days of the request unless the Parties agree otherwise. Each Party shall endeavour in such situations to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution.

8. When an exporting Party identifies that an export consignment which may be associated with a significant sanitary or phytosanitary risk has been exported, it should, to the extent possible, provide information to the importing Party.

Article 5.13: Provisional Measures

1. Without prejudice to Article 5.12, and in particular Article 5.12(7), any Party may, on serious human, animal or plant life or health grounds, adopt provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified within 24 hours to the other Parties and, on request, consultations regarding the situation shall be held within 10 working days unless the Parties agree otherwise. The Parties shall take due account of any information provided through such consultations.

2. If a Party adopts an emergency measure, it shall review the scientific basis of that measure within six months and make available the results of the review to the other Party on request. If the emergency measure is maintained after the review because the reason for its adoption remains, the Party should review the measure periodically.

Article 5.14: Exchange of Information

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

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

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

(b) briefing on current developments affecting trade; and

(c) information on the results of the verification procedures provided for in Article 5.9.

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

Article 5.15: Technical Consultation

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

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

3. Such consultations are without prejudice to the rights and obligations of the Parties under Chapter 14 (Dispute Settlement).

Article 5.16: Cooperation

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

2. The Parties agree to cooperate to facilitate the implementation of this Chapter, and in particular to develop implementing arrangements under this Chapter.

CHAPTER 6

TECHNICAL BARRIERS TO TRADE

Article 6.1: Definitions

1. For the purposes of this Chapter, unless a more specific meaning is given in an Annex:

equivalence of technical regulations means that one Party accepts that the technical regulations of the other Party fulfil the legitimate objectives of its own regulations;

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

TBT Agreement means the *Agreement on Technical Barriers to Trade*, set out in Annex 1A to the WTO Agreement; and

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

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

Article 6.2: Objectives

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

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

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

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

Article 6.3: Scope

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures that may, directly or indirectly, affect the trade in goods between the Parties, except as provided in paragraph 2 and paragraph 3.

2. This Chapter shall not apply to technical specifications prepared by governmental entities for production or consumption requirements of such entities which are covered by Chapter 10 (Government Procurement).

3. This Chapter shall not apply to sanitary and 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.

Article 6.4: Incorporation of Certain Parts of the TBT Agreement

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

(a) Article 2.1, Article 2.2, Article 2.4, Article 2.5, Article 2.9, Article 2.10, Article 2.11, Article 2.12;

(b) Article 5.1, Article 5.2, Article 5.3, Article 5.4, Article 5.6, Article 5.7, Article 5.8, Article 5.9; and

(c) Paragraph D, Paragraph E and Paragraph F of Annex 3.

Article 6.5: Origin

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

Article 6.6: Trade Facilitation

1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to each other's market. In particular, the Parties shall seek to identify initiatives between them that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as harmonisation or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies, as well as cooperation through mutual recognition.

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

Article 6.7: 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. In this respect, and further to Article 2.4, Article 5.4 and Annex 3 of the TBT Agreement, 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, each Party shall apply the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995* (G/TBT/1/Rev.12), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall cooperate with each other, when feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

Article 6.8: Equivalency of Technical Regulations

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

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

Article 6.9: Mutual Recognition of Equivalence of Standards

1. If regulatory compliance is required and if there is equivalence of outcomes, each Party shall give positive consideration to accepting the standards of the other Party as equivalent to its own corresponding standards.

2. A Party shall, on the request of the other Party, explain the reasons why it has not accepted a standard of the other Party as equivalent.

Article 6.10: Conformity Assessment Procedures

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

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

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

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

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

(e) accreditation procedures for qualifying conformity assessment bodies;

(f) government designation of conformity assessment bodies; and

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

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

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

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

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

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

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

8. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical

regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement. The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

9. Further to Article 5.2.5 of the TBT Agreement any conformity assessment fees imposed by a Party shall be limited to the approximate cost of services rendered.

Article 6.11: Transparency

1. In order to enhance the opportunity for persons to provide meaningful comments, a Party publishing a notice under Article 2.9 or Article 5.6 of the TBT Agreement shall:

(a) include in the notice a statement describing the objective of the proposal and the rationale for the approach the Party is proposing; and

(b) transmit the proposal electronically to the other Party through the enquiry point established under Article 10 of the TBT Agreement at the same time as it notifies WTO members of the proposal pursuant to the TBT Agreement.

2. Each Party should allow at least 60 days from the transmission under Paragraph 1(b) for persons and the other Party to make comments in writing on the proposal.

3. When a Party makes a notification under 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 Paragraph 1(b).

Article 6.12: Confidentiality

1. A Party shall not be required to disclose confidential proprietary information to the other Party except where such disclosure would be necessary for the other Party to demonstrate the technical competence of its designated conformity assessment bodies and conformity with the relevant stipulated requirements.

2. A Party shall, in accordance with its applicable laws and regulations, protect the confidentiality of any proprietary information disclosed to it in connection with conformity assessment activities or designation procedures.

Article 6.13: Contact Points

1. Each Party shall designate and notify a contact point for matters arising under this Chapter.

2. A Party shall promptly notify the other Parties 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 points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

(b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;

(c) consulting and if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter.

Article 6.14: Technical Consultations

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

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

3. Such technical consultations are without prejudice to the rights and obligations of the Parties under Chapter 14 (Dispute Settlement).

Article 6.15: Annexes and Implementing Arrangements

1. The scope of the Annexes to this Chapter are set out in each respective Annex.

2. The rights and obligations set out in each Annex to this Chapter shall apply only with respect to the sector specified in that Annex, and shall not affect any Party's rights or obligations under any other Annex.

3. The contact points shall, as and when required:

(a) review the implementation of the Annexes, with a view to strengthening or improving them and if appropriate, make recommendations to enhance alignment of the Parties' respective technical regulations, standards and conformity assessment procedures in the sectors covered by the Annexes; and

(b) consider whether the development of Annexes concerning other sectors would further the objectives of this Chapter or the Agreement and decide whether to recommend to the Joint Commission that the Parties initiate negotiations to conclude Annexes covering those sectors.

4. The Parties may develop implementing arrangements setting out new areas of cooperation in respect of particular sectors with a view to removing or reducing regulatory barriers to the movement of goods, and facilitating trade, between the Parties, or details for the implementation of Annexes to this Chapter.

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

CHAPTER 7

INVESTMENT

Article 7.1: Definitions

For the purposes of this Chapter:

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party 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 1.2 (General Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there;[1]

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments and loans;[2] [3]

(d) futures, options and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

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[1] 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 laws as an entity that has no independent legal existence and is not separately organised.

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

[3] A loan issued by one Party to the other Party is not an investment.

(f) intellectual property rights;

(g) licences, authorisations, permits and similar rights conferred pursuant to the Party's laws and regulations; 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;

investor of a non-Party means, with respect to a Party, an investor that attempts to make,[4] is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; and

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:

(a) central, regional or local governments and authorities; and

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

Article 7.2: Scope[5]

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) covered investments.

2. Article 7.3, Article 7.4, Article 7.5 and Article 7.7 shall not apply to subsides and grants provided by a Party including government-supported loans, guarantees and insurance.

[4] For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-Party" and "investor of a Party", an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

[5] For greater certainty, this Agreement shall not apply to measures affecting natural persons seeking access to the employment market of either Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis. This Agreement shall not prevent either Party from applying measures to regulate the entry of natural persons into, or the temporary stay in, its territory.

3. Article 7.3, Article 7.4 and Article 7.5 shall not apply to any measures affecting investments adopted or maintained pursuant to Chapter 8 (Services) to the extent that they relate to the supply of any specific service through commercial presence as defined in Article 8.3.1(n)(iii) (Definitions), whether or not they are covered by Annex 8.1 (Services Commitments).

4. Nothing in this Chapter shall be construed to impose an obligation on a Party to privatise.

5. For greater certainty, an obligation in this Chapter shall not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the entry into force of that relevant obligation for that Party.

Article 7.3: Most Favoured Nation Status

Except as otherwise provided for in this Agreement, each Party shall accord to investors of the other Party, and to covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments, treatment that is no less favourable than that it accords in like situations to investors and investments from any other State or separate customs territory which is not party to this Agreement.

Article 7.4: National Treatment

Except as otherwise provided for in this Agreement, each Party shall accord to investors of the other Party, and to covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments, treatment that is no less favourable than that it accords in like situations to its own investors and investments.

Article 7.5: Interaction between Article 7.3 and Article 7.4

Each Party shall accord to investors of the other Party, and to covered investments, the better of the treatment required by Article 7.3 and Article 7.4.

Article 7.6: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.[6]

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 the customary international law minimum standard of treatment of aliens referred to in paragraph 1 and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the 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 constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

Article 7.7: Treatment in Cases of Armed Conflict or Civil Strife

1. Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, civil disturbances, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to investors of any non-Party or to its own investors, whichever is more favourable. Any resulting compensation shall be made in freely usable currency and be freely transferable in accordance with Article 7.9.

[6] The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 7.6 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.

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.

Article 7.8: Expropriation and Compensation

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.

5. Notwithstanding paragraphs 1, 2, 3 and 4, in the case of Singapore, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation[7] of the expropriating Party on the date of entry into force of this Protocol, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation.

6. 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 the TRIPS Agreement.[8]

7. 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 7.9: Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;[9]

[7] The existing domestic legislation as at the date of entry into force of the Protocol for Singapore is the Land Acquisition Act (Cap. 152).

[8] For greater certainty, the term "revocation" of intellectual property rights includes the cancellation or nullification of such rights, and the term "limitation" of intellectual property rights includes exceptions to such rights.

[9] For greater certainty, contributions to capital include the initial contribution.

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;

(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 7.7 and Article 7.8; and

(f) payments arising out of a dispute.

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. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of another Party.

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws and regulations[10] 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; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

5. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

6. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its

[10] For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws and regulations relating to its social security, public retirement or compulsory savings programmes.

obligations under this Chapter regarding such transactions, except under Article 16.6 (Measures to Safeguard the Balance of Payments) or at the request of the Fund.

Article 7.10: Limitations

1. Article 7.3, Article 7.4 and Article 7.5 shall not apply to:

   (a) any limitation that is listed by a Party in Annex 7.2;

   (b) an amendment to a limitation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the limitation with Article 7.3, Article 7.4 and Article 7.5;

   (c) any new limitation adopted by a Party, and incorporated into Annex 7.2, which does not affect the overall level of commitments of that Party under this Chapter;

to the extent that such limitations are inconsistent with those Articles.

2. As part of the reviews of this Agreement provided for in Article 15.4 (Review), the Parties undertake to review the status of the limitations set out in Annex 7.2 with a view to reducing the limitations or removing them.

3. A Party may, at any time, either on the request of the other Party or unilaterally, remove in whole or in part limitations set out in Annex 7.2 by written notification to the other Party.

4. A Party may, at any time, incorporate a new limitation into Annex 7.2 in accordance with paragraph 1(c) by written notification to the other Party. On receiving such written notification, the other Party may request consultations regarding the limitation. On receiving the request for consultations, the Party incorporating the new limitation shall enter into consultations with the other Party.

Article 7.11: Subrogation

1. In the event that either Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Chapter, the other Party acknowledges that the former Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of such investors.

2. Any payment made by one Party (or any agency, institution, statutory body or corporation designated by it) to its investors shall not affect the right of such investors to

make their claims against the other Party in accordance with Article 7.14, in cases where the former Party elects not to exercise its subrogated rights or claims.

Article 7.12: Special Formalities and Information Requirements

1. Nothing in Article 7.4 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 7.3, Article 7.4 and Article 7.5, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such 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 7.13: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if the enterprise:

(a) is owned or controlled by a person of a non-Party or of the denying Party; and

(b) has no substantial business activities in the territory of the other Party.

Article 7.14: Investment Disputes

1. Any legal dispute between an investor of one Party and the other Party arising directly out of an investment by that investor in the territory of that other Party shall, as far as possible, be settled amicably through negotiations between the investor and that other Party.

2. If the dispute cannot be resolved as provided for in paragraph 1 within six months from the date of request for negotiations then, unless the parties to the dispute agree otherwise, it shall, on the request of either such party, be submitted to conciliation or arbitration by the International Centre for Settlement of Investment Disputes established by the *Convention on the Settlement of Investment Disputes between the States and Nationals of Other States* done at Washington on 18 March, 1965, provided that the other party does not withhold its consent under Article 25 of that Convention.

3. No claim may be brought under this Article in respect of a tobacco control measure[11] of a Party.

[11] A tobacco control measure means a measure of a Party related to the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures, such as inspection, recordkeeping, and reporting requirements. For greater certainty, a measure with respect to tobacco leaf that is not in the possession of a manufacturer of tobacco products or that is not part of a manufactured tobacco product is not a tobacco control measure.

ANNEX 7.1

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 7.8.1 addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 7.8.1 is indirect expropriation, where 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) whether the government action breaches the government's prior binding written commitment to the investor whether by contract, licence or other legal documents; 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 expropriation.

ANNEX 7.2

INVESTMENT LIMITATIONS

Introductory Note

1. Each Party has set out, pursuant to Article 7.10, the limitations established by it that do not conform with obligations imposed by:

   (a) Article 7.3; and

   (a) Article 7.4.

2. Each limitation sets out the following elements:

   (a) **Type of Limitation** specifies the obligation referred to in paragraph 1 for which a limitation is necessary;

   (b) **Legal Citation** identifies the laws, regulations or other measures which are relevant to the limitation. A measure cited in the legal citation 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;

   (c) **Description** sets out the non-conforming aspects of the measures for which the limitation is necessary, or the basis on which the limitation is applied to a sector.

Annex 7.2.1: Limitations of New Zealand

A. All sectors

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Fisheries Act 1996
Overseas Investment Act 1973
Overseas Investment Act Regulations 1995
Overseas Investment Amendment Act 1998

Description: 1. Under the Overseas Investment Act Regulations 1995, issued under the Overseas Investment Act 1973 Ministerial approval is required for the following investments by an overseas person:

(a) acquisition or control of 25 per cent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$50 million, unless an exemption exists or an authorisation is granted;

(b) commencement of business operations, or acquisition of an existing business, including business assets, in New Zealand, where the total expenditure to be incurred in setting up or acquiring that business or those assets exceeds NZ$50 million, unless an exemption exists or an authorisation is granted;

(c) acquisition, regardless of dollar value, of:

(i) 25 per cent or more of any class of shares or voting power in a New Zealand entity that owns commercial fishing quota or annual catch entitlement;

(ii) commercial fishing quota or annual catch entitlement;

unless an exemption exists or an authorisation is granted;

(d) acquisition, regardless of dollar value of:

(i) New Zealand land outside of urban areas and exceeding five hectares or land wherever located worth more than NZ$ 10 million;

(ii) scenic reserve land (including land that encompasses or adjoins recreational, historic or heritage areas, the foreshore and lakes);

(iii) land over 0.4 hectares on specified off-shore islands;

(iv) any land on all other islands;

unless an exemption exists or an authorisation is granted;

(e) acquisition, regardless of dollar value, of 25 percent or more of any New Zealand entity that owns or controls:

(i) New Zealand land outside of urban areas and exceeding five hectares or land wherever located worth more than NZ$ 10 million;

(ii) scenic reserve land (including historic or heritage areas, the foreshore and lakes);

(iii) land over 0.4 hectares on specified off-shore islands;

(iv) any land on all other islands;

unless an exemption exists or an authorisation is granted**.**

2. Ministers, in determining whether to grant approval, act in accordance with a screening regime (a non-legally binding description of which is appended to this Annex) which may be adjusted or replaced from time to time by New Zealand Government legislation, regulation or policy setting.

B.	Producer and Marketing Boards
Type of Limitation:	National treatment (Article 7.4)
Legal Citation:	Agriculture (Emergency Powers) Act 1934 Apple and Pear Export Regulations 1999 Apple and Pear Industry Restructuring Act 1999 Dairy Board Act 1961 Dairy Industry Restructuring Act 1999 Game Industry Board Regulation 1985 Hop Marketing Regulations 1939 Kiwifruit Export Regulations 1999 Kiwifruit Industry Restructuring Act 1999 Marketing Act 1936 Meat Board Act 1997 Pork Industry Board Act 1997 Primary Products Marketing Act 1953 Wool Board Act 1997
Description:	More favourable treatment may be accorded to New Zealand nationals and permanent residents in respect of ownership of Producer and Marketing Board assets.

C. Fishing

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Fisheries Act 1996

Description:

1. Without the permission of the Minister of Fisheries, and subject to any conditions that he or she thinks fit to impose, no vessel owned or operated by an overseas person may be registered to carry out commercial fishing or fish carrying activities.

2. No vessel that is not a New Zealand ship will be used for commercial fishing within the territorial sea of New Zealand.

3. Foreign fishing vessels or fish carriers are required to obtain the approval of the Minister of Fisheries before entering New Zealand internal waters. If the Minister of Fisheries is satisfied that the vessel has undermined international conservation and management measures he or she may deny the vessel approval to enter New Zealand internal waters.

D.	<u>Privatisation</u>
Type of Limitation:	National treatment (Article 7.4)
Legal Citation:	
Description:	More favourable treatment may be accorded to New Zealand nationals and permanent residents in respect of ownership of enterprises currently in State ownership.

E. Overseas Company Reporting Requirements

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Companies Act 1993
Financial Reporting Act 1993

Description: Overseas companies are required to prepare audited financial statements on an annual basis. Legislation also requires financial statements in relation to an overseas company's New Zealand business. The following companies are required to deliver annual audited financial statements to the Registrar of Companies for registration:

(a) issuers – i.e. those who have raised capital from the New Zealand public ;

(b) overseas companies;

(c) subsidiaries of companies or bodies corporate incorporated outside New Zealand;

(d) companies in which 25 per cent or more of the shares are held or controlled by:

(i) a subsidiary of a company or body corporate incorporated outside New Zealand or a subsidiary of that subsidiary;

(ii) a company or body corporate incorporated outside New Zealand;

(iii) a person not ordinarily resident in New Zealand.

F.	<u>All Sectors</u>
Type of Limitation:	National treatment (Article 7.4)
Legal Citation:	
Description:	More favourable treatment may be accorded to New Zealand nationals and permanent residents in the form of incentives or other programmes to help develop local entrepreneurs and assist local companies to expand and upgrade their operations.

G.	Services
Type of Limitation	National treatment (Article 7.4) Most favoured nation status (Article 7.3)
Legal Citation:	
Description:	1. Most favoured nation status and national treatment shall not apply where a services sector is not scheduled under Chapter 8 (Services). 2. Where a services sector is scheduled under Chapter 8 (Services), the terms, limitations, conditions and qualifications stated therein shall apply to investments in that sector. 3. Any horizontal commitments, limitations, conditions and qualifications scheduled under Chapter 8 (Services) shall apply to investments in the services sector concerned.

DESCRIPTION OF THE OVERSEAS INVESTMENT REGIME

1. The following is a brief, non-legally binding, description of the criteria applied to overseas investment that requires approval under New Zealand's Overseas Investment Act 1973 and the Fisheries Act 1996. The criteria may be adjusted or replaced from time to time by Government legislation, regulation or policy setting. A more detailed description of the criteria is set out in the Overseas Investment Regulations 1995.

Non-Land (Prudential Criteria)

2. Ministers must be satisfied that prospective investors:

(a) have business experience and acumen;

(b) demonstrate a financial commitment to the investment;

(c) are of good character and do not have a criminal record that would prevent them from obtaining permanent residence in New Zealand.

Land and Fishing Quota

3. In addition to the applicable prudential criteria, in order to approve overseas investment in specific non-farm land and fishing quota, Ministers must consider whether the investment is in the national interest. In doing so, Ministers shall have regard to whether the investment is likely to result in:

(a) the creation of new job opportunities in New Zealand, or the retention of existing jobs in New Zealand that would otherwise be lost;

(b) the introduction to New Zealand of new technology or business skills;

(c) the development of new export markets, or increased export market access for New Zealand exporters;

(d) added market competition, greater efficiency, greater productivity, or enhanced domestic services, in New Zealand;

(e) the introduction of additional investment for development purposes;

(f) increased processing in New Zealand of primary products;

(g) in the case of an investment in land, whether an individual intends to reside permanently in New Zealand.

Additional Requirements for Farm Land

4. In addition to the prudential criteria, approval of overseas investment in farm land requires that the farm land has been offered for sale or acquisition on the open market to New Zealanders. Farm land is defined as land used exclusively or principally for the purpose of agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry or livestock.

5. To approve overseas investment in farm land Ministers must also consider whether the overseas investment in farm land is in the national interest and likely to result in "substantial and identifiable benefits" to New Zealand. Ministers must have regard to the same matters as for fishing quota and other land and investment, as well as:

(a) whether experimental or research work will be carried out on the land;

(b) the proposed use of the land; and

(c) whether the overseas investor intends to farm the land for his or her own use and benefit, and is capable of doing so.

Annex 7.2.2: Limitations of Singapore

A.	Services
Type of Limitation:	Most favoured nation status (Article 7.3) National treatment (Article 7.4)
Legal Citation:	
Description:	1. Most favoured nation status and national treatment shall not apply where a services sector is not scheduled under Chapter 8 (Services). 2. Where a services sector is scheduled under Chapter 8 (Services), the terms, limitations, conditions and qualifications stated therein shall apply to investments in that sector. 3. Any horizontal commitments, limitations, conditions and qualifications scheduled under Chapter 8 (Services) shall apply to investments in the services sector concerned.

B.	<u>All Sectors</u>
Type of Limitation:	National treatment (Article 7.4)
Legal Citation:	
Description:	More favourable treatment may be accorded to Singapore nationals and permanent residents in the form of incentives or other programmes to help develop local entrepreneurs/technopreneurs and assist local companies to expand and upgrade their operations.

C. <u>All Sectors</u>

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Companies Act, Cap 50 (1994)

Description: Compliance by Foreign Companies with the Companies Act as in establishing, reporting and filing of accounts.

(a) Commercial presence, right of establishment and movement of juridical persons are subject to compliance with the following provisions:

(i) a foreigner who wishes to register a business firm must have a local manager who should be:

(A) a Singapore citizen;
(B) a Singapore permanent resident;
(C) a Singapore employment pass holder; or
(D) a dependent's pass holder and have written permission from the Singapore Immigration and Registration (SIR).

Provided that a foreigner who is a Singapore permanent resident or a Singapore employment pass holder or a dependent's pass holder with written permission from SIR can register a business without appointing a local manager;

(ii) every company must have at least two directors, and one of whom must be locally resident;

(iii) all branches of foreign companies registered in Singapore must have at least two locally resident agents. (To qualify as locally resident, a person should be either a Singapore citizen or Singapore permanent resident or Singapore employment pass holder or dependent's pass holder with written permission from SIR);

(b) establishment of a foreign company's branch is subject to the filing of necessary documents.

D. <u>All Sectors</u>

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Banking Act, Cap 19 (1985)
Directive on Housing Loans to Financial Institutions issued by the Monetary Authority of Singapore (MAS)
Residential Property Act, Cap 274 (1985)

Description:

1. Ownership of land:

   (a) non-citizens cannot own land.

2. Ownership of property:

   (a) non-citizens are restricted from purchasing landed property and residential property in a building of less than six levels;

   (b) there are also restrictions on non-citizens owning Housing & Development Board (HDB) flats;

3. Housing loans:

   (a) banks are:

      (i) not allowed to extend Singapore Dollar (S$) loans to non-Singapore citizens (excluding permanent residents) and non-Singapore companies for the purpose of purchasing residential properties in Singapore. A company incorporated outside Singapore or majority-owned by non-Singapore citizens and/or permanent residents is considered a non-Singapore company;

      (ii) allowed to extend only one S$ loan to permanent residents for the purchase of residential property which must be owner-occupied.

E. All Sectors

Type of Limitation: National treatment (Article 7.4)

Legal Citation: Banking Act, Cap 19 (1985)
MAS Notice No. 757

Description: 1. Banks are not allowed to extend S$ credit facilities to non-residents[1] for the following purposes:

(a) speculating in the S$ currency and interest rate markets;

(b) financing third-party trade between countries not involving Singapore;

(c) financing the acquisition of shares of companies not listed on the Stock Exchange of Singapore or Central Limit Order Book (CLOB);

(d) financing activities outside Singapore except when approved by MAS.

2. Banks must consult MAS before extending S$ credit facilities to non-residents[2] for, *inter alia*:

(a) amounts exceeding S$5 million for financing investments such as shares, bonds, deposits, and commercial properties;

(b) amounts exceeding S$20 million via repurchase agreements of Singapore Government Securities with full delivery of collateral; and

(c) all activities not explicitly mentioned in the MAS Notice 757.

[1] For the purposes of this MAS Notice 757, Singapore residents are: (i) Singapore citizens; (ii) individuals who are Singapore tax-residents; (iii) companies incorporated in Singapore which are jointly-owned or majority-owned by Singapore citizens; or (iv) overseas subsidiaries which are jointly-owned or majority-owned by Singapore citizens. All other persons are considered non-residents.

F.	Printing & Publishing Manufacture & Repair of Transport Equipment Power/Energy
Type of Limitation:	National treatment (Article 7.4)
Legal Citation:	
Description:	More favourable treatment may be accorded to Singapore nationals and permanent residents in the above sectors.

G.	<u>Privatisation</u>
Type of Limitation:	National treatment (Article 7.4)
Legal Citation:	
Description:	More favourable treatment may be accorded to Singapore nationals and permanent residents in respect of ownership of enterprises currently in Government ownership.

H. Government-Linked Companies

Type of Limitation: Most favoured nation status (Article 7.3)
National treatment (Article 7.4)

Legal Citation:

Description:

1. Most favoured nation status and national treatment shall not apply to any corporate entities in which the Singapore Government is the majority shareholder or has a special share. Such corporate entities shall be permitted to limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

2. The term 'special share' whether created by a corporate entity's articles of association, or by domestic law or administrative action, includes a paid-up share or any other share (whether ordinary, equity or otherwise) and any share that has special voting or veto rights in respect of or entitles the holder to give or withhold consent or object to:

(a) the disposal of the whole or substantial part of the corporate entity's undertaking;

(b) the acquisition by any person of any specified percentage of the issued share capital of the corporate entity;

(c) the appointment of the board of directors, management and/or executive staff of the corporate entity;

(d) the winding up or dissolution of the corporate entity; or

(e) any change to the memorandum of association and/or articles of association of a corporate entity relating to the issue, ownership, transfer, cancellation and acquisition of shares of the corporate entity, appointment and dismissal of the board of directors, management and/or executive staff of the corporate entity.

I.	<u>Manufacturing Sector</u>
Type of Limitation:	Most favoured nation status (Article 7.3) National treatment (Article 7.4)
Legal Citation:	Control of Manufacture Act, Cap 57 (1985)
Description:	Statutory licensing requirements for the manufacture of goods, such as: (a) firecrackers; (b) drawn steel products; (c) pig iron and sponge iron; (d) rolled steel products; (e) steel ingots, billets, blooms and slabs; (f) beer and stout; (g) CD, CD-ROM, VCD; (h) DVD, DVD-ROM; (i) chewing gum, bubble gum, dental chewing gum or any like substance; (j) cigarettes; (k) matches; (l) cigars.

CHAPTER 8

SERVICES

Article 8.1: General Undertaking

The Parties undertake to expand trade in services on a mutually advantageous basis, under conditions of transparency and progressive liberalisation through successive reviews, with the aim of securing an overall balance of rights and obligations, while recognising the rights of both Parties to regulate, and to introduce new regulations, giving due respect to national policy objectives including where these reflect local circumstances.

Article 8.2: Scope

1. This Chapter shall apply to measures by Parties affecting trade in services.

2. New services, including new financial services, shall be considered for possible incorporation into this Agreement at future reviews held in accordance with Article 15.4 (Review), or at the request of either Party immediately. The supply of services which are not technically or technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation at future reviews or at the request of either Party immediately.

3. In financial services, notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding that Party's commitments or obligations hereunder.

4. Government procurement of services shall be governed by Chapter 10 (Government Procurement).

Article 8.3: Definitions

For the purposes of this Chapter:

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

(b) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;

(c) **measures by Parties affecting trade in services** include measures in respect of

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by those Parties to be offered to the public generally;

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

(d) **commercial presence** means any type of business or professional establishment, including through

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

(ii) the creation or maintenance of a branch or a representative office;

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

(e) **sector** of a service means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's schedule of commitments;

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(f) **service supplier** means any person that supplies a service;[1]

(g) **service consumer** means any person that receives or uses a service;

(h) **service of the other Party** means a service which is supplied:

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

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

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

(i) **person** means either a natural person or a legal person;

(j) **natural person of the other Party** means a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party:

(i) is a national of that other Party; or

(ii) has the right of permanent residence in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided that that Party is not obligated to accord to such permanent residents treatment more favourable than would be accorded by the other Party to such permanent residents;

(k) **legal person** means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(l) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;

(m) **financial service supplier** means any natural or legal person of a Party wishing to supply or supplying financial services but does not include a public entity. **Public entity** means:

(i) a government, central bank or a monetary authority of a Party or an 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

(ii) a private entity, performing functions normally performed by a central bank or monetary authority when exercising those functions;

(n) **trade in services** means the supply of a service:

(i) from the territory of one Party into the territory of the other Party (cross border mode);

(ii) in the territory of one Party to the service consumer of the other Party (consumption abroad mode);

(iii) by a service supplier of one Party, through commercial presence in the territory of the other Party (commercial presence mode);

(iv) by a service supplier of one Party, through presence of natural persons of that Party in the territory of the other Party (presence of natural persons mode);

(o) **measures by Parties** means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(p) **services** includes any service in any sector except services supplied in the exercise of governmental authority;

(q) **a 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 services suppliers;

(r) in the case of financial services, **services supplied in the exercise of governmental authority** means the following:

(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

If a Party allows any of the activities referred to in subparagraph (ii) or subparagraph (iii) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities; and

(s) **new financial services** means a service of a financial nature, 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 is supplied in the territory of the other Party.

Article 8.4: Market Access

1. With respect to market access through the modes of supply identified in Article 8.3.1(n), each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule of commitments.[2]

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional sub-division or on the basis of its entire territory, unless otherwise specified in its schedule of commitments, are defined as:

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[3]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

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

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

Article 8.5: National Treatment

1. In the sectors in its schedule of commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the

[2] If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 8.3.1(n)(i) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 8.3.1(n)(iii), it is thereby committed to allow related transfers of capital into its territory.

[3] This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

2. A Party may meet the requirement in 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 one Party compared to the like service or service suppliers of the other Party.

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

Article 8.6: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.4 and Article 8.5, including those regarding qualifications, standards or licensing matters. Such commitments shall be entered in a Party's schedule of commitments.

Article 8.7: Specific Commitments

1. Each Party has set out an initial schedule of the specific commitments it undertakes in accordance with the objective of liberalisation of trade in most services by the date of entry into force of this Agreement.

2. Each Party's schedule of commitments shall clearly specify:

(a) the sectors/subsectors in which commitments are undertaken;

(b) any terms, limitations and conditions on market access;

(c) any conditions and qualifications on national treatment; and

(d) any additional commitments.

3. The schedules of commitments shall be annexed to this Agreement as Annex 8.1 and shall form an integral part thereof.

4. As part of the reviews of this Agreement provided for in Article 15.4 (Review), the Parties undertake to review their schedules of commitments and progressively to expand these initial commitments as well as expand market access or national treatment between them in accordance with the APEC objective of free and open trade in services.

5. Trade in a particular number of services sectors and measures affecting trade in services may not be fully liberalised by 1 January 2010. When it appears this shall be the case, the Parties agree to meet no later than 1 January 2008 to identify a list of such services sectors and measures. This list shall be set out in an exchange of letters between the Parties. The Parties shall consult on a mutually acceptable solution for these sectors and measures and such consultations shall continue for as long as it takes to achieve that solution. The solution may include agreement on a longer timeframe for liberalisation. This provision shall continue to apply after 1 January 2010.

6. The reviews referred to in paragraph 4 shall also examine limitations on market access or national treatment entered in the Parties' schedules of commitments in accordance with the objective identified in that paragraph.

7. A Party may, upon reasonable notice of at least three months, propose a modification of a commitment in its schedule of commitments by written notification to the other Party. In proposing such a modification, the Party concerned shall also propose a means by which the overall level of commitments undertaken by that Party under the Agreement shall be maintained. On receiving such written notification, the other Party may request consultations regarding the proposed modification aimed at ensuring an overall balance of benefits under the Agreement is maintained, and if such consultations fail to achieve a satisfactory solution, the matter shall be dealt with in accordance with Chapter 14 (Dispute Settlement).

Article 8.8: Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. The Parties shall jointly review the results of the negotiations on disciplines for certain regulations, including qualification requirements and procedures, technical standards and licensing requirements, pursuant to Article VI.4 of GATS with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

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

3. Until the incorporation of disciplines developed pursuant to paragraph 2, in sectors where a Party has undertaken specific commitments, and subject to any terms, limitations, conditions or qualifications set out therein, a Party shall not apply licensing and qualification

requirements and technical standards that nullify or impair such specific commitments in a manner which:

(a) does not comply with the criteria outlined in paragraph 2(a), paragraph 2(b) or paragraph 2(c); and

(b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

4. Whenever a domestic regulation is prepared, adopted and applied in accordance with international standards applied by both Parties, there shall be a rebuttable presumption that it complies with the provisions of this Article.

Article 8.9: Professional Qualifications and Registration

1. With a view to ensuring that measures relating to professional[4] qualification and registration requirements and procedures do not constitute unnecessary barriers to trade in services between them, the Parties agree to have identified by the date of entry into force of this Agreement priority areas to address with respect to the recognition of professional qualifications or registration. In identifying initial priority areas, the Parties agree to focus on sectors where specific commitments have been undertaken, and subject to the terms, limitations, conditions, or qualifications set out therein. Thereafter the Parties shall endeavour to consider sectors where no specific commitments have been undertaken.

2. The Parties agree to facilitate the establishment of dialogue between experts in these priority areas with a view to the achievement of early outcomes on recognition of professional qualifications or registration in these areas.

3. Such recognition may be achieved through recognition of regulatory outcomes, recognition of professional qualifications awarded by one Party as a means of complying with the regulatory requirements of the other Party (whether accorded unilaterally or by

[4]Illustrative list of professions:

Professions include, but are not limited to:

Lawyers, legal executives, conveyancers; accountants, auditors, book keepers, tax agents; architects; landscape architects; engineers; doctors; dentists, dental technicians; veterinarians and veterinary nurses; midwives, nurses, physiotherapists and paramedical personnel, including acupuncturists, chiropractors, homeopaths, medical laboratory scientists and technicians, nutritionists, optometrists and dispensing opticians, pharmacists, psychologists, occupational therapists, radiographers, speech therapists; information technology designers, programmers, analysts and technicians; statisticians, surveyors, geologists, geophysicists, cartographers; management consultants; scientific and technical consultants and researchers; educationalists, at the following levels: preschool, primary, secondary, tertiary, adult and other; environmental services consultants; financial services consultants, actuaries and economists; hospital and residential health facility managers and consultants; airline pilots.

Neither Party is precluded from raising any service supplier's occupation under this Article.

mutual arrangement) or by other recognition arrangements which might be agreed between the Parties.

4. The priority areas for further work on professional recognition requirements and the recognition outcomes achieved on initial priorities shall be reviewed as part of the reviews of this Agreement provided for in Article 15.2 (Meetings of the Joint Commission).

Article 8.10: Subsidies

1. Except as provided for in this Article, subsidies related to trade in services shall not be covered under this Chapter.

2. The Parties shall review the issue of disciplines on subsidies related to trade in services in the context of the reviews of this Agreement provided for in Article 15.4 (Review). They shall pay particular attention to any disciplines agreed under Article XV of GATS with a view to their incorporation into this Agreement.

3. The Parties shall consult on appropriate steps in regard to subsidies related to trade in services where any subsidies issues arise in bilateral services trade under this Agreement.

Article 8.11: Monopolies

In sectors where specific commitments have been made, each Party shall ensure that its commitments relating to market access and national treatment pursuant to Articles 8.4 and Article 8.5 are not adversely affected by the actions of a monopoly supplier of a service in its territory.

Article 8.12: Extension of Benefits

A service supplier of a non-Party that is a legal person constituted under the laws of a Party shall be entitled to treatment granted under this Chapter provided that it engages in substantive business operations in the territory of one or both Parties.

CHAPTER 9

ELECTRONIC COMMERCE

Article 9.1: Definitions

For the purposes of this Chapter:

computing facilities means computer servers and storage devices for processing or storing information for commercial use and does not include facilities used for the supply of public telecommunications services;

covered person means:

(a) a covered investment as defined in Article 7.1 (Definitions);

(b) an investor of a Party as defined in Article 7.1 (Definitions), but does not include an investor in a financial institution; or

(c) a service supplier of a Party as defined in Article 8.3.1(f) (Definitions),

but does not include a "financial service supplier" as defined in Article 8.3.1(m) (Definitions) or a financial institution;

electronic authentication means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

electronic transmission or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means;

financial institution means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the laws and regulations of the Party in whose territory it is located;

personal information means any information, including data, about an identified or identifiable natural person;

trade administration documents means forms issued or controlled by a Party 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 to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service

supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

Article 9.2: Scope

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

3. This Chapter shall not apply to:

(a) government procurement; or

(b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

4. For greater certainty, this Chapter may apply to a measure that is also subject to Chapter 7 (Investment) or Chapter 8 (Services).

5. The obligations contained in Article 9.10 (Cross-Border Transfer of Information by Electronic Means, Article 9.11 (Location of Computing Facilities) and Article 9.13 (Source Code) shall not apply to aspects of a Party's measures to the extent that:

(a) they are not within the scope of the Party's specific commitments under Article 8.7 (Specific Commitments);

(b) any terms, limitations and conditions on market access under Article 8.7 (Specific Commitments) apply;

(c) any conditions and qualifications on national treatment under Article 8.7 (Specific Commitments) apply;

(d) any exceptions in Chapter 8 (Services) apply;

(e) any limitations made in accordance with Article 7.10 (Limitations) apply; or

(f) any exceptions in Chapter 7 (Investment) apply.

Article 9.3: Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 9.4: 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 1996* or the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York, November 23, 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.

Article 9.5: Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. No Party shall adopt or maintain measures for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 9.6: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading and deceptive conduct as referred to in Article 11.9.2 (Consumer Protection) when they engage in electronic commerce.

2. Each Party shall adopt or maintain consumer protection laws or regulations to proscribe misleading and deceptive conduct that causes harm or potential harm to consumers engaged in online commercial activities.

3. Each Party shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies.[1]

4. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought pursuant to Article 11.9.5 (Consumer Protection) includes cooperation with respect to online commercial activities.

5. The Parties recognise the benefits of mechanisms, including alternative dispute resolution, to facilitate the resolution of claims over electronic commerce transactions.

Article 9.7: Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. To the extent possible, the legal framework shall take into account principles and guidelines of relevant international bodies such as APEC.

3. Each Party shall:

(a) afford protection, through the legal framework referred to in paragraph 2, to the personal information of users of the other Party on a non-discriminatory basis; and

(b) adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

[1] For greater certainty, this requirement does not require formally identical treatment, and may be met by providing formally different treatment to online and other consumers, which nonetheless provides an effectively equivalent level of overall protection.

4. Each Party shall publish information on the personal information protections it provides to users of electronic commerce, including how:

(a) individuals can pursue remedies; and

(b) business can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party shall pursue the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, broader international frameworks, or where practicable, appropriate recognition of comparable protection afforded by their respective legal frameworks, national trustmark or certification frameworks, or other avenues of transfer of personal information between the Parties.

6. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

Article 9.8: Paperless Trading

1. Each Party shall make publicly available, which may include through a process prescribed by that Party, electronic versions of all existing publicly available versions of trade administration documents.

2. Each Party shall accept the electronic versions of trade administration documents as the legal equivalent of paper documents except where:

(a) there is a domestic or international legal requirement to the contrary; or

(b) doing so would reduce the effectiveness of the trade administration process.

3. The Parties shall cooperate bilaterally and in international forums to enhance acceptance of electronic versions of trade administration documents.

4. In developing initiatives which provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by international organisations.

Article 9.9: Principles on Access to and Use of the Internet for Electronic Commerce

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of consumers in their territories having the ability to:

(a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;[2]

(b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and

(c) access information on the network management practices of a consumer's Internet access service supplier.

Article 9.10: 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, when 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 measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.11: 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. No 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 measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.12: Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

[2] The Parties recognise that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;

(b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 9.13: Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.

3. Nothing in this Article shall preclude:

(a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or

(b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

Article 9.14: Logistics

1. The Parties recognise the importance of efficient cross border logistics which would help lower the cost and improve the speed and reliability of supply chains.

2. The Parties shall endeavour to share best practices in the logistics sector.

Article 9.15: E-Invoicing

1. The Parties recognise the importance of an e-invoicing system which would help improve the speed and reliability of electronic commerce transactions.

2. The Parties shall endeavour to work towards mutually recognising the e-invoicing system of the other Party and to encourage interoperability between the Parties' e-invoicing systems.

3. The Parties shall endeavour to share best practices pertaining to e-invoicing systems.

Article 9.16: Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist business and small and medium sized enterprises to overcome obstacles to its use including the sharing of best practices that would facilitate cross-border electronic commerce;

(b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal information protection;

(ii) online consumer protection, including means for consumer redress and building consumer confidence;

(iii) unsolicited commercial electronic messages;

(iv) security in electronic communications;

(v) authentication; and

(vi) e-government;

(c) exchange information and share views on consumer access to products and services offered online between the Parties;

(d) participate actively in regional and multilateral fora to promote the development of electronic commerce;

(e) work together in relevant international fora to promote the adoption of commitments by non-Parties not to impose customs duties on electronic transmissions; and

(f) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

Article 9.17: Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

(a) building the capabilities of their national entities responsible for computer security incident response; and

(b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

CHAPTER 10

GOVERNMENT PROCUREMENT

Article 10.1: Establishment of a Single Market

1. The Parties agree to establish a single New Zealand/Singapore government procurement market, in order to maximise competitive opportunities for New Zealand/Singapore suppliers, and reduce costs of doing business for both government and industry.

2. This shall be achieved by the Parties:

(a) committing to implement the *APEC Non-Binding Principles on Government Procurement* relating to transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination;

(b) ensuring the opportunity exists for their suppliers to compete on an equal and transparent basis for government contracts;

(c) ensuring the non-application against their suppliers of preferential schemes and other forms of discrimination based on the place of origin of goods and services unless such schemes or forms of discrimination fall within Article 16.14 (Preferences Under Other Agreements);

(d) providing a mechanism for cooperation to work towards achieving the greatest possible consistency in contractual, technical and performance standards and specifications, and simplicity and consistency in the application of procurement policies, practices and procedures.

Article 10.2: Scope

1. This Chapter applies to government procurement valued at above Special Drawing Rights (SDR) 50,000. The Parties shall consult and agree on a common basis for expressing this value threshold in their respective national currency equivalents as at the date of entry into force of this Agreement, and as at the date of reviews of the operation of this Agreement held in accordance with Article 15.4 (Review).

2. Government procurement of services is subject to a Party's schedule of commitments in Annex 8.1 (Services Commitments) and the terms, limitations, conditions or qualifications set out therein.[1]

[1] At the request of New Zealand, Singapore confirms that there shall be no discrimination in terms of government procurement of services in favour of corporate entities where the Singapore Government is the majority shareholder or has a special share as defined in Annex 8.1 (Services Commitments).

3. Where government bodies require enterprises not covered under this Chapter to award contracts in accordance with particular requirements, Article 10.4 shall apply *mutatis mutandis* to such requirements.

Article 10.3: Definitions

For the purposes of this Chapter:

designated bodies means bodies designated in each of the Parties to investigate complaints about non-compliance with this Chapter; they may include an agency or office responsible to a Party, or a position located within such agency or office. The designated body for Singapore is the Ministry of Finance and the designated body for New Zealand is the Ministry of Economic Development;

goods and services means but is not limited to goods alone, services alone or goods and related services. Computer software is defined as "goods" for this purpose. **Related services** means but is not limited to services provided in conjunction with the supply of goods or construction activities (such as architectural design, engineering, project design, project management and related consultancy services);

Ministers responsible for procurement means Ministers with portfolio responsibility for procurement policy where such direct responsibility exists. Otherwise the definition shall mean Ministers with portfolio responsibility for this Chapter;

procurement means but is not limited to purchase, hire, lease, rental, exchange and competitive tendering and contracting (outsourcing) arrangements;

government procurement means procurement by government bodies, that is departments and other bodies, including statutory authorities, which are controlled by the Parties and excludes procurement by any body corporate or other legal entity that has the power to contract, except where the Parties exercise their discretion to determine that this Chapter shall apply. In the case of regional or local governments or authorities, and in the case of procurement of services by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities, the Parties shall use their best endeavours to encourage wider application of this Chapter, consistent with good commercial practice, to procurement by all such governments, authorities and bodies;

New Zealand/Singapore suppliers means service suppliers (determined in accordance with Chapter 8 (Services)) or suppliers of goods originating in New Zealand or Singapore. Whether a good is originating in New Zealand or Singapore shall be determined in accordance with Chapter 3 (Rules of Origin);

value for money means the best available outcome for money spent in terms of the procuring agency's needs. The test of value for money requires relevant comparison of the whole of life costs and benefits relating directly to the procurement. "Whole of life costs and benefits"

include fitness for purpose and other considerations of quality, performance, price, delivery, accessories and consumables, service support and disposal.

Article 10.4: General Principles

Except as provided otherwise in this Chapter, the Parties shall:

(a) at all times conduct their procurement activities in accordance with the spirit and intent of this Chapter;

(b) ensure that all government bodies within their territories comply with this Chapter;

(c) provide to services, goods and suppliers of the other Party equal opportunity and treatment no less favourable than that accorded to their own domestic services, goods and suppliers;

(d) promote opportunities for their suppliers to compete for government business on the basis of value for money and avoid purchasing practices which discriminate or are otherwise biased against, or have the effect of denying equal access or opportunity to, their services, goods and suppliers, while conforming with any commitments of the Parties under international government procurement agreements;

(e) use value for money as the primary determinant in all procurement decisions; and

(f) achieve maximum practicable simplicity and consistency in the application of procurement policies, practices and procedures.

Article 10.5: Valuation of Contracts

1. The following provisions shall apply in determining the value of contracts for the purposes of implementing this Chapter.

2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.

3. The selection of a valuation method by a government body shall not be made, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter.

4. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

Article 10.6: Rules of Origin

A Party shall not apply rules of origin to goods or services imported or supplied from the other Party, for the purposes of government procurement, which are different from the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same goods or services from that other Party.

Article 10.7: Procurement Procedures

1. Each Party shall ensure that the procurement procedures, including tendering and supplier invitation, registration of interest, prequalification, selection, negotiation and contract award procedures, of its government bodies are applied in a manner consistent with this Chapter, the *APEC Non-Binding Principles on Government Procurement*, and good commercial practice.

2. In cases of procurement by open call for tender, invitations to tender shall be advertised in a publicly accessible medium; and in cases of procurement by selective invitation to tender, prior calls to prequalify or register interest shall be advertised in a publicly accessible medium.

3. The Parties shall ensure that government bodies make readily available on request by New Zealand/Singapore suppliers information on contract awards, including the name of the supplier, the goods or services supplied and value of the contract award, unless the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private, or might prejudice fair competition between suppliers.

4. Government bodies shall, on request from an unsuccessful supplier which participated in the relevant tender, promptly provide pertinent information concerning reasons for the rejection of its tender, unless the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

5. Each Party shall also take appropriate steps to enhance transparency at all stages of their procurement procedures, and endeavour to provide the information specified in paragraph 2 and paragraph 3 for all government bodies from a single point of access through a public medium, such as the internet.

Article 10.8: Prohibition of Offsets

1. Government bodies shall not, in the qualification and selection of suppliers, goods and services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets in relation to government procurement from New Zealand or Singapore suppliers.

2. **Offsets in relation to government procurement** means measures used to encourage local development or improve the balance of payments accounts by requiring domestic content, licensing of technology, investment, counter-trade or similar requirements.

Article 10.9: Disputes Between a Supplier and the Procuring Government Body

1. In the event of a complaint by a supplier that there has been a breach of this Chapter, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring government body. In such instances the procuring government body shall accord timely and impartial consideration to any such complaint.

2. Failing resolution through consultation between the supplier and the procuring government body, the complainant should seek the assistance of the designated body of the Party in whose territory the complainant is located. A complaint made informally may be processed informally if this is deemed appropriate by the designated body and the complainant.

3. Failing resolution, the designated body receiving the complaint shall formally raise it with the designated body of the other Party for investigation of any alleged breach of this Chapter and for a report by it in writing. The Parties agree to provide details and documentation to permit a full investigation of complaints. Confidentiality of all information shall be maintained.

4. If the response is satisfactory to the designated body which received the original complaint, then the complaint shall lapse.

5. If satisfactory resolution is not achieved, the designated body which received the original complaint may then refer the matter to the Minister responsible for procurement in the other Party for further investigation and decision.

6. In the event that a complaint cannot be resolved through the steps set out above within 30 days of the designated body that received the original complaint formally raising it with the designated body of the other Party, the provisions of Chapter 14 (Dispute Settlement) shall apply. A Party shall be entitled by subrogation to exercise the rights and assert the claims of its own supplier against the other Party. The subrogated rights or claims shall not be greater than the original rights or claims of that supplier.

Article 10.10: Exemptions

1. It is recognised by the Parties that, under certain circumstances, there may be a need for exemption from some of the requirements of this Chapter for certain government bodies, for certain classes of procurement, and for procurement undertaken in accordance with specific government policies.

2. Exemptions from some of the requirements of this Chapter may be sought by either Party for government bodies which meet the following criteria subject to consultation and agreement with the other Party:

(a) joint bodies with any other State or separate customs territory which is not party to this Agreement;

(b) bodies funded primarily from specific special levies on particular industries, or by community groups or from special grants or public donations.

It is not intended, however, that any government body shall be granted full exemption from the requirements of this Chapter. When considering applications for partial exemptions, the Parties shall exercise their authority with due diligence in accordance with the objectives of this Chapter.

3. The following classes of procurement are exempt from the application of this Chapter:

(a) internal procurement by a government from its own bodies where no other supplier has been asked to tender. If, however, tenders are called or invited, the provisions of this Chapter shall apply whether or not a government body submits a tender;

(b) the procurement of proprietary items required to ensure machinery or equipment integrity, but only as they may relate to biased specifications. Where such items are available from a number of sources or tenders are called or invited, all provisions of this Chapter apply other than as they relate to biased specifications;

(c) the urgent procurement of goods and related services in the event of emergencies, such as natural disasters, or to meet the urgent requirements of United Nations peacekeeping or humanitarian operations;

(d) procurement of proprietary equipment of a work, health or safety nature specified in industrial agreements but only as they may relate to biased specifications. Where such items are available from a number of sources or tenders are called or invited, all provisions of this Chapter apply other than as they relate to biased specifications;

(e) defence procurement of a strategic nature and other procurement where national security is a consideration; and

(f) procurement under development assistance programmes.

4. Either Party may seek to have additional classes of procurement exempted from this Chapter. Such exemptions shall be permitted only with the agreement of the other Party.

Article 10.11: Administration and Review

1. The designated bodies shall report jointly to the Ministers responsible for procurement on the implementation of this Chapter in preparation for the reviews provided for in Article 15.4 (Review).

2. A committee of senior officials responsible for government procurement policy of each Party may meet as appropriate to discuss policy issues, technical or other cooperation, and the reviews referred to in paragraph 1.

CHAPTER 11

COMPETITION AND CONSUMER PROTECTION

Article 11.1: Objectives

The objectives of this Chapter are to promote competition in markets, to enhance economic efficiency, and to bolster consumer protection through the adoption, maintenance and enforcement of laws and regulations to curtail anti-competitive activities. The Parties shall endeavour to implement this Chapter in a manner consistent with the *APEC Principles to Enhance Competition and Regulatory Reform*, adopted in Auckland on 13 September 1999.

Article 11.2: Basic Principles

1. Each Party shall implement this Chapter in a manner consistent with the objectives of this Chapter.

2. The Parties recognise the sovereign rights of each Party to develop, set, administer, and enforce its own competition laws, regulations and policies.

3. Each Party shall apply its competition laws and regulations to all entities engaged in commercial activities. Any exclusions or exemptions from the application of each Party's competition laws and regulations must be:

(a) transparent;

(b) on the grounds of achieving public policy or public interest objectives; and

(c) no broader than necessary to achieve such objectives.

4. Each Party shall apply and enforce its competition laws and regulations in a manner which does not discriminate on the basis of nationality.

5. Each Party shall make publicly available its competition laws and regulations, and any guidelines issued in relation to the enforcement of such laws and regulations, excluding internal operating procedures.

6. Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom, subject to:

(a)

(i) its domestic laws and regulations;

(ii) its need to safeguard confidential information; or

(iii) its need to safeguard information on grounds of public policy or public interest; and

(b) redactions from the final decision or order on the grounds in any of subparagraphs (a)(i) to (iii).

7. Each Party recognises the importance of timeliness in the handling of competition cases.

Article 11.3: Appropriate Measures against Anticompetitive Activities

1. Each Party shall adopt or maintain competition laws and regulations to proscribe anti-competitive activities, and shall ensure that those laws and regulations are enforced effectively.

2. Each Party shall establish or maintain an authority or authorities to effectively enforce its competition laws and regulations.

3. Each Party shall ensure independence in decision making by its authority or authorities in relation to the enforcement of its competition laws and regulations.

Article 11.4: Procedural Rights for Persons or Entities Subject to Sanction

1. Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for breaching its competition laws or regulations, that person or entity is given the reasons, which should be in writing where possible, for the allegations that the Party's competition laws or regulations have been breached, and a fair opportunity to be heard and present evidence.

2. Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations,[1] and any appeal therefrom, available to the person or entity subject to that sanction or remedy.

3. Each Party shall ensure that any person or entity subject to the imposition of a sanction or remedy under its competition laws and regulations has access to an independent review of, or appeal against, that sanction or remedy.

Article 11.5: Cooperation

The Parties recognise the importance of cooperation between their respective competition authorities to promote effective competition law enforcement. To this end, the

[1] This paragraph shall not apply in relation to a jury verdict in a criminal trial.

Parties may cooperate on issues relating to competition law enforcement, through their competition authorities, in a manner compatible with their respective laws, regulations, and important interests, and within their available resources. Such cooperation includes:

(a) notification by a Party to another Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;

(b) upon request, discussion between the Parties to address any matter relating to competition law enforcement that substantially affects the important interest of the requesting Party;

(c) upon request, exchange of information between the Parties to foster understanding or to facilitate effective competition law enforcement; and

(d) upon request, coordination in enforcement actions between the Parties in relation to the same or related anti-competitive activities.

Article 11.6: Confidentiality of Information

1. For greater certainty, nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which would:

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

(b) be contrary to any of its legislation, including those protecting personal privacy;

(c) impede law enforcement; or

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

2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the providing Party of:

(a) the purpose of the request;

(b) the intended use of the requested information; and

(c) any domestic laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the providing Party.

3. The sharing of confidential information between the Parties shall be on a voluntary basis and the use of such information shall be based on mutually agreed terms and conditions between the Parties.

4. If information shared under this Chapter is shared on a confidential basis, then, except to comply with domestic laws and regulations, the Party receiving that information shall:

(a) maintain the confidentiality of the information received;

(b) use it only for the purpose disclosed at the time of the request, unless otherwise authorized by the Party providing the information;

(c) not use it as evidence in criminal proceedings carried out by a court or a judge unless, upon request of the Party receiving the information, such information was provided for such use in criminal proceedings through the diplomatic channel or other channel established in accordance with the laws of both Parties;

(d) not disclose it to any other authority, entity or person not authorised by the Party providing the information; and

(e) comply with any other conditions required by the Party providing the information.

Article 11.7: Technical Cooperation and Capacity Building

The Parties agree that it is in their common interest to work together on technical cooperation activities to build necessary capacities to strengthen competition policy development and competition law enforcement, taking into account the availability of resources of the Parties. Technical cooperation activities may include:

(a) the sharing of relevant experiences and non-confidential information on the development and implementation of competition policy and law;

(b) the exchange of consultants and experts on competition policy and law;

(c) the exchange of officials of competition authorities for training purposes;

(d) the participation of officials of competition authorities in advocacy programmes; and

(e) other activities as agreed by the Parties.

Article 11.8: Consultations

To address specific matters that arise under this Chapter, on request of one Party, the other Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects its important interests, including trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

Article 11.9: Consumer Protection

1. The Parties recognise the importance of consumer protection laws and the enforcement of such laws, as well as cooperation between the Parties on matters related to consumer protection, in achieving the objectives set out in Article 11.1.

2. Each Party shall adopt or maintain laws or regulations against misleading and deceptive conduct that causes harm, or is likely to cause harm, to consumers. Such laws may include general contract or negligence laws and may be civil or criminal in nature. **Misleading and deceptive conduct** includes:

(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) failing to deliver products or provide services to consumers after the consumers have been charged; or

(d) charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain laws or regulations that:

(a) require, at the time of delivery, goods and services provided to be of reasonable and satisfactory quality, consistent with the supplier's claims regarding the quality of the goods and services; and

(b) provide consumers with appropriate redress when they are not.

4. Each Party recognises the importance of improving awareness of, and access to, consumer redress mechanisms, including for consumers from one Party transacting with suppliers from the other Party.

5. The Parties may cooperate on matters of mutual interest related to consumer protection. Such cooperation shall be in a manner compatible with the Parties' respective laws and regulations and within their available resources.

Article 11.10: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 14 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 12

INTELLECTUAL PROPERTY

Article 12.1: Intellectual Property

The Parties agree that the TRIPS Agreement shall govern and apply to all intellectual property issues arising from this Agreement.

CHAPTER 13

REGULATORY COOPERATION

Article 13.1: Definitions

For the purposes of this Chapter:

regulatory cooperation activities means efforts between the Parties to enhance regulatory cooperation in order to further domestic policy objectives, improve the effectiveness of domestic regulation in the face of increased cross-border activity and promote international trade and investment, economic growth and employment; and

domestic regulation means a measure of general application adopted by regulatory agencies within the Parties and with which compliance is mandatory.

Article 13.2: General Provisions

1. The Parties affirm the importance of developing regulatory cooperation and capacity building between the Parties.

2. The Parties acknowledge:

(a) principles of good regulatory practice, while originally developed to improve the quality of domestic regulation, also result in regulation that facilitates trade;

(b) the adoption of international models, norms and rules should be considered in the development of domestic regulation;

(c) regulatory cooperation, both formal and informal, can improve the alignment of domestic regulation between key trading partners to remove potential barriers caused by regulatory difference and support trade;

(d) bodies who develop or implement regulation have a key role to play in regulatory cooperation and should consider the range of regulatory cooperation activities available to increase the alignment of domestic regulation internationally and between key trading partners;

(e) the differences in regulatory settings or regulatory implementation between countries that create problems for businesses participating in supply or value chains do not always fall neatly within the chapter structure of a free trade agreement;

(f) regulatory cooperation, both formal and informal, can improve the alignment, quality and design of future regulation.

3. The Parties therefore recognise the value in creating a mechanism to enable problems for business that span multiple Chapters of this Agreement or do not fit well within the scope of a particular Chapter of this Agreement and could be addressed by regulatory cooperation to be raised for consideration by the Parties.

Article 13.3: Contact Points

1. Each Party shall establish a contact point which shall have responsibility to consult or coordinate with its respective regulatory departments and agencies, as appropriate, on matters arising under this Chapter.

2. The Parties shall provide each other with the name of the governmental organisation that shall be their contact point and the contact details of relevant officials in that organisation, including telephone, email and other relevant details.

3. The Parties are encouraged to make information beneficial for regulatory cooperation available online or otherwise made available through the contact points.

4. The Parties shall notify each other promptly of any change of their contact point or any amendments to the details of the relevant officials.

Article 13.4: Cooperation

1. The Parties shall cooperate in order to facilitate the implementation of this Chapter and to maximise the benefits arising from it. Regulatory cooperation activities shall take into consideration each Party's needs, and may include:

(a) bilateral information exchanges, dialogues or meetings between policy officials in agencies responsible for regulatory management of the Parties;

(b) bilateral information exchanges, dialogues or meetings between policy officials in regulatory agencies or regulators of the Parties;

(c) formal cooperation, such as mutual recognition, equivalence or harmonisation; and

(d) other activities that the Parties may agree to.

2. The Parties may undertake regulatory cooperation activities on a voluntary basis. For greater certainty, a Party is not required to enter into any particular regulatory cooperation activity.

3. The Parties acknowledge the importance of regulators having a mandate and powers that enable them to cooperate with each other. The Parties, through the contact point, shall

encourage its regulators to consider cooperating with their counterparts in the other Party to reduce barriers to trade and investment.

4. The contact points shall ensure that work on regulatory cooperation under this Chapter offers value in addition to initiatives underway in other relevant fora or parts of this Agreement and avoids undermining or duplicating such efforts.

5. The Parties shall use the English language for regulatory cooperation activities under this Chapter to facilitate cooperation between relevant regulatory departments and agencies.

Article 13.5: Relationship 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 13.6: Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 14 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 14

DISPUTE SETTLEMENT

Article 14.1: Scope

1. The rules and procedures of this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement, but are without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are party.

2. For the avoidance of doubt, the Parties agree that the provisions of this Agreement shall be interpreted in accordance with the general principles of international law and consistently with the objectives set out in Article 1.1 (Objectives).

Article 14.2: Consultations

1. Each Party shall accord adequate opportunity for consultations regarding any representations made by the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.

2. Any Party which considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as a result of failure of the other Party to carry out its obligations under this Agreement or the existence of any other situation may, with a view to achieving satisfactory settlement of the matter, make representations or proposals to the other Party, which shall give due consideration to the representations or proposals made to it.

3. If a request for consultation is made, the Party to which the request is made shall reply to the request within seven days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

4. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement; and

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

Article 14.3: Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 14.4.

Article 14.4: Appointment of Arbitral Tribunals

1. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to appoint an arbitral tribunal. The request shall include a statement of the claim and the grounds on which it is based.

2. The arbitral tribunal shall consist of three members. Each Party shall appoint an arbitrator within 30 days of the receipt of the request, and the two arbitrators appointed shall designate by common agreement the third arbitrator, who shall chair the tribunal. The latter shall not be a national of either of the Parties, nor have his or her usual place of residence in the territory of one of the Parties, nor be employed by either of them, nor have dealt with the case in any capacity.

3. If the chair of the tribunal has not been designated within 30 days of the appointment of the second arbitrator, the Director-General of the WTO shall at the request of either Party appoint the chair of the arbitral tribunal within a further one month's period.

4. If one of the Parties does not appoint an arbitrator within 30 days of the receipt of the request, the other Party may inform the Director-General of the WTO who shall appoint the chair of the arbitral tribunal within a further 30 days and the chair shall, upon appointment, request the Party which has not appointed an arbitrator to do so within 14 days. If after such period that Party has still not appointed an arbitrator, the chair shall inform the Director-General of the WTO who shall make this appointment within a further 30 days.

5. For the purposes of paragraphs 1 to 4, any person appointed as a member or chair of the arbitral tribunal by either Party or by the Director-General of the WTO must be a well-qualified governmental or non-governmental individual, and can include persons who have served on or presented a case to a WTO panel, served in the Secretariat of the WTO, taught or published on international trade law or policy, or served as a senior trade policy official of a Member of the WTO. The Parties recognise that the arbitral tribunal should be composed of individuals of relevant technical or legal expertise.

Article 14.5: Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to it as it thinks fit. The findings and rulings of the arbitral tribunal shall be binding on the Parties.

2. The arbitral tribunal shall, apart from the matters set out in Article 14.6, regulate its own procedures in relation to the rights of Parties to be heard and its deliberations.

Article 14.6: Proceedings of Arbitral Tribunals

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it. The reports of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made.

2. The arbitral tribunal shall have the right to seek information and technical advice from any individual or body which it deems appropriate. A Party shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

3. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions and its initial submission to the public. A Party shall treat as confidential information submitted by another Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of a Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

5. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the Party against which the complaint has been brought shall be asked to present its point of view.

6. Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to take the floor first to be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

7. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

8. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 7 shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

9. The arbitral tribunal shall release to the Parties its findings and rulings in a report on the dispute referred to it within 60 days of its formation. In exceptional cases, the arbitral tribunal may take an additional 10 days to release its report containing its findings and rulings. Within this time period, the arbitral tribunal shall accord adequate opportunity to the Parties to review the report before its release.

Article 14.7: Termination of Proceedings

The Parties may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.

Article 14.8: Implementation

1. The Party concerned shall comply with the arbitral tribunal's rulings or findings within a reasonable time period. The reasonable period of time shall be mutually determined by the Parties and shall not exceed 12 months from the date of the arbitral tribunal's report, unless the Party concerned advises the other Party that primary legislation shall be required, in which case the reasonable period of time shall not exceed 15 months from such date.

2. If the Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance therewith or otherwise comply with the arbitral tribunal's report within the reasonable period of time, that Party shall, if so requested, and not later than the expiry of the reasonable period of time, enter into negotiations with the Party having invoked the dispute settlement procedures with a view to reaching a mutually satisfactory resolution.

3. If no mutually satisfactory resolution has been reached within 20 days, the Party which has invoked the dispute settlement procedures may suspend the application of benefits of equivalent effect until such time as the Parties have reached agreement on a resolution of the dispute.

4. In considering what benefits to suspend pursuant to paragraph 3:

(a) the Party which has invoked the dispute settlement procedures should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment; and

(b) the Party which has invoked the dispute settlement procedures may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

Article 14.9: Expenses

Unless the arbitral tribunal decides otherwise because of the particular circumstance of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.

CHAPTER 15

INSTITUTIONAL PROVISIONS

Article 15.1: Joint Commission

1. The Parties hereby establish the Singapore – New Zealand Closer Economic Partnership Joint Commission, composed of government representatives of each Party at the level of senior officials. Each Party shall be responsible for the composition of its delegation.

2. The Joint Commission shall:

   (a) consider any matters relating to the implementation of this Agreement;

   (b) review the general functioning of this Agreement;

   (c) consider any proposal to amend this Agreement;

   (d) supervise the work of all committees established under this Agreement as well as other joint activities conducted under this Agreement; and

   (e) consider any other matter that may affect the operation of this Agreement.

3. The Joint Commission may:

   (a) establish additional committees and working groups, refer any matter to a committee or working group for advice and consider any matter raised by a committee or working group established under this Agreement;

   (b) further the implementation of this Agreement's objectives through implementing arrangements, provided that the negotiation, modification or amendment of implementing arrangements shall be consistent with the rights and obligations of the Parties under this Agreement and shall not constitute amendments to this Agreement under Article 16.15 (Amendments);

   (c) explore measures for the further expansion of trade and investment between the Parties;

   (d) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

   (e) seek the expert advice of non-governmental persons or groups on any matter falling within its functions where this would help the Joint Commission make an informed decision; and

   (f) take such other action in the exercise of its functions as the Parties may agree.

Article 15.2: Meetings of the Joint Commission

1. The Joint Commission shall meet within one year of the date of entry into force of the Protocol. The Joint Commission's subsequent meetings shall be held at such frequency as the Parties may agree. Ad hoc meetings of the Joint Commission may be convened within 30 days of the request of either Party, as mutually agreed by the Parties.

2. Unless otherwise agreed by the Parties, meetings of the Joint Commission shall be held alternately in the territory of each Party and shall be chaired successively by each Party. The Party chairing a meeting of the Joint Commission shall provide any necessary administrative support for such meeting.

3. The Joint Commission shall take decisions on any matter within its functions by mutual agreement.

Article 15.3: Committee on Biosecurity, Food and Primary Products

1. The Parties agree to establish a Committee on Biosecurity, Food and Primary Products comprising representatives of the competent authorities of the Parties. The primary competent authorities and contact points for the committee shall be set out in an implementing arrangement.

2. The committee may agree to establish technical working groups consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from Chapter 5 (Sanitary and Phytosanitary Measures). When additional expertise is needed, the membership of these groups need not be restricted to representatives of the Parties.

3. The committee shall consider any issues between the Parties in relation to biosecurity, food, and primary products, including any matter related to the implementation of Chapter 5 (Sanitary and Phytosanitary Measures).

4. The objectives of the committee are to:

   (a) facilitate trade, including through seeking to resolve trade access issues where they arise, in accordance with the provisions of this Agreement;

   (b) provide a forum for improved communication and consultation between the Parties so as to avoid unnecessary barriers to trade; and

   (c) explore areas for further cooperation between the Parties.

5. In order to give practical effect to the objectives set out in paragraph 4, the committee may, in a manner consistent with other provisions in this Agreement:

   (a) establish, monitor and review work plans; and

(b) initiate, develop, adopt, review and modify implementing arrangements in relation to any matter, including on technical matters which further clarify the provisions of this Agreement, in order to facilitate trade between the Parties.

6. The implementing arrangements referred to in paragraph 5 initially include the following:

(a) Arrangement between New Zealand and Singapore on Competent Authorities and Contact Points;

(b) Arrangement between New Zealand and Singapore on the Recognition of the Equivalence of Foreign Disease and Pest Control and Zoning Measures as They Apply to Trade; and

(c) Arrangement between New Zealand and Singapore on Recognition of Measures and Status.

7. Implementing arrangements developed or modified under paragraph 5 shall commence within three months of the date on which those arrangements or modifications are agreed by the committee unless otherwise mutually determined.

8. The committee shall meet within one year of the entry into force of the Protocol and annually thereafter or as determined by the committee. The committee may meet in person, by teleconference, video conference, or by any other means determined by the committee. The committee may also consider matters through correspondence.

9. At the first meeting of the committee, the committee shall establish its rules of procedure.

10. The committee shall report regularly to the Joint Commission on its activities.

Article 15.4: Review

Unless otherwise agreed by the Parties, the Parties shall undertake a general review of the Agreement with a view to furthering its objectives within five years of the entry into force of the Protocol and shall conduct subsequent general reviews at least every three years thereafter.

CHAPTER 16

GENERAL PROVISIONS

Article 16.1: Application

1. Each Party is fully responsible for the observance of all provisions in this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities, and, in respect of trade in services under Chapter 8 (Services), by non-governmental bodies (in the exercise of powers delegated by central, regional or local government or authorities) within its territory.

2. The provisions of Chapter 14 (Dispute Settlement) may be invoked in respect of measures affecting the observance of this Agreement taken by regional or local governments or authorities within the territory of a Party. When an arbitral tribunal appointed under Chapter 14 (Dispute Settlement) has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. The provisions of Chapter 14 (Dispute Settlement) relating to the suspension of the application of benefits of equivalent effect shall apply in cases where it has not been possible to secure such observance.

3. This Article does not apply to Chapter 10 (Government Procurement).

Article 16.2: Transparency

1. Each Party shall promptly make public all laws, rules, regulations, judicial decisions and administrative rulings of general application pertaining to trade in goods, services, and investment; shall promptly make available administrative guidelines which significantly affect trade in services covered by its commitments; and shall endeavour to make available promptly administrative guidelines which significantly affect trade in goods and investment.

2. Each Party shall endeavour to provide opportunity for comment by the other Party on its proposed laws, rules, regulations and procedures affecting trade in goods and services and investments if it is of the view that any such proposed laws, rules, regulations and procedures are likely to affect the rights and obligations of either Party under this Agreement.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application. Each Party shall establish one or more enquiry points to provide specific information upon request on all such measures.

4. In view of the importance of transparency of domestic legislation and procedures affecting trade in goods and the supply of services and in investment to the operation of this Agreement, the Parties shall discuss any concerns which may arise in this area at the reviews referred to in Article 15.4 (Review), in order to address means of overcoming such concerns.

Article 16.3: Business Law

With a view to facilitating business through addressing issues of common interest in relation to business law, the Parties shall exchange information on their respective business laws as a first step in identifying issues for attention and consideration of an appropriate ongoing process for addressing these issues.

Article 16.4: General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Technical Barriers to Trade), Chapter 7 (Investment), and Chapter 13 (Regulatory Cooperation), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of Chapter 7 (Investment), Chapter 8 (Services), Chapter 9 (E-Commerce), Chapter 13 (Regulatory Cooperation), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

4. For the purposes of Chapter 10 (Government Procurement), Article III(2) of the Revised Agreement on Government Procurement is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article III(2) of the Revised Agreement on Government Procurement include environmental measures necessary to protect human, animal or plant life or health.

5. For the purposes of this Agreement, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods or services and investment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national works or specific sites of historical or archaeological value, or to support creative arts[1] of national value.

[1] "Creative arts" include ngā toi Māori (Māori arts), the performing arts – including theatre, dance, music, haka and waiata – visual arts and craft such as painting, sculpture, whakairo (carving), raranga (weaving) and tā moko, 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.

Article 16.5: Movement of Natural Persons

1. This Agreement applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

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

3. In accordance with Article 8.4 (Market Access), Article 8.5 (National Treatment), Article 8.6 (Additional Commitments) and Article 8.7 (Specific Commitments), the Parties may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under this Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4 This Agreement shall also not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to either Party under the terms of a specific commitment.[2]

Article 16.6: Measures to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. In the case of investments, a Party may adopt or maintain restrictions with regards to payments relating to the transfer of proceeds from investment.

2. The restrictions referred to in paragraph 1:

(a) shall be consistent with the *Articles of Agreement of the International Monetary Fund*;

(b) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

[2] The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

(c) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(d) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and

(e) shall be applied on a national treatment basis.

3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party within 14 days of the date such measures are taken.

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party within 90 days of the date of notification in order to review the measures adopted by it.

5. In the case of trade in goods, where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may, in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of GATT 1994, adopt restrictive import measures.

Article 16.7: Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfillment 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 14 (Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal appointed under Article 14.4 (Appointment of Arbitral Tribunals) may be requested by Singapore to determine only whether any measure (referred to in paragraph 1) is inconsistent with its rights under this Agreement.

Article 16.8: Critical Shortages

Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall preclude the adoption by Singapore of measures it deems necessary to prevent or relieve a critical shortage or threat thereof of any such imports deemed or defined as essential to Singapore under its domestic laws and regulations, and where the situation referred to gives rise, or is likely to give rise, to

major difficulties for Singapore, provided that such measures shall, if Singapore deems fit, be discontinued as soon as the conditions giving rise to such measures have ceased to exist.

Article 16.9: Security

Nothing in this Agreement shall be construed:

(a) as preventing either Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to action relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment, and any action taken in time of war or other emergency in domestic or international relations; or

(b) as preventing either Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 16.10: Disclosure of Information

Nothing in this Agreement shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers:

(a) would be contrary to its essential security interests;

(b) is contrary to the public interest as determined by its laws and regulations;

(c) is contrary to any of its laws and regulation, including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(d) would impede law enforcement; or

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

Article 16.11: Taxation

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures:

(a) where corresponding rights and obligations are also granted or imposed under the WTO Agreement;

(b) under Article 2.14 (Export Duties); and

(c) under Article 7.8 (Expropriation and Compensation).

3. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention relating to the avoidance of double taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

4. If there is a dispute described in Article 7.14 (Investment Disputes) that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 7.14 (Investment Disputes) shall accept a decision of the Parties as to whether the measure in question is a taxation measure.

5. For greater certainty, nothing in this Agreement shall be regarded as obliging either Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement on the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

6. No investor may invoke Article 7.8 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 7.8 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities at least 90 days before submitting any claim to conciliation or arbitration the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within six months of such referral, the investor may submit the dispute to conciliation or arbitration in accordance with Article 7.14.2 (Investment Disputes).

7. For the purposes of this Article:

(a) **competent authorities** means:

(i) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner; and

(ii) for Singapore, the Chief Tax Policy Officer, Ministry of Finance, or his successor or such other public officer as may be designated by Singapore;

(b) **taxation measures** include excise duties, but do not include:

(i) any customs duty as defined in Article 1.2 (General Definitions); or

(ii) the measures listed in subparagraphs (b) and (c) of that definition.

Article 16.12: Association with the Agreement

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

2. The terms of such accession or association shall take into account the circumstances of the Member of the WTO, State or separate customs territory, in particular with respect to timetables for liberalisation.

Article 16.13: Obligations Under Other International, Regional or Bilateral Agreements

Nothing in this Agreement shall be regarded as exempting either Party to this Agreement from its obligations under any international, regional or bilateral agreements to which it is a party. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which both Parties are party, on request, the Parties shall consult with a view to reaching a mutually satisfactory solution.

Article 16.14: Preferences Under Other Agreements

1. Nothing in this Agreement shall be regarded as obliging a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or any future customs union, free trade area, free trade arrangement, common market, monetary union or similar international agreement or other forms of bilateral or regional cooperation to which either of the Parties is or may become party; or as preventing the adoption of an agreement designed to lead to the formation or extension of such a union, area or arrangement or market.

2. Nothing in this Agreement shall be interpreted as obliging a Party to extend the benefit of any treatment, preference or privilege arising under this Agreement to legal or natural persons who otherwise only qualify for such benefit by virtue of a separate agreement or arrangement entered into by the other Party.

Article 16.15: Amendments

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

Article 16.16: Annexes

The Annexes to this Agreement, including any Appendices thereto, shall be an integral part of this Agreement.

Article 16.17: Entry into Force, Duration and Termination

1. This Agreement shall be subject to ratification. Ratification shall be effected by an exchange of Notes between the Parties. The Agreement shall enter into force on the date specified in such exchange of Notes.

2. This Agreement may be terminated by either Party on giving 180 days' written notice to the other Party.